NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 7/21/23

Virtual Meeting

FINANCIAL ANALYSIS SOLVENCY TOOLS (E) WORKING GROUP
Wednesday, August 9, 2023
11:00 a.m. – 12:00 p.m. PT / 12:00 p.m. – 1:00 p.m. MT / 1:00 p.m. – 2:00 p.m. CT / 2:00 p.m. – 3:00 p.m. ET

ROLL CALL

Greg Chew, Chair	Virginia	Judy Weaver / Kristin Hynes	Michigan
Amy Garcia, Vice Chair	Texas	Debbie Doggett	Missouri
Richard Russell / Todrick Burks	Alabama	Patricia Gosselin	New Hampshire
Dave Lathrop / Kurt Regner	Arizona	Olga Dixon	New Jersey
Michelle Lo	California	Victor Agbu	New York
Jack Broccoli	Connecticut	Dwight Radel / Tim Biler	Ohio
Nathaniel Kevin Brown	District of Columbia	Ryan Keeling	Oregon
Carolyn Morgan / Nicole Crockett	Florida	Liz Ammerman / Ted Hurley	Rhode Island
Julia Conrad	Indiana	Kristin Forsberg	Wisconsin
Lynn Beckner	Maryland		

NAIC Support Staff: Ralph Villegas / Rodney Good / Bill Rivers

AGENDA

1. Consider Exposure of Handbook Revisions Resulting from the Following Referrals to FASTWG
   – Greg Chew (VA)

   a. Climate Risk Enhancements Referral – *Page 1*
   b. Group Capital Calculation (GCC) RRG Referral – *Page 21*
   c. Ad Hoc (E/F) Group on Efficiencies Referral – *Page 24*
   d. Risk-Focused Surveillance Working Group (RFSWG) Referral – *Page 29*
   e. Receivership Law Working Group (RLWG) Referral – *Page 33*
   f. Other Staff Recommendations - *Page 43*

2. Discuss Any Other Matters Brought Before the Working Group
   – Greg Chew (VA)

3. Adjournment

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MEMORANDUM

TO: Judy Weaver, Chair of the Financial Analysis Solvency Tools (E) Working Group

FROM: Commissioner Birrane, Co-Chair of the Climate Resiliency (EX) Task Force leading the Solvency Workstream

DATE: May 23, 2022

RE: Referral on Proposed Climate Risk Enhancements

The NAIC's Climate Resiliency (EX) Task Force is charged with evaluating financial regulatory approaches to climate risk and resiliency in coordination with other relevant committees, task forces and working groups, including those under the Financial Condition (E) Committee. As part of its efforts to address this charge, the Task Force designated a Solvency Workstream to explore potential enhancements to existing solvency monitoring processes in this area.

During 2021, the Solvency Workstream held a series of public panels on various climate solvency related topics which included among other things, a high-level summary of existing regulatory tools in the space. Near the end of 2021, the Solvency Workstream released a series of questions intended to solicit input on potential enhancements to the existing regulatory tools. As a result of comments received, and general support for enhancements to the NAIC's Financial Analysis Handbook, the workstream suggests the Working Group consider modifications to incorporate particular concepts as it pertains to climate risk. Specifically, the Workstream suggests the Working Group consider modifications to incorporate procedures for utilizing the Property Casualty RBC Cat reporting data, any investment stress scenario results available from the NAIC Capital Markets Bureau, and Climate Risk Exposure Survey results (if available) in conducting ongoing financial analysis.

The proposed enhancements are presented as high-level principles for the Technical Group to consider and develop as appropriate for inclusion in the Handbook. If there are any questions regarding the proposed referral, please feel free to contact me or NAIC staff (Dan Daveline at ddaveline@naic.org) for clarification. Thank you for your consideration of this request.

Proposed Climate Change Additions for 2023/24 FAH

Note: This document includes additions proposed to various sections of the NAIC's Financial Analysis Handbook to incorporate climate change risks in response to a referral from the Climate Risk and Resiliency (EX) Task Force. Proposed additions are shown in tracked changes throughout the document. In some sections (CR, MK, LQ), one example of proposed revisions is presented, although the proposal indicates that revisions are to be included for multiple branded risks and/or statement types. In other sections (PR/UW, ST), only the Property/Casualty section of the branded risk repositories are impacted.

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III.B.1.a. Credit Risk Repository – P/C Annual

Note: To conserve space, the exposure draft only displays proposed additions to the P/C Credit Risk Repository. However, similar additions are proposed for the Credit, Liquidity and Market Risk Repositories for all three statement types (P/C, Life and Health) to ensure that the impact of climate change/energy transition risk is appropriately considered in ongoing financial analysis of insurer investment portfolios.

Credit Risk: Amounts actually collected or collectible are less than those contractually due or payments are not remitted on a timely basis.

Note: The repository is not an all-inclusive list of possible procedures. Therefore, risks identified for which no procedure is available should be analyzed by the state insurance department based on the nature and scope of the risk. Also, note that key insurance operations or lines of business, for example, may have related risks addressed in different repositories. Therefore, analysts may need to review other repositories in conjunction with credit risk. For example:

- Investment strategy is also discussed in the Liquidity, Market, and Strategic Risk Repositories.
- Investment asset classes (Bonds, Mortgages, etc.) also are discussed in the Market and/or Liquidity Risk Repositories.
- Reinsurance is also discussed in the Operational and Strategic Risk Repositories.

Analysis Documentation: Results of credit risk analysis should be documented in Section III: Risk Assessment of the insurer.

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Invested Asset Exposure to Climate Change Risk

6. Assess the potential impact of climate change and/or transition and asset devaluation risk on the insurer's invested asset portfolio.

	Other Risks
a. Review information provided in the insurer's response to the NAIC's Climate Risk and Disclosure Survey (if available) on its exposure to climate change/energy transition risk and related mitigation activity in this area.	LQ, MK

b. Review relevant information provided in the ORSA Summary Report and/or SEC 10K or 10Q filings (if available) discussing the insurer's exposure to climate change/energy transition risk and related mitigation activity in this area.	LQ, MK
c. Review information provided in the NAIC's U.S. Insurance Industry Climate Affected Investment Analysis to identify potential concentrations in insurer exposure.	LQ, MK

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Additional Analysis and Follow-up Procedures

Request and Assess the Insurer's Investment Policies and Strategies:

If concerns exist regarding the level of credit exposure, request and review the insurer's investment strategy to determine if it is appropriately structured to support its ongoing business plan. Review the guidelines outlined in the plan for:

- Quality of issues invested in and diversification standards pertaining to issuer, industry, duration, liquidity, ~~and~~ geographic location, and issues/sectors exposed to climate change, transition and asset devaluation risks.
- Expected rate of returns on investments (projected investment income) compared to actual results.
- Planned increases in investment types, sectors, markets, etc.
- Appropriateness of the investment plan for the liability structure of the insurer. (This may require a review of asset adequacy analysis for asset liability matching [ALM] and discussion with the insurer's management to better understand their plan.)
- Upon review of the investment plan, compare the plan to actual results. Does the insurer and its investment manager(s) appear to be adhering to the investment policies and guidelines in the investment plan?

Examination Findings:

Review the most recent examination report and Summary Review Memorandum (SRM) for any findings regarding credit risks associated with:

- Investment concentration
- Exposure to riskier asset classes
- Climate change, transition and asset devaluation
- ALM
- Adherence to investment policies and strategies

- Investment Management, and use of and monitoring of external investment managers
- Proper classification (i.e., authorized, unauthorized, reciprocal jurisdiction, certified) and calculation of reinsurance collateral and provision

If outstanding issues are identified, perform follow-up procedures as necessary to address concerns.

NAIC Capital Market's Bureau Analytical Assistance:

Consider requesting the following analytical reviews:

- Review of the insurer's investment portfolio
- Review of Investment Management Agreements

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Example Prospective Risk Considerations		
Risk Components for IPS		***Explanation of Risk Components***
1	Significant concentration by [asset class, sector, issuer, etc.]	High exposure in any one asset class, industry sector or issuer could result in material credit losses if asset class, industry sector or issuer experience an economic decline.
2	Borrower default risk for [mortgage loans, RMBS, CMBS or LBaSS securities, etc.]	Lower credit quality of the borrowers (i.e., prime versus subprime) may result in higher risk of default, leading to credit losses in the event of a housing and/or commercial real estate market downturn.
3	Prepayment variability in RMBS	Prepayment variability in RMBS could result in actual cash flows and investment yields to be materially different from expectations.
4	Volatility of non-investment grade bonds	The market volatility of below investment-grade bonds makes the price at which bonds are held an important consideration.
5	Foreign security default	Material exposure to foreign investments could result in credit losses if those investments are impacted by negative changes in geopolitical or foreign economic environments.
6	Impairment of [bonds, etc.]	Risk of further deterioration in credit quality may result in other-than-temporary impairments impacting income and surplus.
7	Bondholder default	Investment grade bonds that have declined to a non-investment grade status may not recover lost value.
8	Structured notes cash flow volatility risk	Impact of the volatility of structured notes and the underlying asset on which its cash flows are based.
9	Structured notes collateral concentration risk	Material investment in structured notes that may have collateral type concentration may result in concentration risk (lack of diversity) to the insurer's portfolio.
10	Structured notes default	Structured notes may be subordinated in the overall transaction representing exposure to non-payment in event of default.

11	Second lien mortgage loan risk	High exposure to second lien loans may result in increase in risk of non-payment in the event of default as first lien loans are paid first from the value of the property.
12	Mortgage loan collateral inadequate	Out-of-date appraisals may result in inaccurate valuation, resulting in the underlying collateral asset not being adequate.
13	High risk mortgage loan valuation	The investments in high-risk mortgage loans are incorrectly valued.
14	Complexity of BA assets	BA assets often have complex investment strategies and unpredictable cash flows.
15	Adequacy of collateral of BA asset	Volatility of underlying assets (e.g., certain hedge funds and private equity funds) may result in underlying asset not adequate.
16	Economic impact on portfolio of [BA assets, derivatives, etc.]	Portfolio volatility driven by economic changes.
17	Hedge effectiveness of derivatives portfolio	Derivatives strategy may not meet hedge effectiveness for mitigating risk.
18	Investment strategy contemplate higher [credit, market, liquidity…] risk	The insurer's investment strategy may not be structured to support its ongoing business plan, which could indicate the strategy enjoys higher credit, market and liquidity risks than are appropriate for the liabilities of the insurer and may lead to financial concerns in the future.
19	Investment results actual to projected variance	The insurer's actual investment portfolio and/or portfolio performance may vary significantly from projections if the insurer is not adhering to the strategy in place (i.e., higher actual credit, market or liquidity risk compared to the plan).
20	Collectability of receivables for [insert name of receivable]	Payments of [insert name of the receivable] may be delayed or not be paid when due, resulting in cash flow mismatch.
21	Credit quality of [reinsurer, agents, professional employer organization (PEO), affiliate, etc.]	Credit quality and poor financial strength of a [reinsurer, agents, etc.] may result in future collectability risk, which may result in ongoing credit risk and future liquidity issues.
22	Exposure to Climate Change, transition and asset devaluation Risk	The insurer's investment portfolio is subject to prospective devaluation of the assets/changes in the asset return associated with its holdings of climate-affected assets.

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III.B.1.d. Credit Risk Repository - Analyst Reference Guide – P/C Annual

Note: To conserve space, the exposure draft only displays proposed additions to the P/C Credit Risk Repository – Analyst Reference Guide. However, these same (or substantially similar) additions are proposed for the Analyst Reference Guides for the Credit, Liquidity and Market Risk Repositories to ensure that the impact of climate change/energy transition risk is appropriately considered in ongoing financial analysis of insurer investment portfolios.

Credit Risk Assessment

Credit Risk: Amounts actually collected or collectible are less than those contractually due or payments are not remitted on a timely basis.

The objective of Credit Risk Assessment analysis is focused primarily on exposure to credit risk of investments and reinsurance receivables. The following discussion of procedures provides suggested data, benchmarks and procedures analysts can consider in their review. In analyzing credit risk, analysts may analyze specific types of investments and receivables held by insurers. Analysts' risk-focused assessment of credit risk should take into consideration the following areas (but not be limited to):

- Concentrations of investments (i.e., diversification)
- Materiality of high-risk or low-quality investments
- Extensive use of reinsurance
- Credit quality of reinsurers
- Collectability of reinsurance receivables
- Collectability of other receivables
- Credit quality of affiliates
- Quality of collateral
- Strategies for mitigating credit risk (i.e., counterparty risk with derivatives and off-balance sheet transactions)
- Uncollected premium and agents' balances

---Detail Eliminated to Conserve Space--

Invested Asset Exposure to Climate Change Risk

Property/Casualty #	*Life/A&H/Fraternal #*	*Health #*
6	*6*	*6*

The procedure assists analysts in identifying and assessing the potential exposure of the insurer's investment portfolio to the impact of climate change and/or energy transition risks. Transition risks refer to stresses on certain investment holdings arising from the shifts in policy, consumer and business sentiment, or technologies associated with the changes necessary to limit climate change. A few examples of investment holdings and sectors generally subject to greater levels of transition risk include, oil/gas, transportation, heavy manufacturing, and agriculture. In assessing an insurer's exposure to these risks, the analyst is encouraged to review information disclosed by the insurer in its responses to the NAIC's Climate Risk Disclosure Survey, SEC filings, and/or the ORSA Summary Report filings. In addition, the analyst is encouraged to review the results of basic scenario analysis conducted by the NAIC using insurers' Annual Statement filings (U.S. Insurance Industry Climate Affected Investment Analysis) to identify potential concentrations in exposure.

ADDITIONAL REVIEW CONSIDERATIONS

- Review the Insurer's Investment Policies and Strategies to assess whether climate change, transition and asset devaluation risk considerations have been appropriately implemented into the company's investment processes.
- Review the most recent examination report and Summary Review Memorandum (SRM) for any findings regarding climate change/energy transition risks.
- If concerns exist, consider requesting information from the insurer regarding how the insurer manages its exposure to climate change/energy transition risk, including how it identifies and estimates current and prospective exposures and the limits (if any) in place to avoid concentrations.

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III.B.6.a. Pricing/Underwriting Risk Repository – P/C Annual

Note: As the physical risks of climate change and related CAT exposures impact property/casualty insurers most directly, guidance in this area is concentrated in the P/C Pricing/Underwriting Risk Repository and associated analyst reference guide.

Pricing/Underwriting Risk: Pricing and underwriting practices are inadequate to provide for risks assumed.

Note: The repository is not an all-inclusive list of possible procedures. Therefore, risks identified for which no procedure is available should be analyzed by the state insurance department based on the nature and scope of the risk. Also, note that key insurance operations or lines of business, for example, may have related risks addressed in different repositories. Therefore, analysts may need to review other repositories in conjunction with pricing and underwriting. For example, many of the procedures also may be related to operational risks or strategic risks.

--Detail Eliminated to Conserve Space---

Exposure to Catastrophic Events

3. Determine whether concerns exist regarding the insurer's exposure to catastrophic events, including the potential for increased physical losses, prospectively, due to climate change.

	Other Risks
a. Review Annual Financial Statement, Schedule T and the writings section in the Financial Profile Report (or the Mix of Business Dashboard) to evaluate the top states in terms of direct premiums and the percentage of total DPW in those states. Based on the lines of business written, determine whether there is a material concentration of premiums written in areas prone to catastrophic events.	ST
b. Review information provided by the insurer in the RCAT (PR027) section of its Risk Based Capital filing to identify and assess the insurer's current exposure to catastrophic events at modeled worst year in 50, 100, 250, and 500 levels on both a gross (direct and assumed) and net basis (after reinsurance). Evaluate the potential impact of the company's modeled loss results on its capital and surplus and RBC position.	ST
c. Review information provided in the insurer's response to the NAIC's Climate Risk and Disclosure Survey (if available) on its exposure to physical losses impacted by climate change, as well as its related mitigation activity.	ST

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I. Determine whether any of the company's responses require further investigation and inquiry.	
d. Review information provided in the ORSA Summary Report and/or SEC 10K or 10Q filings (if available) regarding the insurer's exposure to physical losses impacted by climate change, as well as its related mitigation activity.	ST
e. Utilize the information gathered and/or request additional information as necessary to assess the insurer's exposure to climate/catastrophic risks, as well as processes and strategies in place to limit exposures. I. Gain an understanding of how the company incorporates catastrophe modeling results into its underwriting processes (e.g., assessment of risk appetite or determination of net retained risk). II. Gain an understanding of and evaluate the potential impact of climate change on the company's business and underwriting strategy over medium and longer-term time horizons. III. Determine whether there are any concerns regarding the company's risk management processes in regard to climate change, both currently and prospectively.	

Additional Analysis and Follow-Up Procedures

Examination Findings:
Review the most recent examination report and Summary Review Memorandum (SRM) for any findings regarding pricing and underwriting risks. If outstanding issues are identified, perform follow-up procedures as necessary to address concerns.

Inquire of the Insurer:
If concerns exist, consider requesting additional information from the insurer regarding:

Marketing Strategy and Projections

- Marketing strategy, including distribution channels/networks, planned growth or cessation of business, expansion into new states or regions, management of closed block operations, etc.
- Financial projections for expected premium/sales

Underwriting Performance

- Descriptions of underwriting practices and policies, including any exposure limits established by the insurer
- Descriptions of pricing practices (e.g., frequency of review) and policies
- Status of recent and pending rate increase requests

Premium Production and Writings Leverage

- The insurer's expertise in the lines of business written
- Explanations for significant shifts in geographic concentrations, lines of business, amounts of premiums written, high leverage positions, etc.

Use of CAT Modeling and Exposure Limits in Underwriting

• CAT modeling processes and oversight • Use of modeled results to set underwriting exposure limits and refine underwriting guidelines
Own Risk and Solvency Assessment (ORSA) Summary Report: If the insurer is required to file ORSA or part of a group that is required to filed ORSA: • Did the ORSA Summary Report analysis conducted by the lead state indicate any pricing and underwriting risks that require further monitoring or follow-up? • Did the ORSA Summary Report analysis conducted by the lead state indicate any mitigating strategies for existing or prospective risks? • Did the ORSA Summary Report present the results of modeled CAT exposure analysis at various levels, on both a gross and net basis?
Holding Company Analysis: • Did the Holding Company analysis conducted by the lead state indicate any pricing and underwriting risks impacting the insurer that require further monitoring or follow-up? • Did the Holding Company analysis conducted by the lead state indicate any mitigating strategies for existing or prospective risks impacting the insurer?

III.B.6.d. PR/UW Risk Repository - Analyst Reference Guide – P/C Annual

Pricing and Underwriting Risk Assessment

Pricing and Underwriting Risk: Pricing and underwriting practices are inadequate to provide for risks assumed.

The objective of Pricing and Underwriting Risk Assessment analysis is to focus on risks inherent in writing business and premium production. Although pricing and underwriting risk is a component of overall profitability and operations, it is reviewed separately from other operational risks. Analysts may require additional investigation and information requests to understand and assess the potential impact of these risks. For example, analysts may need additional information to assess the insurer's capacity for growth and plans for expansion.

The following discussion of procedures provides suggested data, benchmarks and procedures analysts can consider in his/her review. An analyst's risk-focused assessment of pricing and underwriting risk should take into consideration, the following areas (but not be limited to):

- Underwriting performance
- Premium production
- Premium concentration
- Writings leverage
- Financial impact of the federal Affordable Care Act (ACA) (Life/A&H, Health)

---Detail Eliminated to Conserve Space---

Quantitative and Qualitative Data and Procedures – Property & Casualty

Premium Production, Concentration and Writings Leverage

PROCEDURE #2 assists analysts in determining whether concerns exist regarding changes in the volume of premiums written or changes in the insurer's mix of business. Significant increases or decreases in premiums written may indicate a lack of stability in the insurer's operations. In addition, a significant increase in premiums written may be an indication of the insurer's entrance into new lines of business or sales territories, which might result in financial problems if the insurer does not have expertise in these new lines of business or sales territories. Significant increases in premiums written might also be an indication that the insurer is engaging in cash flow underwriting. Cash flow underwriting is the practice of writing a significant amount of business in order to invest and earn a greater investment return than the costs associated with potentially underpriced business. Cash flow underwriting can be a serious concern if it is accompanied by a shift in business written from short-tail property lines of business to long-tail liability lines.

Analysts should consider reviewing premiums written by line of business to determine which lines increased or decreased significantly and whether any new lines of business are being written. Analysts should also consider verifying that the insurer is authorized to write all lines of business being written. If new lines of business are being written, or if premiums are being written in new states, analysts should consider determining whether the insurer has expertise in the new lines of business or new sales territories. This would include expertise in distribution, underwriting, claims, and reserving. There is no information in the Annual Financial Statement to assist analysts in making this determination. However, there may be helpful information in the insurer's Management's Discussion and Analysis (MD&A). Otherwise, information may be requested from the insurer. ~~Analysts should also~~

~~consider determining if, as a result of changes in the mix of business, the insurer's business is concentrated in specific geographic areas, which could result in the insurer being potentially exposed to catastrophic losses.~~

Within several lines of business and policy types (most notably commercial property), property/casualty insurers may be exposed to losses resulting from acts of terrorism. Following the September 11, 2001 attacks on the New York World Trade Center and the U.S. Pentagon, terrorism coverage became prohibitively expensive, if offered at all. In response, the U.S. Congress passed the Terrorism Risk Insurance Act (TRIA) of 2002. TRIA was initially created as a temporary three-year federal program that required insurers to offer commercial policyholders with terrorism coverage, while allowing the Federal Government to share monetary losses with insurers on commercial property/casualty losses from a terrorist attack. Since then, it has been renewed four times and is due to expire on December 31, 2027. Before this backstop can be accessed, several stipulations and limits are applied, many of which have been adjusted under subsequent extensions of the Act to limit the support available to insurers. Analysts should assess the insurer's exposure to losses related to acts of terrorism and consider any mitigation by TRIA. Procedure #2 also assists analysts in determining whether the insurer is excessively leveraged due to the volume of premiums written. Surplus can be considered as underwriting capacity, and the ratios of gross and net writings leverage measure the extent to which that capacity is being utilized and the adequacy of the insurer's surplus cushion to absorb losses due to pricing errors and adverse underwriting results. A gross writings leverage ratio result greater than 900% may indicate that the insurer is excessively leveraged, and special attention should be given to the adequacy of the insurer's reinsurance protection and the quality of the reinsurers. A net writings leverage ratio greater than 300% may also indicate that the insurer is excessively leveraged and lacks sufficient surplus to finance the business currently being written. In evaluating these ratios, analysts should also consider the nature of the insurer's business. For example, an insurer that has historically written primarily short-tail property lines of business might not be considered excessively leveraged even though it has higher ratio results, because the risk of significant underpricing or adverse underwriting results is less than that of an insurer that writes primarily volatile long-tail liability lines of business such as medical professional liability.

Analysts should consider reviewing the net premiums written by line to determine which lines of business are being written. An insurer that writes primarily short-tail property lines may be able to write at higher levels of premiums to surplus than an insurer that writes primarily long-tail liability lines, because the risk of underpricing and significant adverse underwriting results is less with the short-tail property lines of business. Analysts should also consider comparing the ratios of gross and net writings leverage to industry averages to help evaluate the insurer's leverage. If the insurer is a member of an affiliated group of insurers, analysts might want to compute the net and gross writings leverage ratios on a consolidated basis to help evaluate whether the affiliated group of insurers is excessively leveraged. If the net and gross writings leverage ratios results are high, analysts should consider determining whether the insurer has adequate reinsurance protection against large losses and catastrophes and that the reinsurers are of high quality.

Exposure to Catastrophic Events

PROCEDURE #3 assists analysts in identifying and assessing the insurer's current and prospective exposure to catastrophic events as well as the risk management practices of insurers writing a significant percentage of their business in products and geographic areas that are exposed to severe loss events. These types of catastrophic risk exposures have frequently been the cause or contributing factor in insurer insolvencies. Various steps included in this procedure assist in identifying the potential concentrations of exposure through a review of information provided in the annual statement as well as additional information provided within the RBC filing regarding modeled catastrophic risk exposures.

The Catastrophe Risk Charge in RBC (RCAT or PR027) is required to be completed by all insurers filing on the Property/Casualty blank unless they are exempted from filing due to limited exposure to property lines or coverage in catastrophe-prone areas. Insurers that are not exempted from this charge are required to provide modeled loss outputs from an approved catastrophe model for the worst year in 50, 100, 250, and 500, using the insurance company's own insured property exposure information as inputs to the model. Insurers are not required to utilize any prescribed set of modeling assumptions but are expected to use the same exposure data, modeling, and assumptions used in its own internal catastrophe risk management process.

If the analyst identifies potentially significant concentrations or exposures in writings or modeled losses, the analyst should gain an understanding of the risk mitigation practices in place to identify, monitor and mitigate significant exposures. An understanding could be gained through a review of existing information available to the analyst through company responses to the NAIC Climate Risk Disclosure Survey, ORSA Summary Report filings, or public information sources such as SEC 10K or 10Q filings. If these existing information sources are not available or do not provide adequate details of exposures and risk management practices, the analyst is encouraged to reach out to the company to request and review additional information.

In reviewing the insurer's exposure to catastrophic losses, it is important to consider both the current and prospective nature of the exposures. Increases in weather-related catastrophic losses may result from noticeable changes in climate that have been recorded over an extended period, including rising sea levels, changes in temperatures, precipitation, and/or wind patterns. The concern is that climate change or change in weather patterns may increase the severity and frequency of future weather events including, but not limited to: thunderstorms, including severe hail and strong winds; tornadoes; hurricanes; windstorms; floods; heat waves; drought; and wildfires. If the insurer is exposed to significant catastrophic losses that could be the result of climate change, the analyst should take steps to gain an understanding of and evaluate the potential impact on the company's business and underwriting strategy over medium and longer-term time horizons.

III.B.9.a Strategic Risk Repository – P/C Annual

Note: As the physical risks of climate change and related CAT exposures impact the reinsurance strategy of property/casualty insurers most directly, guidance in this area is concentrated in the P/C Strategic Risk Repository and associated analyst reference guide.

Strategic Risk: Inability to implement appropriate business plans, to make decisions, to allocate resources or to adapt to changes in the business environment will adversely affect competitive position and financial condition.

Note: The repository is not an all-inclusive list of possible procedures. Therefore, risks identified for which no procedure is available should be analyzed by the state insurance department based on the nature and scope of the risk. Also, note that key insurance operations or lines of business, for example, may have related risks addressed in different repositories. Therefore, analysts may need to review other repositories in conjunction with strategic risk. For example:

- Changes in officers, directors or organizational structure also is discussed in the Operational Risk Repository.
- Some review of investment strategies also may be performed in the Credit, Market and Liquidity Risk Repositories.

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Reinsurance Strategy

7. Determine whether the insurer has established and maintained appropriate levels of reinsurance to support its business plan and strategy, in consideration of its capital and surplus position and risk exposures.

--Detail Eliminated to Conserve Space---

P/C Specific Procedures	*Other Risks*
o. After reviewing information on reinsurance included in the business plan and the various regulatory filings available to analysts, request and review additional information as necessary to gain an adequate understanding of the insurer's reinsurance strategy and program structure. Evaluate the impact of any significant changes in program structure (e.g., changes in retention levels, coverage limits, exclusions, etc.) on the insurer's business plan and strategy.	PR/UW
p. Review the Annual Financial Statement and other available information (e.g., actuarial opinion, Management's Discussion and Analysis (MD&A), Form B, business plan, etc.) to gain an understanding and evaluate the insurer's reinsurance program in relation to its risk profile and strategy, including adequate protection for large losses. i. Request the Department Actuary review the available information regarding the reinsurance program to identify any concerns.	PR/UW

ii. Consider the following specific procedures related to the Annual Financial Statement, General Interrogatories, Part 2: • #6.1. Do any concerns exist regarding the provision the company has made to protect itself from any excessive loss in the event of a catastrophe under a workers' compensation contract issued without limit of loss? • #6.3. Do any concerns exist regarding the provision the company has made to protect itself from an excessive loss arising from the types and concentrations of insured exposures composing its probable maximum property insurance loss? • #13.2. Does any reinsurance contract considered in the calculation of the largest net aggregate risk amount include an aggregate limit of recovery without also including a reinstatement provision? • #13.3. Are the number of reinsurance contracts considered in the calculation of the largest net aggregate risk amount cause for concern?	
q. Review the insurer's gross and net writings leverage positions to assist in evaluating the adequacy of the insurer's reinsurance strategy. Consider the following specific procedures in this area: i. Compare the gross writings leverage ratio and the net premium written to surplus ratio to the industry averages to determine any significant deviations from the industry averages. ii. If the insurer is a member of an affiliated group of insurers, compute the gross premium written to surplus ratio and the net premium written to surplus ratio on a consolidated basis to determine if the affiliated group of insurers appears to be excessively leveraged. iii. Obtain an explanation from the insurer for unusual results for P/C IRIS ratios #1 and #2.	PR/UW
r. Review, for each line of business included in the Annual Financial Statement, Schedule P, the trends in accident year loss ratios, on both a gross and net basis, for indications of deteriorating underwriting results that may warrant reinsurance consideration.	PR/UW
s. Review the Annual Financial Statement, Schedule T and determine whether there appears to be large geographic concentrations of premiums in areas especially prone to catastrophic events. If "yes," consider requesting and reviewing information from the insurer regarding its catastrophic reinsurance coverage to evaluate its sufficiency.	PR/UW
t. Review information provided by the insurer in the RCAT (PR027) section of its Risk Based Capital filing to identify and assess the insurer's current exposure to catastrophic events at modeled worst year in 50, 100, 250, and 500 levels on both a gross (direct and assumed) and net basis (after reinsurance). Evaluate the adequacy of the company's catastrophic reinsurance coverage at various modeled loss levels, including the potential impact on capital and surplus and RBC position.	PR/UW
u. Review information provided in the insurer's response to the NAIC's Climate Risk and Disclosure Survey (if available) on its exposure to physical losses impacted by climate change as well as its potential impact on reinsurance decision-making. I. Determine whether any of the company's responses require further investigation and inquiry.	PR/UW

v. Review relevant information provided in the ORSA Summary Report and/or SEC 10K or 10Q filings (if available) discussing the insurer's exposure to physical losses impacted by climate change, as well as its potential impact on reinsurance-decision making.	PR/UW
w. Utilize the information gathered and/or request additional information as necessary to evaluate and assess the adequacy of the insurer's catastrophic reinsurance coverage to limit its exposure to large loss events and/or the attritional costs of multiple smaller events. II. Gain an understanding of and evaluate the company's process to incorporate catastrophe modeling results into its reinsurance decision-making processes (e.g., retention levels, coverage limits, exclusions, reinstatement provisions, or use of non-traditional reinsurance). III. Gain an understanding of and evaluate the potential impact of climate change on the company's reinsurance decision-making processes.	PR/UW

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Example Prospective Risk Considerations		
Risk Components for IPS		***Explanation of Risk Components***
1	Impact of [industry risk, news report, reorganization, etc.] on company strategy	Various industry risks, economic conditions, company announcements or other events reported through press releases and news articles may threaten or significantly affect the insurer's strategy.
2	Weak or immature risk management practices	Weaknesses or immaturity in the insurer's risk management practices may limit its ability to identify, track, assess and manage significant strategic risks.
3	Change in strategic direction	A change in strategic direction resulting from turnover or change in key board and/or senior management positions may increase strategic risk.
4	Lack of experienced leadership	The lack of experienced leadership at the board and senior management level may make it difficult to set, maintain and achieve strategic goals.
5	Lack of due diligence in mergers or acquisitions	Failure to adequately conduct due diligence in evaluating the financial condition and compatibility of merger and acquisition candidates may lead to strategic difficulties.
6	Integration challenges	The insurer may experience problems in integrating people, culture, systems and business plans as a result of business combinations and merger/ acquisition activity.
7	Lack of strategic business planning	The lack of formalized business planning and strategic development may limit the insurer's ability to adequately identify, address and respond to risks on a timely basis.

8	Overly aggressive/optimistic business strategies	The insurer's business plans and strategies may be overly aggressive or optimistic, leading to challenges in achieving projected results and meeting strategic objectives.
9	Aggressive investment strategy	The insurer's investment portfolio and strategy may not be structured appropriately to support its ongoing business plan.
10	Lack of investment expertise/oversight	The background, experience and oversight of the investment management function (including in-house staff and third-party investment managers/advisors) may not be sufficient to mitigate investment risks assumed by the insurer.
11	Reinsurance adequacy	The insurer's reinsurance program may be inadequate to support the ongoing business plan and mitigate excessive risk exposures.
12	Affiliated reinsurance concerns	Reinsurance transactions and relationships with affiliates may fail to transfer risk, contain inequitable or unprofitable provisions and/or mask true financial performance.
13	Questionable reinsurance contracts	The insurer may participate in significant third-party reinsurance contracts that distort its surplus position, mask true financial performance, or raise questions related to risk-transfer and ongoing obligations.
14	RBC concerns	The insurer's current and/or prospective RBC position may be insufficient to support its ongoing business plan and strategy.
15	Adequacy of surplus	The insurer's overall surplus position may be inadequate to support its ongoing business plan, operations and long-term strategy.
16	Reinsurance cost and availability	The insurer's reinsurance strategy may not be sustainable due to increasing cost and availability concerns on a prospective basis.

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III.B.9.a Strategic Risk Repository – Analyst Reference Guide – P/C Annual

Strategic Risk: Inability to implement appropriate business plans, make decisions, allocate resources or adapt to changes in the business environment that will adversely affect competitive position and financial condition.

The objective of Strategic Risk Assessment analysis is to focus on risks inherent in the company's business strategy and plans. As such, risks in this area are often prospective in nature and may require additional investigation and information requests to understand and assess their potential impact. For example, analysts may require an up-to-date business plan from the insurer to assess emerging risk exposures and prospective risks that could prevent the insurer from meeting its strategic goals. In addition, information presented in the Enterprise Risk Report (Form F) and Own Risk and Solvency Assessment (ORSA) Summary Report (if available)which the lead state reviews and documents risks, may assist analysts in identifying and assessing the insurer's exposure to strategic risks.

The following discussion of procedures provides suggested data, benchmarks and procedures analysts can consider in his/her review. In analyzing strategic risk, analysts may analyze a wide-range of risk exposures related to the insurer's business plan and overall strategy. An analyst's risk-focused assessment of strategic risk should take into consideration the following areas (but not be limited to):

- Industry and market factors
- Risk management and governance challenges
- Changes in officers and directors
- Recent and pending merger and acquisition activity
- The insurer's strategic planning process
- Significant recent or pending changes in business plan and strategy
- Underwriting strategy and plans
- Investment strategy and use of investment advisors
- Reinsurance strategy, including adequacy of coverage
- Affiliate relationships and transactions
- Capital planning and adequacy

---Detail Eliminated to Conserve Space---

Reinsurance Strategy

PROCEDURE #7 relates to the reinsurance levels maintained by the insurer and whether they are adequate to support the insurer's business plan and strategy. As risks related to reinsurance strategy may vary somewhat according to business type, the procedures in this area include both considerations applicable to all business types and those specifically associated with Property/Casualty (P/C), Life and Health business.

In general, to assess the adequacy of the reinsurance program in place, analysts should evaluate the insurer's leverage position (on both a gross and net basis), as well as identify risk concentrations that could expose the insurer to significant loss events. An in-depth understanding of the insurer's lines of business and business strategy is most likely to result in the identification of risk concentrations, and a number of tools and reports can be beneficial in supporting and supplementing that understanding. Many of the most relevant tools and metrics are highlighted in the procedure, such as Schedule T premium data, RBC RCAT disclosures, disclosures in the Annual Financial Statement and various tool results and ratios (e.g., Largest Net Amount Insured in an One Risk to Surplus). In addition, information provided in ORSA reporting and rating agency reports (i.e., A.M. Best

Supplemental Ratings Questionnaire – Reinsurance Section) may provide additional information on risk concentrations and exposures.

If concerns related to the insurer's leverage position and significant risk concentrations/exposures are identified, analysts should evaluate the adequacy of the insurer's reinsurance program to mitigate those exposures. In so doing, analysts should use information in the Annual Financial Statement and other available information (e.g., actuarial opinion, Management's Discussion and Analysis (MD&A), Form B, business plan, reinsurance contracts filed with the department, etc.) to gain an understanding and evaluate the insurer's reinsurance program in relation to its risk profile and strategy, including adequate protection for large losses. After reviewing information on reinsurance included in the business plan and the various regulatory filings available, analysts should request and review additional information as necessary to gain an adequate understanding of the insurer's reinsurance strategy and program structure. In so doing, analysts should evaluate the impact of any significant changes in program structure (e.g., changes in retention levels, coverage limits, exclusions, reinstatement provisions, or use of non-traditional reinsurance) on the insurer's business plan and strategy.

In addition to considerations regarding the insurer's current reinsurance program and its adequacy, analysts may want to evaluate the longer-term sustainability of the insurer's reinsurance strategy. This is particularly true for entities that are subject to significant catastrophic risk exposures with the potential to be impacted by climate change. The analyst may find information provided in the NAIC's Climate Risk Disclosure Survey, ORSA Summary Reports and/or SEC 10k and 10Q filings valuable in identifying and assessing risks in this area.

MEMORANDUM

TO: Financial Analysis Solvency Tools (E) Working Group

FROM: Risk Retention Group (E) Task Force

DATE: November 15, 2022

RE: Special Considerations for RRGs when Exempting Groups from the GCC

The Risk Retention Group (E) Task Force is charged with monitoring the work of other NAIC committees, task forces and working groups as it relates to risk retention groups (RRGs). As part of that charge, the Task Force is monitoring implementation of the group capital calculation. Because RRG's have unique structures that can impact how they are regulated, it is important to be aware of special considerations that can impact the decision to grant an exemption from the group captial calcuation (GCC).

The Task Force drafted proposed revisions to the NAIC's *Financial Analysis Handbook* (Handbook) that expand the existing guidance for exempting groups from the GCC to include special considerations for RRGs (see attached). The Task Force requests that the Financial Analysis Solvency Tools (E) Working Group consider the proposed revisions for inclusion in the Handbook.

Thank you for your consideration. If you have any questions on this referral, please contact Sandy Bigglestone, Chair of the Risk Retention Group (E) Task Force, or Becky Meyer, NAIC staff.

Considerations When Exempting Groups

As stated elsewhere within this guidance, the GCC and its related provisions in the NAICs Model Holding Company Act and corresponding regulation are not designed or otherwise intended for regulators to take regulatory action based on the reported level of a group's GCC. Rather, the GCC is intended to be a tool to better understand the risks of the group, mostly through the trending of the financial information in the "Input 4-Analytics" tab. However, specific to the provisions of the NAICs Model Holding Company Act and corresponding regulation, the Group Capital Calculation (E) Working Group did believe that the GCC might be more helpful for some groups and not as much for others when it developed criteria within the Act and the regulation for exemptions. On this point, the Working Group believed that in general the GCC would be more helpful for those groups that had 1) non-U.S. insurers within the group; 2) a bank within the group, or 3) a more material degree of non-insurers. Specific to the point regarding non-U.S. insurers or banks, the GCC is based upon the premise that the most relevant measure of capital is the actual legal entity requirements of capital from the applicable regulator. On this point, the required capital, as well as the trending of information on these particular legal entities might be the most valuable, particularly if the relative operations and assets of these entities compared to the U.S. RBC filers is material. Similarly, while the calculated capital on the non-insurance entities may not be as relevant as required capital on regulated insurers or banks, if the operations and assets of non-insurers relative to those of US RBC filers are material, the GCC may provide greater value to such types of groups.

To these points, the NAICs Model Holding Company Act and corresponding regulation contain possible exemptions for groups that have less than $1 billion in premium and that do not possess any of the three characteristics just described. The possible exemptions exist after the GCC has been filed once, because without seeing the completed GCC at least once for a group, it may be difficult for the lead-state to determine if the GCC has value. However, it should also be understood that these three criteria of non-U.S. insurer, bank, or non-material non-insurers are not the only situations where the GCC would be valuable to the lead-state. As a reminder, all states are required to assess the sufficiency of capital within the holding company structure; prior to the GCC, this was done using various methods (e.g., debt to equity ratios, interest coverage ratios, existing RBC ratios and relative size of insurance). The GCC is expected to enhance a state's ability to make this assessment more easily. Therefore, in deciding if a group should be exempted, the lead-state will need to consider a number of factors, including how easily it can make this assessment without the GCC. For small groups where the U.S. RBC operations and assets are much larger than the non-insurance operations, it is likely the GCC would provide a smaller degree of value and exempting from the GCC may be appropriate. However, the analyst should also consider the fact that the simpler the holding company structure, the more easily the GCC can be completed. Specifically, given all of the data included in the GCC is existing data and therefore readily available to the company, a smaller and simple structured group should be able to accumulate into the GCC template in a short period of time. Also worth considering is that if such operations are contained within a number of different U.S. insurers where it is difficult to determine the degree of double counting of capital, the GCC may provide more value. To be clear, these are not the only situations where the GCC might be helpful even with a relatively small group. This is because the value may come from figures the GCC requires that the state may have otherwise not been aware of. Specifically, the GCC may identify non-RBC filers who may be experiencing some level of financial difficulties. This possible identification of information the lead-state was not otherwise aware of is the primary reason the Working Group suggested the GCC be filed once before deciding on whether a group should be exempted. While the NAIC Accreditation program may not require a state to have such authority to have the GCC filed once before exempting, this background information provided herein is intended to encourage the state to consider such possibilities before deciding on exempting a group, particularly since it may be difficult to stop an exemption in a given year once it's provided. In summary, as with everything else described in this documentation, the GCC requires judgement on behalf of the analyst and the lead-state which is based upon multiple factors including the lead-state's existing knowledge of the group. The same applies when considering whether a group should be exempt.

Special Consideration for RRGs when Exempting Groups

RRG's often have unique structures that impact how they are regulated, how risks are assessed, and the potential sources of capital. For RRGs in a holding company system, the type of entities in the group as well as the amount of information readily available for the other entities in the group play a key role in regulatory oversight, including granting exemptions from the GCC calculation.

The following are some examples of unique circumstances/structures and related procedures that should be considered for RRGs when granting exemptions from the GCC. There may be other examples when evaluating RRGs and the regulator should clearly document the justification if an exemption is granted.

- RRG is affiliated with a commercial carrier and the RRG is not the controlling entity in the holding company:
  - The lead state of the commercial carrier will determine whether GCC is required.
  - Commercial carrier will prepare GCC, which will include RRG results.
- Closely held RRG:
  - Obtain and review sponsoring organization's audited financial statements to assess the ability to infuse capital if needed and consider any other impacts to the RRG.
  - Check sponsoring organization website and/or perform internet research for news headlines as to any current changes to the sponsor structure such as mergers, acquisitions or any other significant occurrences that could impact the RRG. This would be done periodically/quarterly to anticipate changes requiring a Form D filing.
  - Review the RRG's balance sheet for the asset receivable from parent, subsidiaries, and affiliates, as well as the liability payable to parent, subsidiaries, and affiliates to determine whether there are concerns with the level of affiliated receivables/payables.
- RRG with affiliated offshore reinsurer:
  - Obtain and review most recent audited financials for the affiliated reinsurer.
  - Ensure compliance with credit for reinsurance requirements.
- RRG itself is the ultimate controlling entity, has one or more non-insurance subsidiaries, and no one policyholder owns or controls 10% or more of the RRG:
  - Through review of RRG policies and procedures, corporate documents, subscription agreements, and policy provisions, determine the RRG's access to capital in the event a capital infusion would be needed. Consider the need to obtain financial information of policyholders, however, where no one policyholder owns or controls 10% or more of the RRG, it is not contemplated that the state would routinely collect financial information of the RRG's individual policyholders.
  - Obtain and review most recent financials for the subsidiaries.

In addition to structure, factors consistent with the above guidance for all holding company groups should be considered when exempting an RRG from the GCC. Factors to consider include how easily the information necessary to understand the group's capital situation can be obtained without the GCC and whether the state already has a process to obtain and review the information needed to easily assess the sufficiency of capital within the holding company system.

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MEMORANDUM

TO: Greg Chew, Chair of the Financial Analysis Solvency Tools (E) Working Group

FROM: Ad Hoc (E/F) Group on Efficiencies & Resources

DATE: February 21, 2023

RE: Referencing Existing Analysis Documentation in Risk Assessment Work

As you are aware, the Ad Hoc (E/F) Group on Efficiencies and Resources (Ad Hoc Group) was formed in May 2022 following an informal meeting between a small number of members of the Financial Regulation Standards and Accreditation (F) Committee and Financial Condition (E) Committee. The informal meeting was the result of a regulatory only discussion that occurred on April 19 by members of the Financial Condition (E) Committee in which members potential changes that could be made to address some of the issues highlighted by states in a survey on solvency regulators resources and workloads.

In discussing these issues, the Ad Hoc Group identified an opportunity to be more efficient in quarterly/annual risk assessment documentation by allowing existing analysis documentation available in other areas of the analysis file to be cross-referenced, as opposed to requiring it to be duplicated in the risk assessment worksheet (or similar area of the file). For example, recent analysis work performed to document the review of a Form D or ORSA Summary Report filing could be cross-referenced within a branded risk assessment, as opposed to being copied/pasted or duplicated within the documentation.

Attached to this referral are proposed edits to two different sections of the Financial Analysis Handbook, as well as proposed edits to a Sound Practices document to allow this practice. We're recommending that these proposed edits be considered by the Working Group for adoption into the *Financial Analysis Handbook* in 2023 to promote greater efficiency in this area.

Thank you for your leadership on this important initiative and please feel free to reach out to NAIC support staff (ddaveline@naic.org or bjenson@naic.org) with additional questions regarding this referral.

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SECTION III: RISK ASSESSMENT

Risk assessment includes the documentation of information reviewed in Section I and Section II, as well as a review of the data, benchmarks and procedures provided in each of the nine branded risk repositories to develop and document a risk assessment of each relevant material risk of the insurer.

Depth of review and level of documentation:

- The depth of review and level of documentation should be commensurate with the nature, complexity, financial strengths and weaknesses, and known risks of the insurer. New risks and significant changes in exposures will require more investigation than risks that the insurer has routinely been exposed to and that don't change materially year-over-year.
- Other factors, such as the insurer's past regulatory history, accuracy of filing, age of insurer, stability of business plan, and knowledge of the insurer's operations, materiality of the concerns etc., may affect the scope and depth of analysis. The flexibility to customize the scope and depth of the analysis is determined at the state insurance department's discretion, should include analyst and supervisor input and may vary between analyses. Therefore, the state insurance department should tailor the data and procedures used and the level of documentation to sufficiently address the specific risks of the insurer. It is expected that the risk assessment documentation will be at a level that is more detailed than the IPS.
- In certain situations, it may be appropriate to reference documentation located in another area of the analysis file (e.g., Form D review, ORSA Review Template), as opposed to duplicating the documentation here. However, in such situations, the risk component title should still be presented, along with a conclusion on the current level of concern/trend in Section III, with a cross-reference to supporting documentation provided in other areas of the file. In so doing, the analyst should carefully consider whether the risk exposure has shifted since it was assessed in another area of the file and whether the level of concern/trend conclusion is adequately supported by the cross-referenced work.

Branded Risk Repositories:

- **Analysts should not rely solely on the risk repositories for identification of risks as the repositories do not represent a complete list of possible risks. Analysts should customize their analysis to identify and assess risks unique to the insurer.**
- It is not necessary and may be inefficient and unproductive to include every risk component from the repositories in the analysis if it is not applicable to the insurer.
- The risk repositories are a tool for helping identify and investigate risks; however, there is no documentation requirement within the repositories themselves.
- Analyst are not expected to respond separately to procedures or benchmark results in the risk repositories that fall outside the benchmarks, rather, analysts should use their expertise and knowledge of the insurer to tailor the analysis to address those risks they deem material or that warrant further investigation.
- Analysts may choose to use the repositories as a starting point for analysis; however, alternatively for analysts that have a good understanding of their assigned insurers' risks, the analyst might consider using the repository as a completeness check at the end of their review to ensure they have not overlooked any material issues.
- Note that procedures included in the branded risk repositories are "best fit" as some procedures may identify risks that could be categorized in more than one branded risk category. Analysts should use his or her knowledge of the insurer and critical thinking skills to exercise discretion in re-categorizing risks as needed to document the details of the analysis and to update the IPS.
- Analysis results from the repositories should be documented in this Section III: Risk Assessment section of the worksheet.

For reserving risk: Analysts should also consider the risk repository for review of the Statement of Actuarial Opinion and other related actuarial filings. For property/casualty (P/C) insurers, this includes completion of the Actuarial Opinion Summary procedures. For life/health and fraternal insurers, this includes completion of the procedures for the Regulatory Asset Adequacy Issues Summary (RAAIS).

For Title insurers: Analysts should first utilize the III.C.3 Title Insurer Worksheet to develop the risk assessment, and then reference the applicable risk repositories as needed.

Inclusion in the IPS: The Risk Assessment worksheet provides for consideration of whether the risk warrants inclusion in the IPS, the assessment level (minimal, moderate, or significant) and the trend (static, decreasing or increasing). Not all issues analyzed will warrant inclusion on the IPS due to materiality or other reasons.

Refer to the Analyst Reference Guide branded risk chapters for explanation of the risk category and of the data, benchmarks and procedures provided for each.

SECTION IV: UPDATE INSURER PROFILE SUMMARY

At the conclusion of the analysis, analysts should also assess the priority level based on the results of the current analysis. While summary documentation of the rationale for the insurer's priority may be included in the IPS, detailed documentation of the rationale for a change in priority should be included in the risk assessment worksheet.

At the conclusion of the Risk Assessment procedures, analysts are asked to develop and document an overall summary and conclusion based on the results of the risk-focused analysis performed, prospective risks of the insurer, follow-up analysis or regulatory actions, impact of the holding company on the insurer, and any correspondence. Analysts should update the IPS (and supervisory plan, if applicable). **Note that an analyst's documentation of the Section III: Risk Assessment and other cross-referenced work represents the *detail* of the analysis of risks, which should be more in-depth for certain material risks or complex insurers, whereas the IPS represents a *summary* of the risks of the insurer for purposes of communication to other state insurance regulators and departments.**

Ensure that all nine branded risk classifications are addressed in the IPS, even if documentation is limited to *"Assessment of this risk classification was performed and no material risks were identified for this risk."* Where no individual risk components were identified within a branded risk classification, it is acceptable to include a statement, such as the above, in the narrative of the branded risk classification and list no risk components in the table, so as to avoid listing items that do not represent a risk to the insurer (i.e., generic or positive attributes). Positive attributes may be included in the narrative or other area of the IPS as appropriate (e.g., background, strengths and weaknesses).

Because some items, such as the Audited Financial Report and the various holding company filings are not required to be filed until after most of the annual review is completed, analysts will document a conclusion based on the current analysis of the insurer. The Audited Financial Report should be reviewed upon receipt, and if additional concerns are noted, the conclusion or the quarterly conclusion should be revised to reflect the most recent information.

While analysts may consider a cursory review of holding company filings when received to identify any material or urgent solvency concerns, the review of holding company filings is required to be completed by October 31st for analysis conducted by the lead state or by December 31st for analysis conducted by the domestic state.

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Overall Section I Assessment

After summarizing the information reviewed for each of the key principles individually, the lead state analyst should provide an overall assessment of the insurer's ERM framework, including any concerns or areas requiring follow-up investigation or communication. In preparing the assessment, the lead state analyst should understand that ORSA summary reports may not always align with each of these specific principles. Therefore, the lead state analyst must use judgment and critical thinking in accumulating information to support their evaluation of each of these principles. The overall evaluation should focus on critical concerns associated with any of the individual principles and should also address any other ERM framework concerns that may not be captured within these principles.

The lead state analyst should also be aware that the lead state examiner is tasked with supplementing the lead state analyst's assessment with additional onsite verification and testing. The lead state analyst should direct the lead state examiner to those areas where such additional verification and testing is appropriate and could not be performed by the lead state analyst. Where available from prior full scope or targeted examinations, information from the lead state examiner should be used as a starting point for the lead state analyst to update. Consequently, on an ongoing basis, the lead state analyst's update may focus on changes to ERM processes and the ORSA Summary Report since the prior exam in directing targeted onsite verification and testing.

The lead state analyst, after completing a summary of Section I, should consider if the overall assessment, or any specific conclusions, should be used to update either the ERM section of the GPS (if the ORSA Summary Report is prepared on a group basis) or information in the IPS (if the ORSA Summary Report is prepared on a legal entity basis). In addition, key information from the review should be incorporated into or referenced in the Risk Assessment Worksheet (RAW) during the next full analysis (quarterly or annual) of the insurer where relevant.

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Documentation for Section II

Prepare a summary and assessment of Section II by identifying and outlining key information associated with the significant reasonably foreseeable and material relevant (key) risks of the insurer per the ORSA Summary Report. Following the documentation on each key risk per the report, the lead state analysts should include an analysis of such risk. In developing such analysis, the lead state analyst is encouraged to use judgment and critical thinking in evaluating if the risks and quantification of such risks under normal and stressed conditions are reasonable and generally consistent with expectations. The lead state analyst should be aware that the lead state examiner is tasked to update the assessment by supplementing the lead state analyst's assessment with additional on-site verification and testing. The lead state analyst should direct the lead state examiner to those areas where such additional verification and testing is appropriate and could not be performed by the lead state analyst. Suggested information to be documented on each key risk, including supporting considerations, is outlined below:

- **Risk Title and Description** – Provide the title for each key risk as identified/labeled by the insurer as well as a basic description.
- **Branded Risk** – Provide information on the primary branded risk classification(s) that apply to the key risk and briefly discuss how they apply/relate.
- **Controls/Mitigation** – Summarize information known about the controls and mitigation strategies put in place by the insurer to address the key risk.
- **Risk Limits** – Provide information on any specific risk tolerances or limits associated with the key risk and how they are monitored and enforced.
- **Assessment** – Discuss how the key risk is assessed by the insurer, including whether the assessment is performed on a quantitative or qualitative basis. Describe the methodology used, the key underlying

assumptions and the process utilized to set these assumptions.

- **Normal Exposure** – Summarize the insurer's normal exposure to this key risk based on budget information or historical experience.
- **Stress Scenario(s)** – Discuss the stress scenario(s) identified and applied to the key risk and how they were determined and validated by the insurer.
- **Stressed Exposure** – Provide information on the impact of the stress scenario(s) on the key risk and potential impact on the insurer's surplus position and business strategy/operations.
- **Inclusion on IPS/GPS** – Discuss whether the key risk will be recognized on the IPS/GPS of the insurer, including the risk component it will be incorporated into.
- **Regulator Review and Assessment** – Assess the adequacy of the risk assessment performed by the insurer on each key risk (including the appropriateness of controls/limits and reasonableness of methodology, assumptions and stress scenarios used) and whether any specific issues or concerns are identified that would require further investigation or follow-up communication

After completing a summary and assessment for each key risk addressed in Section II, the lead state analyst should use the information to update the risk assessment in either the GPS (if the ORSA is prepared on a group basis) or the IPS (if the ORSA is prepared on a legal entity basis) and supporting documentation if deemed necessary. In addition, key information from the review should be incorporated into or referenced in the RAW during the next full analysis (quarterly or annual) of the insurer where relevant.

Overall Section II Assessment

The lead state analyst should complete an overall assessment of the information provided in Section II, including an evaluation of the insurer's risk assessment processes and whether all material and relevant risks were assessed and presented at an appropriate level of detail. This should include consideration of whether there is consistency between the insurer's risk identification and prioritization process discussed in Section I and risks that are assessed and reported on in Section II (i.e., have all key risks been addressed). In addition, this should focus on critical concerns associated with the assessment of individual key risks as well as whether the insurer's overall assessment process (i.e., methodology, assumptions and stress scenarios) is adequate and well-supported.

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Overall Section III Assessment

In addition, after summarizing the assessment of each individual element above, the lead state analyst should provide an overall assessment of the insurer's risk capital assessment process, including any concerns or areas requiring follow-up investigation or communication. The overall evaluation should focus on critical concerns associated with any of the individual elements noted above and should also address any other risk capital assessment concerns that may not be captured within these principles.

The lead state analyst, after completing a summary of Section 3, should consider if the overall assessment, or any specific conclusions, should be used to update either the ERM section of the GPS (if the ORSA Summary Report is prepared on a group basis) or information in the IPS (if the ORSA Summary Report is prepared on a legal entity basis). In addition, key information from the review should be incorporated into or referenced in the RAW during the next full analysis (quarterly or annual) of the insurer if relevant.

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MEMORANDUM

To: Greg Chew (VA), Chair, Financial Analysis Solvency Tools (E) Working Group

From: Amy Malm (WI), Chair, Risk-Focused Surveillance (E) Working Group

Date: June 13, 2023

RE: May 2023 Examination Peer Review Takeaways

In May 2023, the Risk-Focused Surveillance (E) Working Group oversaw a Financial Examination Peer Review session, focused on contractor oversight. Each participating jurisdiction sent the individual acting as department designee on the submitted examination, as well as a representative from the contract firm who participated in the examination. Participants represented 5 jurisdictions and 5 contract firms. During the session, an issue was identified that might be appropriate for consideration of additions to the NAIC's *Financial Analysis Handbook* (Handbook). The topic discussed, as well as other relevant considerations, are outlined below.

Ongoing Communicating Throughout the Examination – While coordination and communication between the exam team and department analyst has continued to improve over time, the peer reviewers found that additional guidance could help clarify the role and expectations of the department analyst during the examination. To address this concern, we propose adding an agenda topic to the *Template for Planning Meeting with Financial Examiner* to discuss expectations for the analyst in participating in certain exam activities, monitoring the status of the exam, and communicating new information about the company (e.g., quarterly results, new Form D filings) arising during the examination. Furthermore, when the examination is being led by an independent contractor, we recommend that the department designee lead this planning meeting discussion topic.

Note, because the Template for Planning Meeting with Financial Examiner is included within the Financial Condition Examiners Handbook under the title of "Exhibit D – Planning Meeting with the Analyst" a similar referral has been sent to the Financial Examiners Handbook (E) Technical Group for consideration. See Attachment A for proposed edits to the template.

If there are any questions regarding this referral, please feel free to contact me or NAIC staff (Bruce Jenson at *bjenson@naic.org*) for clarification. Thank you for your consideration of this request.

Overview

This template is intended as an optional tool highlighting items that may be discussed during a planning meeting between the assigned financial analyst and the financial examiner in support of the financial exam process. This meeting should ensure that the examiner both understands the company that will be examined and also receives details on work that has already been performed in supervising the company's operations. An effective exchange of information will promote efficiencies in the financial examination process by allowing the examiner to leverage the knowledge and work performed by the financial analyst. It may also prove useful to supplement this meeting with a discussion of the Exam Planning Questionnaire (Exhibit B) so that the analyst can review during the discussion to highlight or indicate if a document being requested has been obtained and/or reviewed by the insurance department. Although this template focuses on discussions between the assigned financial analyst and the financial examiner, the examiner may also consider incorporating this discussion into a broader planning meeting with members of department management and representatives from other areas of the department. However, if such an approach is taken, it should not reduce or diminish the level of discussion between the analyst and the examiner.

Given the importance of the Insurer Profile Summary (IPS) in communicating the results of the department's financial analyst's review of the company's operations, the planning meeting with the analyst is intended to generally follow the format of the IPS template.

Depending on the significance of operations at the group level, the examiner should consider whether additional agenda items should be added to focus on risks posed and discussed on the Group Profile Summary that are relevant for consideration during the examination.

NOTE: The exhibit was prepared to assist examiners in obtaining a general knowledge of the company through the meeting with the analyst. The examiner leading the discussion should not rely exclusively on these topics and should tailor agenda items based on knowledge of the company and based on knowledge of work that has been performed by the department. In situations where the exam is being led by an independent contractor, it may be appropriate for the insurance department's designee to lead the discussion of certain agenda items such as the role of the financial analyst in the examination.

Planning Meeting Between the Financial Analyst and Financial Examiner – Agenda Items

1. **Business Summary** – Discuss a summary of the business operations and lines of business of the insurer.
   a. Discuss whether the department has received a recent business plan from the company and has identified any significant changes in strategy/operations.
   b. Discuss any recent meetings with the company and their potential impact on the examination.
   c. Discuss the corporate governance in place at the company and any recent changes or concerns identified.
2. **Regulatory Actions** – Discuss any significant recent steps taken in supervising the company, including, but not limited to:
   a. Granting of permitted practices
   b. Identification of issues of non-compliance
   c. Follow-up on items from the last financial examination
   d. Review of items filed with the department for approval
3. **Financial Snapshot/Overview of Financial Position** – Discuss the company's recent financial results, including, but not limited to:

a. Changes in profitability trends.

b. Deterioration in asset quality, liquidity or capital adequacy.

c. Changes in investment holdings and strategy.

d. Changes in key annual statement balances.

e. Changes in reinsurance balances and program structure.

f. Significant results noted in financial analysis solvency tools.

4. **Branded Risk Assessments** – Discuss individual branded risk assessments with a focus on moderate and significant areas of concern. For example:

a. Discuss a summary of detailed analysis work performed to address key issues.

b. Discuss the status of any outstanding inquiries or requests for the company.

c. Discuss any management representations to the department that should be verified or corroborated during the exam.

d. Discuss any recommended exam procedures and/or follow-up on key issues.

5. **Impact of Holding Company on Insurer** – Discuss the impact of the holding company system on the domestic insurer. For example:

a. Discuss and obtain the Group Profile Summary and non-lead state holding company analysis work as necessary.

b. If the lead state, discuss whether the analyst's review of the group's Corporate Governance Annual Disclosure (CGAD), if applicable, Own Risk and Solvency Assessment (ORSA) Summary Report and/or Form F reporting indicate a need for additional follow-up and review during the exam.

c. If not the lead state, discuss whether your state's review of the following indicates a need for additional follow-up and review during the exam.

i. As applicable, either the insurance entity CGAD, or the lead state's review of the group's CGAD provided in the GPS and other information provided by the lead state

ii. The lead state's analysis of the ORSA Summary Report

iii. The lead state's analysis of the Form F provided in the GPS or other information provided by the lead state

d. Discuss any developments or follow-up items resulting from recent supervisory college sessions.

6. **Overall Conclusion and Priority Rating** – Discuss the analyst's overall conclusion on the company's financial condition, strengths, weaknesses, and priority rating assigned to the company.

7. **Supervisory Plan** – Discuss the analyst's plans for the ongoing supervision of the company, including any specific examination procedures identified.

8. **Access to Work Papers and Company Documents** – Discuss the best way that the analyst's work can be reviewed/obtained. As the number of files that examiners wish to review and obtain increases, they may consider obtaining access to the analyst's workpapers and receiving specific locations (i.e., workpaper references) for all requested documents.

9. **Input from Other Areas of the Department** – Discuss whether the analyst has received recent communications from other areas of the insurance department regarding issues that could affect the financial examination including, but not limited to, units in charge of:

a. Approving rates and forms filings

b. Legal and administrative matters

c. Market conduct examinations/filings

10. **General Observations** – Depending on the information already provided, determine whether there are any additional topics relevant for discussion, such as:

a. If you were going on-site to examine this company, where would you focus your time?

b. What are your biggest concerns in terms of things that could go wrong at this company to result in a solvency concern?

c. Are you aware of any fraud allegations or concerns at the company? Are there any fraud risk factors that the exam team should be aware of?

11. **Communication/Coordination Throughout Exam** – Discuss the role of the financial analyst in the examination, including the following:

a. Participation in examination activities (e.g., Kickoff/Exit meetings, C-Level interviews)
b. Ongoing monitoring of exam status and findings; and
c. Responsibility to communicate new information about the company (e.g., Form D filings, quarterly analysis results/updated Insurer Profile Summary) to the examination team timely throughout the course of the exam.

NAIC NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MEMORANDUM

TO: Judy Weaver, Chair of the Financial Analysis Solvency Tools (E) Working Group (FASTWG)

FROM: Kevin Baldwin and Laura Slaymaker, Co-Chairs of the Receivership Law (E) Working Group (RLWG)

DATE: November 15, 2022

RE: Pre-Liquidation Coordination and Information Sharing Memorandum of Understanding

The Receivership Law (E) Working Group of the Receivership & Insolvency (E) Task Force adopted a template for a Memorandum of Understanding ("MOU") that can be utilized to facilitate transitional planning and preparation, communication and information sharing with guaranty funds, starting when a troubled property and casualty insurer faces a material risk of being liquidated as insolvent. The insurance financial regulators, insurance receivers and the guaranty funds need advance planning for the transition from a troubled insurance company to liquidation. The MOU template is flexible and can be tailored to the individual state insurance department and the specific troubled property and casualty insurer situation. The attached MOU is also posted to the Receivership and Insolvency (E) Task Force webpage as a resource for state insurance departments.

The MOU was subsequently adopted by the Financial Condition (E) Committee on Nov. 15, 2022. The RLWG encourages the FASTWG to consider including a reference to this MOU template when updating existing *Financial Analysis Handbook* guidance regarding considerations to promote early communication in property and casualty insurer pre-liquidation situations.

If there are any questions regarding this referral, please contact NAIC staff (Jane Koenigsman) to discuss.

Adopted by the NAIC Financial Condition (E) Committee Nov. 15, 2022
Adopted by the NAIC Receivership & Insolvency (E) Task Force Oct. 11, 2022

BACKGROUND OF THE

MEMORANDUM OF UNDERSTANDING

When a property & casualty insurer is liquidated, our regulatory system mitigates the adverse effects on policyholders and claimants through the state insurance resolution system. This system includes the coordinated management of the liquidation and wind down of the insurance company, in accordance with the state's receivership laws, and the payment of statutorily defined "covered claims" by the state guaranty fund system. In today's technological world, the insurance financial regulators, insurance receivers and the guaranty funds need advance planning for the transition from a troubled insurance company to liquidation.

This model Memorandum of Understanding ("MOU") is flexible and can be tailored the individual state insurance department and the specific troubled property and casualty insurer situation.

The MOU is intended to be used to facilitate transitional planning and preparation, starting when a troubled property and casualty insurer faces a material risk of being liquidated as insolvent[1]. Such a liquidation creates various obligations for the insurance receiver and triggers the guaranty funds' statutory duties to pay "covered claims." One goal of this transitional planning is to ensure that the guaranty funds are prepared and have the appropriate information necessary to assume their statutory duties to protect policy claimants promptly upon liquidation. Another important goal of this early estate planning process is to facilitate the receiver's duties upon liquidation, which include transition of claims to the guaranty funds, marshalling the remaining company assets and resolving claims against the insurer.

This planning process necessarily involves the sharing of confidential information about the troubled company that is protected by statutory confidentiality and privilege provisions. The parties sharing such information intend that it stay confidential and privileged and that no such protection be waived. This MOU is intended to document an agreement to that effect. The parties are the (1) Commissioner, (2) the insurance receiver if appointed (and who may be added later) or a standing insurance receivership office, if applicable, (3) the potentially triggered guaranty funds, and (4) the National Conference of Insurance Guaranty Funds ("NCIGF").[2] If separate from a state's receivership office, the state's insurance financial regulatory office could also be a party to the MOU, as the MOU can be tailored to the specific state.

The MOU provides that all non-public planning information provided to the guaranty funds under it shall be kept confidential, with the protective mechanism to maintain confidentiality spelled out. Specifically, confidential information initially may only to be shared with NCIGF and guaranty fund staff, agents, and counsel and, importantly, *may only be used for purposes of planning for liquidation of the troubled*

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[1] This model MOU is intended for use with only property and casualty receiverships. Life and health guaranty associations utilize confidentiality, and joint and common interest agreements, to gain access to information in the event of receivership, when necessary.

[2] See https://www.ncigf.org/. In general, the legal relationships between the troubled company and the regulatory authorities will be governed comprehensively by appropriate statutes and regulations in the state insurance code, thus generally there is no need for the troubled company be a party to the MOU. There may be, however, considerations in particular cases where it would be prudent to add the troubled company as a party, particularly if slow or incomplete compliance with disclosure and reporting requirements are an issue. For example, additional enforcement mechanisms could be added and troubled company cooperation with the prospective receiver and the guaranty funds could be spelled out in more detail.

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company. Confidential information will not be shared with industry representatives who sit on or participate in a guaranty fund's Board of Directors until such time as the information is necessary for the Board to discharge statutory duties or consider or take for official action. Confidential information received by the Insurance Commissioner pursuant to its examination authority, which based upon NAIC Model 390 typically is "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," is as shared agreed to retain such privileged status, particularly given the common interest of the parties in the MOU in facilitating the prospective liquidation proceedings and the insurance resolution mechanism. As further protection for the privileged status of such confidential information, the guaranty funds are obligated under the MOU to defend against any attempt to discover any confidential or privileged information shared with them and to notify the other parties to the MOU of discovery or disclosure request.

The proposed MOU is a template that contains the essential terms of a confidential information sharing agreement and can easily be customized to address specific issues that may arise in the course of addressing troubled company concerns and in planning for liquidation.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is among the [state] Department of Insurance ("DOI"), the [Receiver of the insolvent company – if appointed] and the [guaranty fund in the state of domicile of the troubled company, the other insurance guaranty funds which have executed this agreement (collectively "Guaranty Funds") and the National Conference of Insurance Guaranty Funds.(NCIGF)

Definitions:

1.1 "Agreement" or "MOU" refers to this Memorandum of Understanding;

1.2 "Confidential Information" refers to any:

a) documents, data or other information relating to any domestic insurance company in the State of [state] where the Commissioner has determined that the financial condition of such company creates a material risk of Liquidation that are not publicly available or public records, whether written or not, including but not limited to claims files and data; financial analyses, modeling and projections; trade secrets, technical processes and know-how; agency agreements, arrangements, accounts, proposals, lists, and other information; policyholder lists and information; costs and pricing information; internal procedures, strategies and plans; and computer programs;

b) work product or other information regarding any such Company that is confidential and/or privileged;

c) communications between the Parties regarding any potential or pending legal actions involving any such company that is a threat to such companies' solvency; and

d) specifically contemplates information received by the Insurance Commissioner pursuant to its examination authority [insert state adoption of NAIC Model Law 390], which is "confidential by law 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."

1.3 "Evaluation Material" refers to all information, oral or written, including but not limited to Confidential Information as defined herein, that is furnished to Guaranty Funds or NCIGF under the terms of this Agreement, and all analyses, compilations, studies, or other materials prepared by Guaranty Funds or NCIGF containing or based in whole or in part upon such information. "Evaluation Material" includes but is not limited to information on the financial condition of the company, information data systems utilized and condition of the data, location of data files, involved third party administrators, UDS test files that may be created, policy forms – especially those for unique or complex lines of business, company organization charts, claims counts and liability amounts by line and by state, and lists of cases in trial, attorney contacts and any other information appropriate to enable the Guaranty Funds to fulfill their statutory duties upon liquidation. This material shall be updated from time to time as appropriate.

1.4 "Company or Companies" refers to any domestic property and casualty insurance company in the

State of [state]where the Commissioner has determined the financial condition of such company creates a material risk of Liquidation.

1.5 “Commissioner” refers to the Commissioner of Insurance of the State of [state].

1.6 “Party” and “Parties” refer to the Commissioner, the Receiver, if appointed, the signatory Guaranty Funds and the NCIGF.

1.7 “Receivership Court” refers to the [court with jurisdiction over the receivership]

1.8 “Receivership” refers to the rehabilitation or liquidation of any domestic insurance company in the State of [state].

1.9 “Receiver” refers to [name of deputy receiver if appointed] or any of his or her successors.

1.10 “Covered Claim” shall have the same meaning as contained in the applicable statutes of the Guaranty Funds.

II. Recitals

2.1 The Commissioner is responsible for the financial regulation of Companies. From time-to-time the financial condition of one or more of such Companies creates a material risk of Liquidation.

2.2 Should a Receivership occur of a Company, the Commissioner may appoint a special deputy receiver who will be responsible for the handling of such Receivership.

2.3 If the Receivership of a Company includes an order of liquidation with a finding of insolvency or if other statutory requirements are met, the Guaranty Funds will have the responsibility for the payment of “Covered Claims” arising from such Receivership.

2.4 The Parties agree that in order to properly prepare for any Receivership, to provide for a smooth transition to liquidation should it become required, and in order to avoid delay in the payment of “Covered Claims,” it is essential to share Confidential Information among them with respect to any Company the Commissioner determines is at material risk of Liquidation.

2.5 It is agreed by the Parties that, subject to the Commissioner’s discretion, the Commissioner can freely consult with the Receiver (if appointed), the Guaranty Funds, and NCIGF, with respect to any Company, including but not limited to, the dissemination of Confidential Information and Evaluation Material as defined herein. It is understood that such consultations are to be held in strictest confidence and the Commissioner may, in his or her discretion, withhold the name of the Company being discussed from the Guaranty Funds and the NCIGF.

2.6 The Guaranty Funds have determined that in order to protect consumers and to better fulfill their mission (*see* cite to applicable Guaranty Funds’ statutes) it is necessary and proper for them to enter into this Agreement and likewise it is necessary and proper for the NCIGF, as a membership organization that supports the Guaranty Funds in their mission, to enter into this Agreement. The DOI and Receiver have determined that this Agreement enables them to better serve the insurance consumers in [involved states] and to better protect them from the adverse consequences of a Company liquidation.

III. Use and Treatment of Evaluation Material

3.1 Subject to the terms of this Agreement, the Commissioner and Receiver will grant the Guaranty Funds and NCIGF access to Evaluation Material as they determine is appropriate. The Evaluation Material shall be used by the Guaranty Funds and NCIGF to determine potential obligations of the Guaranty Funds, prepare for the possible assumption of such obligations, and to perform such statutory obligations in the event they become obligated to pay "Covered Claims" under policies of insurance issued by a Company. The Guaranty Funds and NCIGF shall be allowed to copy such Evaluation Material for their own use consistent with the terms of this Agreement.

3.2 The Guaranty Funds and the NCIGF agree to maintain the confidentiality of all Evaluation Material provided to them, and of any privileges with respect to such information. The Guaranty Funds and the NCIGF agree not to disclose any Evaluation Material to any person or entity, except as expressly provided herein.

3.3 The Guaranty Funds and the NCIGF may share Evaluation Material with their respective counsel, consultants or agents as they deem necessary, provided that such persons agree to comply with terms of this Agreement, including but not limited to the remedies provided under Part IV. In the event of a breach of this Agreement by any person to whom Evaluation Material has been provided, the Party or Parties providing such information shall also remain liable for the breach.

3.4 The Guaranty Funds and the NCIGF agree that no Evaluation Material shall be provided to any insurance companies or the owners, directors, officers, employees, agents, representatives, or affiliates of any insurance companies, except as necessary to discharge statutory duties, for official action or consideration by the Board of Directors.

3.5 In the event that the Guaranty Funds or the NCIGF are served with process seeking the production of Evaluation Material, including but not limited to a subpoena or order of a court of competent jurisdiction, an investigation by a government entity, or discovery demand issued in connection with any action, the Guaranty Funds and NCIGF, as appropriate, shall notify the Commissioner and Receiver in writing as promptly as practicable. The Guaranty Funds and NCIGF, as appropriate, shall take reasonable actions to protect the confidentiality and, if applicable, the privileged status of such information, unless otherwise requested by the Commissioner or the Receiver. If a protective order or other remedy is not obtained prior to the date that compliance with the request is legally required, the Guaranty Funds and the NCIGF, as appropriate, will furnish only that portion of the Evaluation Material or take only such action as is legally required.

IV. Remedies

4.1 The Guaranty Funds and the NCIGF agree that money damages would not be a sufficient remedy for a breach of this Agreement, and that the Commissioner or Receiver shall be entitled to equitable relief, including injunctive relief, as a remedy for such breach. Such remedy shall be in addition to all other remedies available at law or in equity, and shall not be deemed the exclusive remedy for a breach of this Agreement. Any action to enforce this Agreement shall be brought in the [appropriate court for the proceeding].

4.2 In the event of an action alleging a breach of this Agreement, the prevailing party shall be entitled to reimbursement for its reasonable attorney's fees. Any attorney's fees awarded to the Guaranty

Funds or the NCIGF shall be handled as an administrative expense in the proceeding, subject to [cite to applicable law]. Any attorney's fees awarded to the Commissioner or Receiver shall be paid from the Guaranty funds and NCIGF's funds, and shall not be submitted as a claim in the proceeding.

4.3 No failure or delay by any Party in exercising any right, power or privilege shall operate as a waiver thereof. Any exercise of a right, power or privilege shall not be considered to preclude any other or further exercise thereof.

4.4 There shall be no liability on the part of the Commissioner or Receiver or the Company(ies) to the Guaranty Funds or NCIGF relating to or arising from the Evaluation Material or any other documents, material, information or communications provided under this Agreement.

V. Warranties and Representations

5.1 The Commissioner, the Guaranty Funds, and the NCIGF to the extent consistent with their statutory and other obligations, shall in good faith cooperate and communicate promptly with each other with respect to the performance of their duties under this Agreement.

5.2 The Guaranty Funds and the NCIGF represent that they have the authority to enter into this Agreement and fulfill their obligations under this Agreement.

5.3 Each undersigned person represents that he or she is authorized to sign this Agreement on behalf of the Party he or she represents.

5.4 The Guaranty Funds and the NCIGF understand and acknowledge that the Commissioner or Receiver makes no representations or warranties as to the accuracy or completeness of any Evaluation Material provided under this Agreement.

5.5 The Guaranty Funds and NCIGF understand and acknowledge that the Evaluation Material may include information furnished by consultants, access to which will require additional agreements with such consultants.

VI. Termination

6.1 This Agreement may be terminated at any time by agreement among the Parties or by any single Party in writing with 30 days' notice, provided that all Evaluation Material obtained prior to such termination shall remain confidential, unless otherwise agreed by the Parties, and except as otherwise provided by law. Further, this Agreement shall be terminated upon a determination in writing by the Commissioner or the Receiver that the Company no longer presents a material risk of Liquidation.

6.2 The Guaranty Funds and the NCIGF are permitted to use Evaluation Material in the manner and for purposes described herein until delivery by the Receiver or Commissioner of a written notice specifying the date of termination of this Agreement. Upon a liquidation order wherein one or more Guaranty Funds are triggered this Agreement shall terminate in all respects without the obligation to destroy Evaluation material or maintain it as confidential.

6.3 Except as provided in Paragraph 6.2, in the event of a termination of this Agreement, the Guaranty Funds and NCIGF shall immediately undertake to destroy all Evaluation Materials, and all copies, summaries, analyses and notes of the contents or parts thereof, and shall provide an affidavit attesting to the destruction of all such Evaluation Materials being provided to the Receiver, if appointed, and the Commissioner within 30 days after termination, and no part thereof shall be retained by the Guaranty Funds or NCIGF in any form without the prior written consent of the Commissioner or Receiver.

VII. Miscellaneous Provisions

7.1 Nothing in this Agreement shall be deemed to create an attorney-client relationship between any Party's counsel and any other Party.

7.2 This Agreement shall be governed by and construed in accordance with the laws of the State of [state of domicile of the insolvency].

7.3 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes, and all of which together shall constitute one and the same instrument.

7.4 This Agreement shall be effective upon the date signed by each party and shall also apply to any and all Evaluation Material that has previously been shared between the Parties.

7.5 All communications under this Agreement shall be in writing and shall be sent by email to the addresses specified below. A copy of any such notice shall also be personally delivered or sent by either first class registered or certified U.S. Mail, return receipt requested, postage prepaid, or by a bonded mail delivery service, to the address set out below:

The Commissioner:
[name, address, phone, email address]

The Receiver:
[name, address, phone, email address]

Guaranty Funds:

[list of contact information for signatory funds]

7.6 The Parties agree to meet periodically, at least annually, to discuss issues arising under this Agreement and its implementation with respect to any specific Company.

[SIGNATURES OF PARTIES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____________, 2019:

Commissioner

By: _________________________
Its: _________________________
Date: _________________________

Receiver (if appointed)
By: _________________________
Its: _________________________
Date: _________________________

NCIGF:

By: _________________________
Its: _________________________
Date: _________________________

Guaranty Fund:

Separate signature pages may be appropriate.

**************[TEXT INTENTIONALLY REMOVED FROM MATERIALS TO CONSERVE SPACE]******************

Considerations for Troubled Insurance Companies

In troubled or potentially troubled insurance company situations, proactive and timely communication to the appropriate persons within the department and with non-domiciliary state departments (for multistate companies) is critical. It is also important that the non-domiciliary state communicate with the domestic regulator prior to taking any action against the insurer. In certain circumstances, it may also be appropriate to communicate certain information with other parties (e.g., other regulatory bodies, company management, state guaranty funds, etc.). Establishing a coordinated communication system among the relevant parties will help facilitate the domestic regulator's surveillance of the troubled or potentially troubled insurance company. The *Troubled Insurance Company Handbook* (regulator only) provides additional guidance to assist in enhancing a state's monitoring and surveillance of troubled insurance companies, including communication and coordination of troubled or potentially troubled insurance companies.

At some point, the insurance department may determine that a corrective action plan cannot be implemented or completed successfully. Under these circumstances, the department may determine that the appropriate course of action is to place the troubled company in receivership. The *Troubled Insurance Company Handbook* outlines specific steps the department should take at all times during the development and implementation of a corrective action plan to prepare itself for this eventuality. This includes knowledge and control over the company's assets, determining and reviewing the company's obligations, operational considerations, information gathering, data/IT systems, other jurisdiction/regulatory considerations, etc. In addition to the *Troubled Insurance Company Handbook,* the *Receiver's Handbook for Insurance Company Insolvencies*[i] provides detailed information and guidance regarding pre-receivership considerations. Both Handbooks emphasize the benefits of early communication in a pre-receivership situation. The Handbooks offer tools and best practices for state insurance regulators for communication and coordination with other relevant parties in a pre-receivership situation, including other state insurance departments, federal and international regulatory authorities, guaranty associations, and etc. Tools include, for example, checklists to assist in the takeover phase of the receivership process and an optional memorandum of understanding template for advance communication with guaranty associations in a property and casualty liquidation[ii].

[i] The *Receiver's Handbook for Insurance Company Insolvencies* is available on the NAIC website at: https://content.naic.org/sites/default/files/publication-rec-bu-receivers-handbook-insolvencies.pdf

[ii] The optional MOU template is available on the NAIC website at: https://content.naic.org/sites/default/files/inline-files/2022_PreLiquidation_PC_MOU.docx

****[Text removed to conserve space.]****

U.S.-Based Internationally Active Insurance Group Considerations

****[Text removed to conserve space.]****

- **Crisis Management Group**[i] – The group-wide supervisor establishes a crisis management group (CMG) for the IAIG, with the objective of enhancing preparedness for, and facilitating the recovery and resolution of, the IAIG.
  - There should be clear membership conditions, and members should include the group-wide supervisor, other relevant involved supervisors, and relevant resolution authorities, if possible.
  - The CMG should keep under active review the process for sharing information within the CMG and with host resolution authorities not represented, the processes for recovery and resolution planning for the IAIG, and the resolvability of the IAIG.
  - The group-wide supervisor, in consultation with the CMG, should determine whether to require that the IAIG develop a formal recovery plan[ii] to establish in advance the options to restore the financial position and viability of the IAIG in a crisis, as well as how and when the plan should be updated on an ongoing basis. The role, priorities, and approach of any CMG should be proportional to each group's organization, capital structure, characteristics, and financial condition.
    - The recovery plan should be utilized by the CMG and the IAIG to take actions for recovery if the IAIG comes under severe stress.
    - It is recommended that the group-wide supervisor consider the IAIG's nature, scale, and complexity when setting recovery plan requirements, including the form, content, and detail of the recovery plan and the frequency for reviewing and updating the plan.
    - The head of the IAIG should maintain management information systems that are able to produce and communicate information relevant to the recovery plan on a timely basis.
    - Regardless of whether a formal recovery plan is required, the ORSA Summary Report should discuss at a high level the severe stresses that could trigger a recovery plan and the recovery options available.
  - Resolution plans[iii] are put in place at IAIGs where the group-wide supervisor and/or resolution authority, in consultation with the CMG, deems necessary. Where a resolution plan is required, the group-wide supervisor and/or resolution authority, in coordination with the IAIG CMG, should:
    - Determine whether a resolution plan is necessary, including consideration of factors such as the size and complexity of the IAIG.
    - Require relevant legal entities within the IAIG to submit necessary information for the development of resolution plan.

Commented [Staff1]: Recommend footnote be added subject to final adoption of guidance being considered by the Receivership & Insolvency (E) Task Force.

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[i] For additional guidance, refer to the *Receiver's Handbook for Insurance Company Insolvencies* [insert chapter/appendix reference] and the *Troubled Insurance Company Handbook* (regulator only publication) [insert chapter/appendix reference].

[ii] Refer to ICP CF 16.15 and the IAIS Application Paper on Recovery Planning for more background information and possible best practice guidance regarding governance, monitoring, updating the recovery plan, and key elements of a recovery plan (e.g., stress scenarios, trigger frameworks to identify emerging risks, recovery options, communication strategies, and governance). (https://www.iaisweb.org/home)

[iii] Refer to ICP CF 12.2 and 12.3 and the Application Paper on Resolution Powers and Planning for more background information and possible best practice guidance, including the approach to determining if resolution plans are needed and key elements of a plan (e.g., resolution strategies, financial stability impacts, governance, communication, and impact on guaranty fund systems). (https://www.iaisweb.org/home)

    - The head of the IAIG should maintain management information systems that are able to produce and communicate information relevant to the resolution plan on a timely basis.
    - Regularly undertake resolvability assessments to evaluate the feasibility and credibility of resolution strategies, in light of the possible impact of the IAIG's failure on policyholders and the financial system and real economy in the jurisdictions in which the IAIG operates.
    - Require the IAIG to take prospective actions to improve its resolvability.
- The group-wide supervisor puts in place a written coordination agreement between the members of the IAIG CMG, which covers the following:
    - Roles and responsibilities of the respective members of the IAIG CMG.
    - The process for coordination and cooperation, including information sharing among members of the IAIG CMG.