NAIC National Association of Insurance Commissioners

Date: 10/7/20

GROUP CAPITAL CALCULATION (E) WORKING GROUP
Tuesday, October 20, 2020
2:00 – 3:30 p.m. ET / 1:00 – 2:30 p.m. CT / 12:00 p.m. – 1:30 p.m. MT / 11:00 a.m. – 12:30 p.m. PT
WebEx Call-in

ROLL CALL

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

NAIC Support Staff: Dan Daveline/Lou Felice

AGENDA

1. Consider Comments on Exposed Changes to Model Act and Model Regulation—Commissioner David Altmaier *(FL)*

    a. Make Final Decisions
        - Make Final Decision Regarding Subgroup Reporting
            - Oct. 5 Comments in Favor of Subgroup Reporting
                - Liberty Mutual (Pages 1-2)
                - Coalition of groups (Pages 13-18)
                - ACLI (Page 25)
            - Oct. 5 Comments Opposed to Subgroup Reporting
                - Allianz/Transamerica (Pages 3-5)
            - Other Commenters from Past Exposures (Comments not included)
                - RAA, APCIA, Swiss Re, Munich Re
        - Make other Final Decisions
            - Summary of Comments — Attachment A

    b. Combined Comment Letters — Attachment B
    c. Revised Model 440-Comments Addressed through Revised Wording — Attachment C
    d. Revised Model 450-Comments Addressed through Revised Wording — Attachment D

2. Adjournment

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Comments on Exposure (Besides Subgroup Reporting)

The following does NOT attempt to address all of the specific comments related to each of the issues, including specifically 1) the Subgroup reporting issue; 2) those comments that have been addressed by revised wording in revised models (Attachment C & D).

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 1- County Mutual Language	**Section 4L(2)(a) exemption criteria for county mutual, town mutual and farm mutual…should be revised…we suggest using a structural approach that limits the exemption to single state writers that only include one insurer writing business within the group.**	**NAMIC**	**11**

Staff Summary of the Issue:
NAMIC suggests replacing the county mutual exemption with the following language.

> "An insurance holding company system that has only one insurer within its holding company structure that only writes business (and is only licensed) in its domestic state and assumes not business from any other insurer."

Recommended Action:
Staff supports this recommendation and has incorporated into the revised draft on the basis that a number of working group members queried by NAIC staff have indicated support.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 2- Limited GCC Filing for Groups with RBC Filer as the UCP	**ACLI opposes the exemption in 21B(1) as overly broad and recommend removing it from the Model Regulation. Creating too many exemptions for the GCC deprives regulators of valuable analytical data and could hurt the credibility of the GCC if large, complex insurance groups are excluded from the GCC.**	**ACLI**	**22**
	These groups may qualify for the limited GCC filing….but NAMIC members would prefer that this language include considerations for materiality and urge the Working Group to reconsider the inclusion of a materiality concept to avoid excluding an IHCS with immaterial operations from the limited filing….and requests adding the term "active" to Model 450….	**NAMIC**	**10**

Staff Summary of the Issue:
NAIC staff believes the regulator's decision to allow UCP RBC filers to complete the limited filing was appropriate since they recognized an RBC filer produces a GCC result that is not materially different from the RBC result and created the limited filing specifically with such entities in mind. More specifically, a number of regulators have noted that the GCC provides more value than the result and have said its greatest benefit will be from the analytical information (e.g. other financial information) required in the GCC on the different entities in the group; and therefore creating the limited filing for this purpose.

Comments on Exposure (Besides Subgroup Reporting)

Recommended Action:
Staff recommends no change to the 21(B)(1) that currently allows the limited filing for insurers where the UCP is an RBC filer since there is no material difference in the result from the RBC ratio and the GCC ratio and because the limited filing does provide the valuable analytical data. Additionally, Staff does not recommend the addition of the word "active" as run-off business has its own risks.

However, if the Working Group chooses to further limit this Limited Filing option it could consider one of the following two options: 1) option 1 would prevent the limited filing for any group that had an insurer outside the US; 2) option 2 would prevent the limited filing to those groups subject to Comframe:

Option 1
The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act], and the holding company system conducts no insurance operations that are domiciled outside of the United States or one of its territories ~~in a Reciprocal Jurisdiction that is not a qualified jurisdiction as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law]~~, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations;

Option 2
The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act], and the holding company system does not meet the criteria of an internationally active insurance group as defined in [insert cross-reference to appropriate section of Insurance Holding Company Model Act], ~~conducts no insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law]~~, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations;

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 3- Subgroup Details	**Developing a "U.S. Operations" GCC requires a significant resource commitment from regulators and industry. The core challenge with a "subgroup" capital measure is that one must first extract a portion of the group then assess the capital adequacy only of the extracted portion"**	**Allianz/ Transamerica**	**5**

Staff Summary of the Issue:
The comment letter sets forth a number of questions/issues as follows:

Following the identification of the portion of the group to extract, there would be a need to develop guidance on how to handle a variety of interconnections between the extracted and non-extracted portions. Such interconnections include:

- Capital instruments issued by either the extracted or non-extracted part of the group that are used to support the entire group;
- A variety of transactions (loans, reinsurance, guarantees) between "in scope" and "out of scope" parts of the group;
- Possible adjustments for (e.g.) cost allocations within the group;

Comments on Exposure (Besides Subgroup Reporting)

- The benefit of "group support"; and
- Issues related to the possible exclusion of non-U.S. subsidiaries from "U.S. operations."

We would imagine that each organization subject to a "U.S. operations" GCC could have unique interconnections that require thoughtful consideration.

Finally, it would be necessary to develop appropriate unique regulatory guidance for the use of the "U.S. operations" measure. This would include appropriate calibration, instructions for the Financial Analysis Handbook, and guidance for the use of the results in a supervisory college environment.

Recommended Action:
Staff recommends the following guidance be added to the current GCC instructions to address most of the comments. Other observations on the comments are listed below.

> **Subgroup Reporting:** Refers to a GCC wherein the scope of application specifically includes all of the U.S. insurers within the broader group and all of the directly and indirectly held subsidiaries of those U.S. insurers. For purposes of subgroup reporting, capital instruments, loans, reinsurance, guarantees would only include those that exist within the U.S. insurers. Amounts included for the U.S. insurers shall include all amounts contained within the financial statements of those entities included in the subgroup reporting, whether those amounts are directly attributable or allocated to a company in the subgroup from an affiliate outside of the U.S. insurers and its direct or indirect subsidiaries.

Other Comments: As it relates to the suggestion that the U.S. subgroup reporting should have its own unique regulatory guidance, including appropriate calibration, Financial Analysis Handbook guidance or use of the results in a supervisory college environment, NAIC staff disagrees. NAIC staff notes that the concept of subgroup reporting is based on the perspective that the supervisor representing that jurisdiction (in this case the lead state for the U.S. as a whole), understands and has the ability to communicate the results of their subgroup financial analysis during a supervisory college or with other jurisdictions more generally. As such, staff sees no reason for a different calibration since the calculation is determined in the same manner as a groupwide calculation but simply represents a smaller portion of the broader group. Additionally, its unclear why the Analysis Handbook guidance would be different since the GCC would still involve the same analysis to be done. However, for purposes of such guidance, staff acknowledges that it may be necessary to develop a brief summary of what subgroup reporting represents (repeating the definition) and how the analysis completed may need to be documented into the Group Profile Summary (GPS) differently. Specifically, since the GPS would already be expected to represent a summary of information captured from the Group Wide Supervisor, the subgroup reporting information would be additive information whose value would be applicable mostly for representation at the supervisory college but to a lesser extent when communicating with other domestic states on the US business.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 4- Reference in Communication	**The communication required of supervisors in non-Reciprocal Jurisdictions in which no U.S. groups operate should be considered.**	**Allianz/ Transamerica**	**6-7**

Comments on Exposure (Besides Subgroup Reporting)

Staff Summary of the Issue:
The current draft refers to sending a communication to the IAIS regarding the acceptability of the "GCC as an international capital standard."

> Allianz Proposal
> Although the Aggregation Method (AM) at the IAIS is sometimes promoted as an international standard, it does not seem appropriate to codify the AM in an NAIC model, as it does not seem certain that the AM will endure and be maintained in the future. We therefore believe the most prudent path is to focus on the aggregation approaches in general, and our recommendation is for an attestation that "aggregation-based capital approaches are acceptable for an insurance group capital assessment."

Recommended Action:
Staff notes that while the GCC is a more specified method of an aggregation method, the current language better correlates to the specific name of the group capital calculation that will be authorized by this NAIC model. Specific to the Allianz paragraph describing their proposal, staff notes that it includes the phrase "it does not seem certain that the AM will endure and be maintained in the future." This is concerning as it implies the AM will be used on used on a transitional basis.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 5- Communication of non-Reciprocal Jurisdictions	**The communications required of supervisors in non-Reciprocal Jurisdictions in which no U.S. groups operate should also be considered.**	**Allianz/ Transamerica**	**7**

Allianz makes the following more specific comments:
Non-U.S. groups have a lead state but are ordinarily subject to worldwide group supervision by a non-U.S. supervisory authority. There is a need to limit the attestation to U.S. based groups or groups for which the U.S. lead state is the group-wide supervisor.

U.S. group supervision and capital do not apply to all U.S. groups with non-U.S. operations. Under current NAIC Model 440, group supervision applies only to Internationally Active Insurance Groups, and, under the most recent draft, there could be situations in which a U.S.-based groups operating in a non-Reciprocal Jurisdiction could be exempt entirely from the GCC. There is a need to align the attestations with the scope of the GCC, once it is finalized, and to consider situations in which either formal group supervision and/or the GCC is inapplicable to a cross-border U.S.-based group.

Staff Summary of the Issue:
Recall, Model 440 sets forth a requirement, similar to other provisions of the Holding Company Act, that all groups are subject to. However, the GCC section 4L is structured differently in that it provides an avenue for exemption, and specifically provides an avenue for exemption for those groups that are based out of jurisdictions that recognize the GCC. More generally, this approach encourages mutual recognition for other jurisdictions by setting forth criteria in section 21D.

On the first point, while it's true that non-U.S. groups are ordinarily subject to worldwide group supervision by a non-U.S. supervisory authority, if this provision was limited to U.S. based groups, it would lack the criteria for the jurisdiction to show mutual recognition and would prevent the non-U.S. groups from being exempt.

Comments on Exposure (Besides Subgroup Reporting)

On the second point, it should be understood that NAIC accreditation requirements apply to all states and require group supervision on all groups operating in the U.S. through requirements on the lead states of those groups. However, in the case of non-U.S. groups, the requirements allow the lead state to defer to the group-wide supervisor (GWS) provided the lead state can obtain enough information from the (GWS) to complete the group profile summary.

Recommended Action:
Due to a difference in understanding the states approach to group supervision, NAIC staff does not believe these comments require any changes to be made.

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 6- Enterprise Risk Definition	**We note that the definition of "Enterprise Risk" in section 1.I of the model has not been amended to take into consideration its application to the new group-wide financial supervision of national and international insurance groups.**	**UnitedHealth Group**	**19-20**

Staff Summary of the Issue:
United suggests that in the context of the Group Capital Calculation (GCC), the definition is overly broad.

Here is the definition of enterprise risk in the model already:

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

Here is what United suggests as additional language.

> (b) For the purpose of the group capital calculation only, "enterprise risk" shall mean any activity, circumstance, event or series of events involving one of more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurance holding company system as a whole.

Recommended Action:
While staff agrees that the GCC is intended to permit the lead state regulator in assessing group solvency, so is the Form F for which the definition of enterprise risk originally created. More importantly, we don't believe the existing definition of enterprise risk is inconsistent with how the GCC provides a view of enterprise risk, although the GCC provides a quantitative view of such risk while the Form F provides a qualitative view of such risk. Specifically, the GCC provides financial information on affiliates that will assist the regulator in identifying situations that could have a material adverse impact on the financial condition of the insurer. Therefore, staff recommends no changes.

Comments on Exposure (Besides Subgroup Reporting)

Core Issue	Summary of Comment	Party Making Comments	Page Number in Attachment
Issue 7- Exemptions	**In Section 21, the exemptions are confusing.**	**UnitedHealth Group**	**20**

Further Detail from United:
Model 440 Section 4L(2) has a list of exemptions from filing, for example, for holding company systems that are required to complete a group capital calculation by the U.S. Federal Reserve. We urge that these exemptions either be specifically referenced in Section 21 of Model 450, or that they be included verbatim in the Regulation in order to avoid confusion about which entities are relieved from filing altogether versus only those potentially relieved from filing after filing at least one GCC with its lead state regulator.

Recommended Action:
Staff suggests no changes.

Model 440 Section 4L(2)(f) sets forth the authority for the Commissioner to grant exemptions or limited filings if certain conditions are met, but NAIC generally does not include references to the model act within the more detailed modeled regulation. In summary this is a stylistic suggestion that doesn't match the style used in most NAIC models.

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September 29, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Kathy Belfi
Vice Chair, NAIC Group Capital Calculation Working Group
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Re: Proposed Amendments to Insurance Holding Company System Regulatory Act and Regulations – September 18, 2020 Exposure Drafts

Dear Chair Altmaier and Vice Chair Belfi:

Liberty Mutual appreciates the opportunity to comment on the September 18, 2020 exposure drafts of Models 440 and 450, the NAIC Insurance Holding Company System Model Act and Regulation.

Our comments focus on the amendments to Section 4L of Model 440 that introduce and implement Subsections 4L(2)(e) and 4L(2)(f) and the concept of "subgroup reciprocity" expressed in these provisions in connection with application of the Group Capital Calculation (GCC).

Liberty Mutual joins with the stance in favor of the proposed language taken by the group of U.S. companies in their letter of August 24, 2020. We believe the proposed language appropriately conditions application of the exemptions to the filing of the GCC by non-U.S. groups on the mutual recognition of group supervisory regimes across jurisdictions and, most importantly, to recognition of the GCC.

We believe this language is consistent with the structure of the U.S. approach to group capital regulation and the notion that there should be one single group capital supervisory system for a global insurance group. Moreover, it is fully within the spirit and the letter of the Covered Agreement and the similar agreements between the NAIC and other Reciprocal Jurisdictions. As such, we believe non-U.S. regulators should not object to the proposed amendments.

These provisions provide a reasonable safeguard for U.S. groups against over-reaching regulation in other jurisdictions, while preserving the ability of foreign regulators to apply local financial solvency standards to operating units domiciled or doing business in their jurisdictions. Accordingly, we believe the proposed approach is well balanced and properly respectful of the authority of non-U.S. jurisdictions, while ensuring that U.S. groups are subject to only one group capital supervisory regime.

However, we recommend the proposed language be further revised to delete the discretionary language and make mandatory the treatment of U.S. subgroups set forth in the amendments, once the NAIC has determined that a Reciprocal Jurisdiction, or other jurisdiction that recognizes and accepts the GCC, should be subject to subgroup reciprocity. Doing so will strengthen the import of these provisions by assuring that they are consistently applied among the states.

Thank you for your consideration.

Yours truly,

Jack D. Armstrong

cc: Dan Daveline

October 5, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chair, NAIC Group Capital Calculation (E) Working Group

via email to ddaveline@naic.org

Re.: Proposed revisions to the NAIC Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450)

Allianz Life Insurance Company of North America ("Allianz") and the Transamerica Companies ("Transamerica") welcome the opportunity to comment on the Group Capital Calculation Working Group's most recent exposure of proposed changes to the NAIC's Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450). We appreciate the multiple opportunities we have had to provide input on these important model changes.

In our initial joint comment letter, we explored the tractability and viability of a "subgroup reciprocity" provision by identifying a number of issues that would need to be addressed before "subgroup reciprocity" would be suitable for inclusion in an NAIC model. We had understood the subsequent July exposure to replace subgroup reporting with a revised approach for "recognizing and accepting" the worldwide GCC, which would have alleviated a number of the issues we had initially identified. However, the fact that subgroup reporting remains unresolved indicates that our interpretation may not have been correct.

In this letter we highlight three key considerations for regulators in deciding whether to pursue subgroup reporting of the GCC:

1. The proposed subgroup "trigger" is likely to send unintended messages of disapproval to the international insurance regulatory community;
2. Developing a "U.S. Operations" GCC requires a significant resource commitment from regulators and industry; and
3. Lead state supervisor discretion regarding whether to require subgroup reporting if the trigger is tripped addresses neither of the above issues.

These considerations form the basis of our opinion that subgroup reciprocity should be removed from the current draft exposure.

We also provide input on a few other proposed provisions, including a response to the question we were asked by Jim Jakielo (CT) during the September 18 public call.

A. Three key considerations in assessing whether to include subgroup GCC reporting in Model 440 and 450

1. The proposed subgroup "trigger" is likely to send unintended messages of disapproval to the international insurance regulatory community

None of the stakeholder input to date has explained why subgroup supervision currently exists in some jurisdictions. We think this information is vitally important for regulators to consider, as inclusion of a legal trigger based on regulatory practices in non-U.S. jurisdictions would express that state insurance regulators disapprove of those practices or of the underlying motives.

Subgroup supervision of U.S. groups does exist in a few non-U.S. jurisdictions. With no known exceptions, this subgroup reporting does not systematically discriminate against U.S.-based insurance groups, nor is it intended to "retaliate" against U.S. regulatory practices. Instead it is based on the fundamental premise that some form of effective group supervision is necessary to protect policyholders.

Group supervision practices in Japan provide an example of the circumstances that lead to subgroup supervision. Japan has made a policy decision to consider effective group supervision on a non-extraterritorial basis, leading to a "subgroup" construct for all non-Japanese groups. By including a subgroup trigger in Model 440, however, state regulators would seem be signaling that U.S. state regulators disapprove of Japan's non-extraterritorial approach to group supervision. Alternatively, state regulators might be signaling disagreement with the fundamental premise that effective group supervision within Japan is necessary. We suspect that neither message would be intended.

Group supervision practices within the European Union (and, post-Brexit, the United Kingdom) provide another example. Recognizing that many significant insurance groups operate internationally, the EU's Member States have made a policy decision to consider effective group supervision on an extraterritorial basis, with allowance for reliance on non-EU supervisors through an equivalence regime. The U.S./NAIC has elected not to pursue a program that would lead to a finding of equivalence. Under European law, however, effective group supervision is still deemed essential to protect policyholders, and legislation permits a variety of measures to achieve the objectives of group supervision. The U.S.-EU Covered Agreement has removed the potential option for EU supervisors to apply EU capital measures on a worldwide basis, but other options remain available, and supervisors are required to implement measures that achieve the intended objectives. Consequently, in order to ensure that European citizens are protected by effective group supervision, a handful of U.S. groups appears to have become subject to subgroup supervision (based on our internal research). Therefore, a subgroup trigger in Model 440 would signal disapproval either of the NAIC's own prior decisions regarding the pursuit of equivalence or of the premises underlying the EU's approach to group supervision. Again, we suspect that neither message would be intended.

At a minimum, the above messages—if they are, in fact, not intended—argue for a scope-out from subgroup reporting for groups whose group-wide supervisor is based in a Reciprocal Jurisdiction. Indeed, NAIC models already consider Reciprocal Jurisdictions to "recognize the U.S. state regulatory approach to group supervision and group capital." From the more parochial perspective of Allianz and Transamerica, we would find it mystifying for state regulators to potentially enforce a subgroup reporting "penalty" on our organizations because of the NAIC's own prior decision regarding the pursuit of group supervision equivalence. If subgroup supervision within the EU is deemed to be problematic, rather than "penalizing" EU-based groups operating in the United States, we would gently suggest pursuing a program that leads to group supervision equivalence, thus eliminating the underlying cause.

More generally, we expect that interest in cross-border group supervision will increase in the future. Therefore, before including triggers based on regulatory practices by non-U.S. supervisors in an enduring NAIC model, we believe that U.S. state insurance regulators must be highly confident that the messages of disapproval attached to those triggers will always be intended. If the messages are not intended, state regulators could inadvertently damage relationships within the international regulatory community and harm the prospects for initiatives that would bring U.S. state insurance regulation greater recognition and respect.

2. Developing a "U.S. operations" GCC requires a significant resource commitment from regulators and industry

In considering the possibility of a GCC applied to "U.S. operations," it should be recognized that the current GCC is not sufficiently developed for this purpose. The core challenge with a "subgroup" capital measure is that one must first extract a portion of the group and then assess the capital adequacy only of the extracted portion. Under the current proposal, it would not be straightforward to identify a portion of the group to extract, as "U.S. operations" does not necessarily describe a connected family of legal entities under a parent, unlike a true subgroup. To our knowledge, this term has not been defined.

Following the identification of the portion of the group to extract, there would be a need to develop guidance on how to handle a variety of interconnections between the extracted and non-extracted portions. Such interconnections include:

- Capital instruments issued by either the extracted or non-extracted part of the group that are used to support the entire group;
- A variety of transactions (loans, reinsurance, guarantees) between "in scope" and "out of scope" parts of the group;
- Possible adjustments for (e.g.) cost allocations within the group;
- The benefit of "group support"; and
- Issues related to the possible exclusion of non-U.S. subsidiaries from "U.S. operations."

We would imagine that each organization subject to a "U.S. operations" GCC could have unique interconnections that require thoughtful consideration.

Finally, it would be necessary to develop appropriate unique regulatory guidance for the use of the "U.S. operations" measure. This would include appropriate calibration, instructions for the Financial Analysis Handbook, and guidance for the use of the results in a supervisory college environment.

The overall process would seem to require a formal charge, drafting, exposures, field testing, and deliberate resolution of issues. We would also request additional revisions to draft Model 440 and 450 to allow for various exclusions and simplified reporting alternatives that are available to U.S.-based groups that are subject to the GCC. As noted above, subgroup supervision does currently exist in some jurisdictions, so—unless Reciprocal Jurisdictions are out of scope of subgroup reporting—an operable "U.S. operations" GCC would be needed soon after a "go live" date. None of the necessary work is currently underway. Our view is that, if regulators decide to incorporate subgroup reciprocity, work on a "U.S. operations" GCC must be undertaken seriously and expeditiously.

3. Lead state supervisor discretion regarding whether to require subgroup reporting if the trigger is tripped addresses neither of the above issues

The updated draft changes the consequences of a trigger of the subgroup provision to be discretionary ("has the discretion to require") rather than mandatory ("shall require"). Should regulators decide to keep the subgroup reciprocity clause in the model law, we support this change in the interest of ensuring that any subgroup reporting does not have the effect of placing unwanted burdens on state regulatory resources. Nevertheless, while we would support this change, it does not address either of the above issues, namely:

- Unintended messages of disapproval are still likely to be sent to the international insurance regulatory community; and
- A significant resource commitment is still required.

It is therefore our opinion that subgroup reciprocity should be removed from the current draft exposure.

B. Other issues

1. We welcome the added clause describing Reciprocal Jurisdictions under Model 440, Section 4L(2)(c)

At present, the only definition of Reciprocal Jurisdictions in NAIC models is found in Model 786. However, the description of Covered Agreement Reciprocal Jurisdictions in Model 786 is incomplete relative to the description of non-Covered Agreement Reciprocal Jurisdictions. Specifically,

- The description of Covered Agreement Reciprocal Jurisdictions mentions only reinsurance, while
- The description of non-Covered Agreement Reciprocal Jurisdictions mentions both reinsurance and group supervision/capital.

When the NAIC adopted changes to Model 786 to incorporate Reciprocal Jurisdictions, it was not contemplated that Reciprocal Jurisdictions would be used outside the realm of reinsurance. This is no longer the case. The NAIC's conditions for non-Covered Agreement qualified jurisdictions to qualify as Reciprocal Jurisdictions were designed to replicate the substantive provisions of the U.S.-EU and U.S.-UK Covered Agreements. Therefore, it is appropriate to incorporate explicit model law language that clarifies that every Reciprocal Jurisdiction "recognizes the U.S. state regulatory approach to group supervision and group capital."[1]

2. The communications required of supervisors in non-Reciprocal Jurisdictions in which no U.S. groups operate should be reconsidered

On the September 15 call, Jim Jakielo (CT) queried us regarding a point made in our previous comment letter. The point was:

> *For jurisdictions in which no U.S. groups operate, the proposal indicates that insurance groups based in such jurisdictions can gain the benefits of "recognizing" of the GCC by sending a communication to the IAIS regarding the acceptability of the GCC "as an international capital standard." Yet the GCC has not, to date, been promoted as an international capital standard; rather the "Aggregation Method"—a more generalized approach akin to the ICS—is being promoted as an international standard. We question whether any supervisors would or could satisfy this provision as drafted.*

We were asked to provide a recommendation for alternative language, and we indicated that we would follow up.

Our general view is that group capital is a component of group supervision, and the GCC should apply only when the U.S. lead state is the group-wide supervisor. The current draft model law and regulation essentially makes the opposite presumption: group capital always applies, with exceptions for non-U.S. groups conditioned on bilateral agreements or assertions made by non-U.S. supervisors. Therefore, the NAIC's approach is not our preference. Nevertheless, if this approach is taken, the required assertions should avoid placing non-U.S. supervisors in impossible dilemmas.

Regarding supervisors in jurisdictions in which no U.S. groups operate, we believe it is inadvisable to require an attestation regarding the GCC as an international standard, for the reasons described in our prior letter. We also believe that it is not reasonable to require such supervisors to attest to the merits of the GCC, as such supervisors would have no reason to have knowledge of the specifics of the GCC. Although the Aggregation Method (AM) at the IAIS is sometimes promoted as an international standard, it does not seem appropriate to codify the AM in an NAIC model, as it does not seem certain that the AM will endure and be maintained in the future. We therefore

[1] An alternative interpretation of this clause would be that it is adding a condition to Covered Agreement Reciprocal Jurisdictions, i.e. requiring recognition of U.S. group supervision and capital in addition to being a Reciprocal Jurisdiction as a condition for being out-of-scope of the GCC. This outcome, however, would create a severe conflict with the U.S.-EU and U.S.-UK Covered Agreement, so we do not consider this to be a plausible interpretation.

believe that the most prudent path is to focus on aggregation approaches in general, and our recommendation is for an attestation that "aggregation-based capital approaches are acceptable for an insurance group capital assessment."

3. ***The communications required of supervisors in non-Reciprocal Jurisdictions in which U.S. groups operate should also be reconsidered***

Concerns similar to the above arise from draft Model 450, Section 21D(1), regarding the attestation required of supervisors in non-Reciprocal Jurisdictions in which U.S. groups operate. Such supervisors would be required to attest that insurers whose lead state is accredited "shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting as applicable by the lead state." However,

- Non-U.S. groups have a lead state but are ordinarily subject to worldwide group supervision by a non-U.S. supervisory authority. There is a need to limit the attestation to U.S.-based groups or groups for which the U.S. lead state is the group-wide supervisor.
- U.S. group supervision and capital do not apply to all U.S. groups with non-U.S. operations. Under current NAIC Model 440, group supervision applies only to Internationally Active Insurance Groups, and, under the most recent draft, there could be situations in which a U.S.-based groups operating in a non-Reciprocal Jurisdiction could be exempt entirely from the GCC. There is a need to align the attestations with the scope of the GCC, once it is finalized, and to consider situations in which either formal group supervision and/or the GCC is inapplicable to a cross-border U.S.-based group.

We recommend careful attention to these attestations during the drafting process, as placing them an NAIC model will make them difficult to change.

We hope the Working Group will find our comments to be informative and constructive. Allianz and Transamerica continue to commit to the development of efficient and effective prudential regulation within the United States.

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cc: Grace Arnold, Temporary Commissioner, Minnesota Department of Commerce
Doug Ommen, Commissioner, Iowa Insurance Division

October 5, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation (E) Working Group
Florida Office of Insurance Regulation

Via email to Dan Daveline *ddaveline@naic.org*

Re: NAIC Group Capital Calculation ("E") Working Group 9/18/2020 Exposure of the NAIC's Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

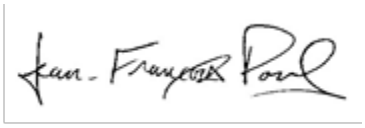
Dear Commissioner Altmaier:

We are writing to provide our comments on the proposed amendments to the Model Holding Company Act and Model Holding Company Regulation currently out for exposure. We commend the GCC Working Group for their efforts on creating a workable framework that meets regulatory needs.

Manulife/John Hancock, Sun Life, and Canada Life support the amendments that allow a regulator in a non-Reciprocal Jurisdiction to recognize and accept the GCC for sub-group reporting "reciprocity in regulatory action." We appreciate the focus on the actions of non-US jurisdictions as a truly reliable indicator of their recognition of the effectiveness of US oversight.

In addition, we appreciate the amendments to 21D(1) that remove a requirement for written confirmation. Regulators have many ways to confirm their recognition, including through supervisory colleges and regular insurance group interactions. Clarification of these methods as being acceptable for confirmation could be made through either the GCC Instructions, the Financial Analysis Handbook, or a drafting note.

Thank you in advance for your consideration, and we are happy to answer any questions.



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October 5, 2020

Commissioner David Altmaier
Chair, Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

VIA Email Transmission: ddaveline@naic.org; lfelice@naic.org

RE: NAMIC Comments on Proposed Amendments to NAIC Model 440: Insurance Holding Company System Regulatory Act and Model 450: Insurance Holding Company System Model Regulation

Dear Commissioner Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies[1] regarding the NAIC Group Capital Calculation (E) Working Group's revised draft amendments to the Model Insurance Holding Company System Regulatory Act (#440) and Regulation (#450).

NAMIC members are largely supportive of the current amendments that would require insurance holding company systems (IHCS) to file at least one annual group capital calculation (GCC), subject to specified exemptions, before the lead-state commissioner has the discretion to exempt the ultimate controlling person (UCP) from the filing or to allow for a limited GCC filing only that would require information that is not already provided to the lead state regulator pursuant to other existing law. We believe that the amendments to the Model Regulation (#450) give the lead-state commissioner a lot of flexibility to determine whether subsequent annual GCC filings would be beneficial in the review and assessment of IHCS. Even in situations where a group has been exempted from the GCC (or allowed to file a limited GCC filing) in prior years, the current proposal gives the lead-state commissioner the authority to withhold the exemption and request a GCC whenever the situation may call for it, for example, an insurer purchases a large non-insurer or some other material risk that impacts the enterprise emerges throughout

[1] NAMIC membership includes more than 1,400-member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write more than $278 billion in annual premiums. Our members account for 58 percent of homeowners, 44 percent of automobile, and 30 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

the year. Further, the lead-state commissioner will be able to compare the results of the GCC to the groups' annual RBC report to help the lead-state commissioner make a determination on whether to exempt the group from the GCC or request a limited GCC filing. As recognized by other commenters, and the NAIC, for some insurance group structures with an insurer as the UCP already supplying an annual RBC report, the GCC calculation does not afford additional information.

We support the comments made by Texas during the July 21, 2020 GCCWG meeting requesting that the Working Group consider giving the commissioner the authority to provide exemptions; however, as currently drafted, the lead-state commissioner would be significantly constrained in its decision-making ability. The language currently being proposed in Model Act (440) Section 4L(2)(f) includes the phrase, "an insurance holding company system that has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories." We suggest the Working Group revert to the language proposed in the July 23, 2020 Working Group proposal. That language is as follows:

> *g. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.*

We believe the Act should establish the requirement of the GCC and any non-specified exemption criteria should be left to the Regulation. It is the lead-state commissioner that is in the best position to determine if an exemption is warranted or not based on its expertise, significant interaction, and deep understanding of the IHCS and its insurers. By keeping this language as currently proposed in the Model Act (440), it takes away the lead-state commissioner's ability to grant exemptions from certain groups (i.e. those with insurers domiciled outside the United States or its territories) which may not be appropriate given the unique circumstances of each IHCS. Furthermore, it does not allow for any consideration of the materiality or operational status of insurers domiciled outside the United States or one of its territories. We believe the July 23, 2020 proposal provides the lead-state commissioner with the most flexibility and control over requiring an annual GCC or a limited GCC filing. In addition, with respect to the phrase, "an insurance holding company system that has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories.," this exact phraseology is also included in the proposed changes to Model 450 (Section 21A(2) and 21B(2)(a)); therefore, in our estimation, it is duplicative to include it also in the Model Act.

The language in the Regulation as currently proposed requires a full GCC in year one for all groups under the $1 billion direct written premiums threshold, subject to specified exemptions, and no exemption would be granted in

subsequent years for these groups if they have "insurers within its holding company structure that are domiciled outside of the United States or one of its territories" (Model 450 Section 21A(2)). In addition, for groups above the $1 billion DWP threshold where the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, those groups must also file a full GCC in year one. These groups *may* qualify for the limited GCC filing if the IHCS "conducts no insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction" and the lead-state has determined that the IHCS has no material financial risk emanating from non-insurers within the group. NAMIC members would prefer that this language include considerations for materiality and urge the Working Group to reconsider the inclusion of a materiality concept to avoid excluding an IHCS with immaterial operations from the limited GCC filing. In the alternative, we request the Working Group consider adding the term "active" to Model 450 Section 21B(1), to read, "the holding company system conducts no *active* insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction..." This would give the lead-state commissioner discretion to allow a limited GCC filing for a U.S. RBC filer whose operations are in run-off so long as they met the other criteria of Model 450 Section 21B(1).

The GCC exemption and the limited GCC filing in the Model 450 Regulation provide discretionary authority to grant or remove the exemption based on a change in circumstances of the IHCS. In addition, embedded within each Model 450 exemption (Section 21A(5); Section 21B(1); and 21B(2)(c)), is the requirement that any non-insurers within the holding company system "do not pose a material financial risk to the insurers ability to honor policyholder obligations". This language provides an additional hurdle for IHCS with non-insurers to obtain an exemption and empowers the lead-state commissioner to refrain from granting the exemption or to remove an exemption previously granted based on a change in circumstances involving non-insurers.

Finally, as it applies to specified exemption criteria included in the amendments to the Model Act (440) and specifically Section 4L(2)(a) exemption criteria for county mutual, town mutual, and farm mutual insurers, NAMIC members believe the threshold should be revised. As stated in a previous comment letter to the working group, many NAMIC members do not file Risk-Based Capital reports with their lead state due to their size; therefore, completing the GCC would present a significant challenge for these groups. Instead of using a dollar threshold, we suggest using a structural approach such that limits the exemption to single state writers that only include one insurer writing business within the group. We request the following language be considered by the working group:

> "An insurance holding company system that has only one insurer within its holding company structure that only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer."

We believe that the GCC was not designed to capture the universe of small single-state (single-county in many cases) town, county and farm mutual insurers. This language would address our concerns that these groups would be required to complete the GCC. Further, these entities are not writing outside of the United States and should not be burdened with additional group supervision requirements designed to meet the purposes of the Covered Agreement as they are not active in a Host party's territory.

We appreciate the opportunity to review the proposed language. Thank you for your consideration of these comments on this matter of importance to NAMIC, its member companies and their policyholders. If there are any questions, please feel free to contact me at 317-876-4206.

Sincerely,

Jonathan Rodgers
Director of Financial and Tax Policy
National Association of Mutual Insurance Companies

Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
[via-email: ddaveline@naic.org]

October 5, 2020

Re: Comments on Group Capital Calculation Working Group's Draft Scope Related Amendments to the Model Insurance Holding Company System Regulatory Act ("Model Act") and Regulation ("Model Regulation")

Dear Commissioner Altmaier:

Our coalition strongly supports mutual recognition of supervisory regimes across jurisdictions. As U.S. insurance groups with international operations, we believe this must include recognition and acceptance of the tools and approaches employed for state-based group supervision – including the group capital calculation (GCC) – by foreign jurisdictions. We believe a subgroup reciprocity provision in Section 4L(2)(e) of the Model Act is critical to furthering this objective, as are the reciprocity requirements in Sections 4L(2)(c) and (d).

To be effective, the provisions must be applied consistently across the states and be subject to a process framework that guides a consistent outcome among the states in the application of Sections 4L(2)(d) and 4L(2)(e). This would give the U.S. the ability to advance a unified position when engaging in dialogue with non-U.S. jurisdictions on the topic. We agree that diplomacy efforts should be given an opportunity to work before a final decision on whether a jurisdiction recognizes and accepts the GCC is made. At the same time, these aspects must be incorporated in a manner that does not undermine the overarching objective of securing mutual recognition of the GCC.

Thus, we support drafting Section 4L(2)(e) as follows:

> Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner ~~has the discretion to~~ shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. based insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation.

"Recognize and Accept" Criteria

We support the "recognize and accept" criteria in the Model Regulation, but we recommend amendments to clarify that Model Act Section 4L(2)(e), which addresses application of reciprocity at the subgroup level, applies not only to Section 4L(2)(d) but also to Section 4(L)(2)(c). As currently drafted in the latest exposure, only Section 4L(2)(d) is addressed in Section 21D of the Model Regulation and thus its scope needs to be broadened to include Section 4L(2)(e).

D. ~~For the purposes of [insert cross-reference to Model Holding Company Act section 4L(2)(d), a non-U.S. jurisdiction that is not a Reciprocal Jurisdiction, is considered~~ **A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation** ~~as a world-wide capital assessment for U.S. insurance groups who operate within the jurisdiction of the group-wide supervisor~~ if it satisfies the following criteria ~~for "recognize and accept"~~:

1. With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]:

a. the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

b. ~~2.~~ ~~With respect to [insert cross-reference to Section 4L(2)(d), the non-U.S. jurisdiction~~ where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1).

2. With respect to [insert cross reference to Section 4L(2)(e) of the Model Act], the non-U.S. jurisdiction does not apply its own group capital reporting measures to the operations of U.S. insurance groups within its jurisdiction;

~~3. With respect to [insert cross-reference to Section 4L(2)(d), the non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1).~~

3. The non-U.S. jurisdiction ~~The P~~provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

Commented [A1]: The reference to "Reciprocal Jurisdiction" should be deleted. The exemption from worldwide reporting of the GCC for Reciprocal Jurisdictions is addressed in Section 4L(2)(c) of the Model Act, which we support. Section 4L(2)(c) does not incorporate the "recognize and accept" language because Reciprocal Jurisdictions are separately designated pursuant to the Credit for Reinsurance Models.

However, Reciprocal Jurisdictions would be subject to the "recognize and accept" determination with respect to subgroup reporting in Section 2L(4)(e) of the Model Act as both the Credit for Reinsurance Models and Covered Agreements do not prohibit subgroup level reporting – see Attachment 1 for further information. Our suggested amendments throughout Section 21D aim to make sure Section 2L(4)(e) is appropriately applied across all jurisdictions to further advance the objective of securing mutual recognition of the GCC.

Commented [A2]: Moved with edits as shown in redline, to Section 21D(1)(b) above.

Additionally, Section 21(E)(3) of the Model Regulation should be amended as follows to reflect that a Reciprocal Jurisdiction may be determined to *not* recognize and accept the GCC at the *subgroup* level (as opposed to the worldwide level) in accordance with Model Act Section 4L(2)(e):

E. A list of non-U.S. jurisdictions that ~~are Reciprocal Jurisdictions or~~ "recognize and accept" the group capital calculation will be published through the NAIC Committee Process:

1) A list of jurisdictions that "recognize and accept~~s~~" the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)] and of jurisdictions that "recognize and accept" the group capital calculation pursuant to [insert cross-reference to Section 4L(2)(e) of the Model Act], is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to 4L(2)(d)] or [insert cross-reference to 4L(2)(c)] but is not exempted from filing under 4L(2)(e). ~~The lead state commissioner shall provide the non-U.S. jurisdictions confirmation to the NAIC for recommendation that it be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.~~

2) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Section D will serve as support for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.

3) ~~A list of jurisdictions that "recognize and accepts" the group capital calculation is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation.~~ The commissioner ~~may approve a jurisdiction that does not appear on the NAIC list of jurisdictions except that the Commissioner shall not remove from any non-U.S. jurisdiction that is a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital. Such Reciprocal Jurisdictions will automatically be included on the NAIC List~~. If the lead-state commissioner makes a determination pursuant to Section 4L(2)(d) and/or 4L(2)(e) that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.

4~~5~~) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to "recognize and accept" the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that "recognize and accepts" the group capital calculation.

Commented [A3]: We believe the process to be employed to track jurisdictions that recognize and accept the GCC should support determinations made at both the worldwide parent and subgroup level. As noted above, a determination must be made as to whether Reciprocal Jurisdictions recognize and accept the GCC at the subgroup level.

Commented [A4]: We believe this section should start with the text currently in 21E(3), with the list referred to established via a process similar to the one that is proposed on pages 4 and 5 of our comment letter.

Commented [A5]: We recommend deleting the current E1 and replace it with E3.

Commented [A6]: Moved up to E1, per comment above.

Commented [A7]: We recommend deleting this highlighted language because, for purposes of the 4L(2)(c) exemption, Reciprocal Jurisdictions are not subject to the "recognize and accept" evaluation and do not need to be included on the list. The application of 4L(2)(c) is automatic for jurisdictions already deemed to be "Reciprocal Jurisdictions" pursuant to the Credit for Reinsurance Model.

Instead, Reciprocal Jurisdictions will only be included or excluded from the list for purposes of whether they are requiring subgroup reporting and thus are subject to 4L(2)(e) of the Model Act.

If the decision is made to retain this provision, we suggest it be modified to read as follows:

> The commissioner may approve a jurisdiction that does not appear on the NAIC list of jurisdictions except that the Commissioner shall not remove from the list with respect to the Section 4L(2)(c) of the Model any non-U.S. jurisdiction that is a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital at the worldwide level. Such Reciprocal Jurisdictions will automatically be included on the NAIC List with respect to application of 4L(2)(c) only.

Commented [A8]: The Commissioner makes the final determination under 4L(2)(d) and 4L(2)(e), and the Commissioner should explain when a decision differs from the NAIC recommendation. This same language is included in the Credit for Reinsurance Model.

Recognize and Accept Process

The process for determining whether a jurisdiction "recognizes and accepts" the GGG should both promote dialogue and provide some degree of flexibility to account for unique facts and circumstances. Below is a high-level outline of a process that we believe would:

- Promote dialogue in an effort to avoid the need to enforce the reciprocity provision.
- Establish a fair, transparent, and equitable process for lead-states and the NAIC to consider all the facts and circumstances and have diplomatic discussion with the non-U.S. jurisdiction before making a final decision on reciprocity.
- Encourage a unified approach across states to avoid undermining efforts to promote mutual recognition of the GCC.

We suggest developing a process similar to the existing NAIC process for evaluating Qualified or Reciprocal Jurisdictions in the Credit for Reinsurance Models and associated materials including the Qualified Jurisdiction Working Group's *Process for Evaluating Qualified and Reciprocal Jurisdictions.* The process would be a narrower review than the Qualified or Reciprocal Jurisdiction review as the only issue being evaluated is whether the jurisdiction recognizes and accepts the GCC.

Under this approach, the lead state would make the final determination based on the relevant facts and circumstances, and there would be a process for the NAIC to provide an analysis and recommendation to regulators with the decision (*which would help encourage uniformity*).

High-Level Framework:

1) A lead-state commissioner or a non-U.S. jurisdiction may specifically request an evaluation of the non-U.S. jurisdiction by the NAIC for purposes of the exemptions under Sections 4L(2)(d) and 4L(2)(e). Such requests will get priority over evaluations of other non-U.S. jurisdictions.
    - Note: the process for designating jurisdictions as Reciprocal Jurisdictions referenced in 4L(2)(c) is already established through the Credit for Reinsurance Models. But that process only addresses *worldwide* group capital reporting, accordingly Reciprocal Jurisdictions would need to be evaluated for *subgroup* reciprocity for purposes of Section 4L(2)(e).
2) The NAIC will send formal notice of its intent to initiate an evaluation process to the non-U.S. jurisdiction's supervisory authority.
3) Enforcement of Section 4L(2)(d) and Section 4L(2)(e) are delayed until the review of the non-U.S. jurisdiction has been completed.
4) To encourage progress, a period of 6 months from the date of formal notice should be allowed to conduct and finalize the review in a timely manner. Reasonable extensions could be permitted provided they are based on reasonable grounds shown.
5) The public will be notified of non-U.S. jurisdiction's undergoing evaluation, and should have the opportunity to comment, but the process of evaluation and all related documentation will be private and confidential matters between the NAIC, state regulators and the non-U.S. jurisdiction (as governed by confidentiality and information sharing agreements to be established as necessary).

6) Before making a final determination that a non-U.S. jurisdiction should not be included on the NAIC list, the NAIC will solicit input from state insurance commissioners and the non-U.S. jurisdiction, including any unique facts or circumstances that should be considered as part of the evaluation, and facilitate discussion among these parties.

    - This process should give the non-U.S. jurisdiction the opportunity to remove its requirements for subgroup capital reporting.

7) To inform application of Section 4L(2)(d) and/or Section 4L(2)(e), the NAIC will provide state regulators a list of jurisdictions that "recognize and accept" the GCC, at the worldwide and/or subgroup level, based on the results of the evaluations conducted.

    - Note: A non-U.S. jurisdiction's imposition of subgroup capital reporting on a specific company due to the hazardous financial condition of that company would not require the NAIC to deem the jurisdiction to have failed to recognize and accept the GCC at the subgroup level.

8) The lead state commissioner of the relevant non-U.S. based group will make the final determination regarding the application of Section 4(L)2(d) and/or Section 4L(2)(e) after consideration of the list provided by the NAIC and in consultation with other impacted state commissioners.

9) If the lead state commissioner makes a determination pursuant to Section 4L(2)(d) and/or 4L(2)(e) that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.

10) Jurisdictions included on the list should be subject to ongoing monitoring by the NAIC similar to the process for Qualified and Reciprocal Jurisdictions.

11) A commissioner can call for a reevaluation of a non-U.S. jurisdiction included on the list if it believes the jurisdiction no longer meets the criteria for recognizing and accepting the GCC. Prior to sending formal notice of its intent to initiate an evaluation, the NAIC will facilitate discussion among the relevant parties, as appropriate, in an effort to resolve the matter that triggered the reevaluation request.

Sincerely,

Berkshire Hathaway Group of insurance companies
Liberty Mutual Insurance Group
MetLife, Inc.
Odyssey Reinsurance Company
Prudential Financial, Inc.
Reinsurance Group of America, Incorporated
The Travelers Companies, Inc.
Transatlantic Reinsurance Company

Attachment 1

Section 4L(2)(e) is consistent with the EU-U.S. and UK-U.S. Covered Agreements and Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation. The Covered Agreements prohibit "Host" supervisors from exercising group supervision, including group capital measures, at the "worldwide" group level while retaining the authority for imposition of a group capital measure on the operations of an insurance group within the territory of the Host jurisdiction. Article 4(h) of the Covered Agreement addresses group capital specifically and provides that, "the Host supervisory authority does not impose a group capital assessment or requirement at the level of the worldwide parent undertaking of the insurance or reinsurance group according to the applicable law in its territory." (Emphasis added.) The Statement of the United States on the Covered Agreement with the European Union dated September 22, 2017, reiterates this point: "The Agreement provides that U.S. insurers and reinsurers can operate in the EU without the U.S. parent being subject to the group level governance, solvency and capital, and reporting requirements of Solvency II,…" (Emphasis added.)

Pursuant to Articles 1(c) and 4(b) of the Covered Agreement, a Host supervisor retains the authority to exercise group supervision, including group capital measures, over a Home group's subgroup operations in the Host' supervisor's own jurisdiction. Article 4(b) provides that "Host supervisory authorities may exercise group supervision, where appropriate, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its territory. Host supervisory authorities do not otherwise exercise worldwide group supervision with regard to a Home Party insurance or reinsurance group, without prejudice to group supervision of the insurance or reinsurance group at the level of the parent undertaking in the territory of the Host Party."

Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation allow "Reciprocal Jurisdiction" status to be granted to non-U.S. jurisdictions subject to a covered agreement and for qualified jurisdictions that meet a list of requirements based on the covered agreement, including written confirmation by a qualified jurisdiction that a U.S. insurance group "will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction." (Emphasis added.)

UNITEDHEALTH GROUP

October 5, 2020

Honorable David Altmaier
Commissioner of Insurance
Chair, Group Capital Calculation Working Group
Office of Insurance Regulation
The Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0305

VIA EMAIL

RE: Amendments to Models 440/450

Dear Commissioner Altmaier:

We write today on behalf of UnitedHealth Group, one of the nation's largest managed care and healthcare services companies, which, through its UnitedHealthcare business platform, administers and provides healthcare benefits to more than 48 million individuals in all fifty states and the District of Columbia. UnitedHealth Group's Optum business segments provide health services, including pharmacy services, health care delivery, population health management, collaborative care delivery, information technology, and health care financial services to 115 million individuals and more than 100,000 physicians, practices, and other health care facilities nationwide. We thank you for the opportunity to provide comments on the recently released amendments to Models 440 and 450.

Model 440.

We note that the definition of "Enterprise Risk" in Section 1.I of the model has not been amended to take into consideration its application to the new group-wide financial supervision of national and international insurance groups. The current language reads:

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

We suggest that in the context of the Group Capital Calculation (GCC), this definition is overly broad. The GCC is intended to permit the lead state regulator to assess group solvency. It is not intended to replace state-based assessments of insurer risk or risk-based capital solvency of an insurer, and it is not intended to be a legal-entity solvency review tool. When used to define actions that can or should be taken by the lead state regulator, "enterprise risk" should focus exclusively on risk to the holding company system as a whole. Risk should not be measured by its potential impact on the smallest – or even largest - legal entity within a holding company group, or even a subset of legal entities unless there is a material impact on the

entire group. To do otherwise supplants state-based insurance regulation and confuses the nature of the GCC as a tool for the holistic review of the group as a whole and could cause specific insurer risks to be mis-interpreted as group risks. The application of multiple levels of materiality across multi-license groups is burdensome for groups and may excessively multiply "group risks". It is critical that the GCC be used only by the lead state regulators and that it be used only when there are material implications for the group.

We suggest that new language, in a new paragraph, be added to this definition as follows:

(b) For the purposes of the group capital calculation only, "enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurance holding company system as a whole.

Model 450

Section 21.

We urge that the words "lead state" appear before each instance in which there is a reference to the "commissioner" in order to remain clear that the GCC calculation is not to be used by non-lead states. It is critical that there only be one commissioner with authority to take actions with respect to solvency considerations for a large insurance holding company system. We note instances in subsections B, C, D and E in which the terms "commissioner" and "lead state commissioner" are used interchangeably. This can cause significant confusion in the future.

Also, in Section 21, the exemptions from filing are potentially confusing. Model 440 Section 4L(2) has a list of exemptions from filing, for example, for holding company systems that are required to complete a group capital calculation by the U.S. Federal Reserve Board. We urge that these exemptions either be specifically referenced in Section 21 of Model 450, or that they be included verbatim in the Regulation in order to avoid confusion about which entities are relieved from filing altogether versus only those potentially relieved from filing after filing at least one GCC with its lead state regulator.

We thank you for the opportunity to provide our input and comments and look forward to discussing this with you further. Please let me know if you have any questions or comments.

Sincerely,

Randi Reichel, Esq.
Vice President, National Regulatory Affairs
UnitedHealth Group

Cc: Mr. Dan Daveline
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October 05, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation (E) Working Group
Florida Office of Insurance Regulation

Re: NAIC Group Capital Calculation ("E") Working Group 9/18/2020 Exposure of the NAIC's Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act ("Model Act") and Model Holding Company Regulation ("Model Regulation"). We appreciate the significant and thoughtful work being done by the NAIC on this project and receptivity to discussing our members' recommended changes in this and previous exposures.

Our engagement in this initiative continues to be guided by principles our Board approved. We have included the Principles as an Appendix in this letter and we have attached our prior letters on these exposures. While we have refrained from providing a markup of the Model Act and Model Regulation text, we note that we believe our Board approved principles and the intent of our previously submitted comments are equally applicable.

In addition to carry forward of our principles and prior comments, ACLI has identified one additional item it would like to address.

- **ACLI opposes the exemption in § 21B(1) as overly broad and recommend removing it from the Model Regulation. Creating too many exemptions for the GCC deprives regulators of valuable analytical data and could hurt the credibility of the GCC if large, complex insurance groups are excluded from the GCC.**

With respect to U.S. domiciled groups, ACLI continues to support exemptions for groups that file a group capital report with the Federal Reserve Board and for small insurance groups. An appropriate threshold for small insurance groups is the size-threshold used in ORSA ($1 billion in annual written or assumed premium for the groups).

ACLI members oppose the proposed exemption in 21B(1)[1] and believe it should be eliminated. The exemption is overly broad and deprives supervisors of valuable analytical information about

[1] Section 21B(1) gives regulators the discretion to exempt any group from having to complete a GCC ratio if: (i) the ultimate controlling party ("UCP") is an RBC filer; (ii) the group has filed a full GCC at least once, (iii) the group does not have insurance operations in the EU or UK; and (iv) the non-insurance operations don't pose a material threat to policyholders.

a group's solvency and intragroup transactions, whether they are mutual or non-mutual companies. Members are also concerned that 21B(1) is detrimental to the long-term credibility of the GCC as a group capital assessment.

We recognize that in its current form, and consistent with ACLI's advocacy, the GCC calculation for many groups with an RBC filer as the ultimate controlling person is likely to be highly consistent with the RBC calculation for that UCP insurer. This may cause some to question the supervisory value of obtaining the GCC from such a group. However, the GCC process consists of more than simply the ultimate ratio. The supervisory value in the GCC's scheduling and adjustments for consequential intragroup financial arrangements, for example, may be as meaningful when applied to a group with a holding company UCP as with an insurer UCP. As a result, ACLI opposes the exemption in 21(B)(1).

In addition, 21B(1) creates the risk of an unlevel playing field, because potentially complex groups could qualify for the exemption, whereas simpler groups with less risk would not, solely because of their corporate structure. This potential exemption for large and complex groups could also harm the U.S. in its efforts to promote the GCC as an acceptable alternative to Insurance Capital Standard developed by the International Association of Insurance Supervisors if the U.S. carves out large and complex insurance groups from the GCC.[2]

To be clear, the ACLI is not arguing in favor of the Holding Company Act providing exemptions for more groups, regardless of size or complexity. We continue to recommend that exemptions or limited filing privileges for U.S. based groups should be limited to groups who have less than $1 billion in annual written or assumed premiums or who file a group capital report with the Federal Reserve Board. The $1 billion dollar cap is easy to understand and explain, clearly excludes any potential IAIGs from qualifying for the exemption, and prevents the perceived unfairness of a very large complex group qualifying for the exemption when a much smaller stock or mutual holding company does not qualify. Most importantly, it also ensures that lead-state regulators of large groups have access to the full array of detailed information contained within the GCC's schedules.

Thank you for the opportunity to submit our comments. As always, we would be pleased to meet with your or your staff at your convenience to discuss our comments or provide additional detail.

Mariana Gomez-Vock

Patrick C Reeder

[2] Under 21B(1), a regulator has the discretion to exempt a large and complex mutual insurer, even if the group qualifies as an Internationally Active Insurance Group ("IAIGs"), owns one or more depository institutions, and has significant overseas insurance operations, as long as the operations aren't in the EU or UK. However, a regulator would lack the ability to exempt a mid-size or large company with a holding company as the ultimate controlling party, even if the company had a simple corporate structure, did not operate overseas, and did not own any depository institutions.

Appendix

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.

3. Subgroup reciprocity:

    a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.

    b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.

    c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.

4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment ("ORSA") group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.

5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

Mariana Gomez-Vock
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July 15, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chairman, NAIC Group Capital Calculation (E) Working Group
[via-email to ddaveline@naic.org]

Re: NAIC Group Capital Calculation ("E") Working Group's Exposed Revisions to the NAIC's Model Holding Company Act (#440)

Dear Commissioner Altmaier,

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act. Our comments are divided into three parts. In the first section, we summarize the key principles guiding our responses to the NAIC's proposed revisions in the Model Holding Company Act. While many of our principles align with the exposure, we believe that some of the language in the exposure requires refinement and some of the processes for implementation must be clarified, through an accompanying regulation or regulatory guidance. The second section assesses the proposed exemptions against ACLI's principles of support. The final part of our letter discusses ACLI's response to the Working Group's recommended confidentiality language.

PART I. KEY POSITIONS

The following items are key areas of agreement among ACLI's diverse set of members, that guided our response to the NAIC's exposure. ACLI members support legislative regulatory proposals that align with the following principles:

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.

3. Subgroup reciprocity:

    a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.

b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.

c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.

4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment ("ORSA") group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.

5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

PART II. SPECIFIC COMMENTS ON THE PROPOSED EXEMPTIONS IN SECTION 4L(2).

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

ACLI believes that an insurance group should only be subject to one group capital assessment or requirement at the level of the ultimate controlling person (i.e., world-wide level).[1] Achieving this result– of one group capital assessment or requirement at the world-wide level, requires that jurisdictions accept other group supervision regimes, including group capital assessments, and avoid imposing redundant group capital regimes on groups who are already subject to a group capital evaluation.[2] We believe this is critical to avoid the situations where groups are subject to redundant and potentially conflicting capital frameworks, which could inhibit management's ability to operate the company and protect policyholders. Beyond the practical obstacles created by trying to apply more than one group capital assessment at the world-wide parent, the broad application of extraterritorial authority by multiple jurisdictions defeats the purpose of having a single group-wide supervisor at the world-wide parent level. It also contravenes supervisory colleges, whose existence and mission are intended to apprise regulators of the groups' activities and financial condition, as well as promote regulatory dialogue.

The concepts of "one-group, one group-capital standard or assessment" and the related principle of reciprocity are embedded in the U.S. Covered Agreement with the European Union and United Kingdom[3] and the NAIC's Reciprocal Jurisdiction process in the NAIC Credit for Reinsurance Model

[1] Other jurisdictions, and the Covered Agreement, use the term "level of the world-wide parent" instead of "ultimate controlling person."

[2] ACLI's support of the concept that a group should only be subject to one-group capital assessment or requirement is made within the context of whether it is appropriate for a group to be subject to more than one group capital calculation or requirement. It should not be read to imply that ACLI believes that group capital is fungible. ACLI's general policy is that capital within a consolidated or aggregated capital calculation is not fungible when it is held in an insurance entity, and an insurance group-wide supervisor does not and should not have the authority to transfer insurance assets out of a regulated entity unless pursuant to applicable law or regulation.

[3] EU and US Covered Agreement (Sept. 2017), is available here, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement. The US-UK Covered Agreement is available here https://home.treasury.gov/news/press-

Regulation (#786). The Working Group has proposed an exemption for non-U.S. holding companies whose non-U.S. group-wide supervisors are located within reciprocal jurisdictions that is parallel to the requirements of the Covered Agreement and Reciprocal Jurisdiction process.

Under proposed 4L(2)(c), the world-wide parent of a group whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction is exempt from having to file the GCC at the world-wide level.[4] ACLI supports this result, because we do not believe a group should be subject to more than one group capital assessment or standard at the world-wide level. There may be circumstances when a supervisor needs to request information from the world-wide parent, especially if the group's activities pose a serious threat to policyholders located in a supervisors' jurisdictions, but these requests are distinguishable from attempting to require a non-U.S. holding company to apply a U.S. group capital calculation at their world-wide parent level.

We think the same logic applies to non-U.S. groups whose non-U.S. group-wide supervisors are located within non-reciprocal jurisdictions. We understand, and support, the NAIC's and Team USA's ongoing efforts to secure mutual recognition for the GCC and the Aggregation Method; however, we have significant concerns that the revisions to the Model Holding Company Act could subject an insurance group whose group-wide supervisor is in a non-reciprocal regime to two capital assessments at the world-wide parent level. That is an undesirable result. A potential manifestation of our concern is in Section 4L(2)(d)(ii)(a). As 4L(2)(d) is written, the non-U.S. group supervisor must "recognize and accept" the U.S. GCC for the non-U.S. insurance group to qualify for an exemption from the GCC. If the non-U.S. group supervisor fails this test, then the ultimate parent company of the non-U.S. group will have to file the GCC at the level of the world-wide parent.

To help avoid such outcomes, the phrase, "recognizes and accepts" will need to be clarified by establishing a transparent process in an accompanying regulation or regulatory guidance There are many possible processes or potential definitions that could be used to determine if a regime "recognizes and accepts" the GCC. It could, for example, be defined to allow supervisory regimes to demonstrate reciprocity through regulatory action. In other words, where a non-U.S. jurisdiction does not apply its own group capital reporting requirements to a U.S. insurance group (either at the ultimate controlling party of a subsidiary or affiliate operating in that jurisdiction or at the subgroup level), then the non-U.S. jurisdiction could be deemed to "recognize and accept" the GCC. It could include the NAIC acting as a central body to establish and maintain a record of jurisdictions that "recognize and accept" the GCC. Alternatively, it could include language that empowers the lead-state to assess each situation individually to determine if an exemption is appropriate for an insurance group We believe these processes and potential definitions of "recognize and accepts" should be the subject of transparent discussion and vetting by stakeholders and regulators.

releases/sm570#:~:text=The%20U.S.%2DUK%20Covered%20Agreement%20also%20benefits%20the%20U.S.%20economy,Covered%20Agreement%20Letters%20to%20Congress.

[4] The U.S. operations of the non-U.S. group domiciled in a reciprocal jurisdiction may still be subject to the GCC, but only if their group wide supervisor does not recognize or accept the GCC for a U.S. group doing business in its jurisdiction

2. ACLI supports including a subgroup reciprocity provision regarding the GCC and group capital regimes in other jurisdictions in the model law.

ACLI supports the inclusion of a reciprocity provision, such as subsection 4L(2)(e), in the Model Holding Company Act. Subsection 4L(2)(e) specifies that the exemptions for non-U.S. insurance groups are contingent on their non-U.S. group-wide supervisor "recognizing and accepting the group capital calculation for any U.S. insurance group's operations doing business in that group wide supervisor's jurisdiction." As we noted above, we believe that the phrase "recognize and accepts" will need to be clarified upon implementation, perhaps in an accompanying regulation, or regulatory guidance. Further, we believe that the subgroup reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice, and equitable to insurers based in all jurisdictions. We think a similar process, with equal levels of transparency and equity is required for determining if reciprocity exists at the world-wide level (per § 4L(2)(d)).

While ACLI believes that subsection 4L(2)(e) is consistent with the Covered Agreement, it would be prudent for the NAIC's Office of General Counsel to consult with the U.S. Treasury about the provision.

3. ACLI supports an exemption for insurance groups that file a group capital report with the Federal Reserve Board - § 4L(2)(b).

ACLI supports the Working Group's recommended exemption for insurance groups who file a group capital calculation with the Federal Reserve Board, although we are recommending a minor change to accommodate information-sharing restrictions on Insurance Savings and Loan Holding Companies ("ISLHC"). ISLHCs are not opposed to sharing the information and results with their lead-state commissioner, but they may not be permitted to share the results or supporting information, with any outside parties, including regulators, until they obtain permission from the Federal Reserve Board through a prescribed process that is occasionally lengthy. As a result, we recommend amending 4L(2)(b) to strike the reference to "non-U.S" supervisor and to remove the language conditioning the exemption on the ISLHC filing a copy of the Federal Reserve Board's group capital calculation with the lead-state commissioner. In its place, we recommend inserting language requiring the ISLHC to cooperate with their lead-state supervisors requests to access group capital calculation information, as well as take any necessary steps to facilitate this exchange of information.

ACLI agrees that ISLHCs should be expected to help their lead-state commissioner gain access to their federal group capital calculation information and we understand the lead-state commissioner's desire and need to access this information. However, we do not believe it is appropriate to subject the ISLHC to a GCC filing requirement when the ISLHC is prohibited by law from sharing the information until they receive permission from the Federal Reserve Board. We think an appropriate balance is struck by exempting the ISLHC from the GCC, but also including language that creates a duty for the ISLHC to facilitate information-sharing between the lead-state commissioner, the Federal Reserve Board, and the ISLHC, to the maximum extent permissible by state or federal law.

Additionally, in section 8.1A, we also recommend striking "and" and replacing with "or" in the section addressing confidentiality protections for non-U.S. insurers and ISLHC who file a group capital calculation with the Federal Reserve Board.

4. ACLI supports the concepts embodied in 4L(2)(f) and 4L(2)(g) and we encourage the NAIC to refine them to improve clarity.

(a) ACLI comments on 4L(2)(f)

Subsection 4L(2)(f) gives the commissioner the discretion to exempt an insurance holding company system from filing a group capital calculation if the group has previously filed an annual group capital calculation and the insurance holding company system is a non-ORSA filer who meets certain criteria. While ACLI is generally supportive of the attempt to create an exemption for non-ORSA filers, additional streamlining and clarity may be useful in this section.

Proposed revisions to section 4L(2)(f):

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

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

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

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

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

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

(b) ACLI comments on 4L(2)(g)

Subsection 4L(2)(g) provides supervisory discretion to allow the ultimate parent companies of certain groups to submit a limited GCC filing, consisting of Schedule 1 and other information the supervisor deem necessary. ACLI is generally supportive of the principles expressed in this provision, but we encourage the Working Group to streamline this section prior to placement in the model Holding Company Act.[5]

[5] At a minimum, it is not clear if the conditions listed after "and the following additional criteria are met" are intended to apply only to non-ORSA filers or groups with an RBC-filing insurer as the ultimate controlling person.

Regardless of whether the Working Group adopts ACLI's specific recommendations for subsection 4L(2)(g), we encourage the NAIC to harmonize the terminology used in 4L(2)(f) and 4L(2)(g), as well as evaluate if some of the guidance included in 4L(2)(f) or (g) may be better suited in a regulation or supplementary regulatory material (i.e., guidance, handbook, or the GCC instructions).

For example, ACLI recommends that 4L(2)(g) refer to a "limited annual group capital filing or report" instead of the detailed description of Schedule 1 and additional information. Regulatory guidance could specify explain that a "limited annual group capital filing or report" refers to Schedule 1 of the GCC. Reducing the specificity in the description of the limited filing will help the statute stay evergreen in the event of future changes to the GCC template and instructions.

Proposed changes to 4L(2)(g):

"(g) ~~In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(f),~~ The lead-state commissioner has the discretion to ~~instead~~ accept a~~n~~ limited group capital filing or report on an annual basis ~~that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation,~~ if either:

"(i) the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined ~~that there are de minimis materially risky non-insurers;~~ that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or

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

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

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

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

5. *4L(2)(h) should be revised to ensure compliance with the Covered Agreement and enhance mutual regulatory cooperation.*

Because this section gives the lead-state commissioner the authority to require the ultimate controlling person of any group to file GCC, regardless of whether they are domiciled in a U.S. or non-U.S. jurisdiction, we believe that 4L(2)(h) should be modified to conform with the Covered Agreement and the NAIC Credit for Reinsurance Model Regulation (#786).

We recommend that the NAIC Office of General Counsel confer with the U.S. Treasury on the best way to incorporate the requirements into the Model Holding Company Act that a Host Jurisdiction may need to satisfy prior to requesting group prudential information from an ultimate controlling person domiciled in a covered-jurisdiction. One option may be to condition information requests to the ultimate-controlling person of a non-U.S. jurisdiction on the terms found in Article 4(f) and Article 4(g) of the Covered Agreement. If the Holding Company Act gives the lead-state commissioner the authority to request information from the world-wide parent of a non-U.S. jurisdiction in a covered jurisdiction, then the Holding Company Act should also include the requirement that the lead-state commissioner informs the non-U.S. group's supervisory college of information of any requests that extend to the world-wide parent. As a practical matter of promoting regulatory cooperation, it makes sense to extend this informational notice to all group wide supervisors of non-U.S. groups.

In addition, we recommend striking 4L(2)(h)(i) and moving it to section 4L(2)(f) or 4L(2)(g), which is where we believe it may provide the most value to regulators. We do not believe it is appropriate to require a group that is already subject to prudential group capital supervision to have to submit a GCC simply because a material transaction has occurred anywhere in the holding company system, including extraterritorial transactions by non-U.S. insurance entities. However, that kind of requirement may be appropriate for a U.S. domiciled group that is not otherwise subject to a full group capital assessment because they are partially or fully exempt from filing the GCC. It may also be helpful to limit the language regarding "material transactions" to those between insurers and non-insurer affiliates, as this appears to reflect the concerns expressed by regulators on Working Group calls.

Proposed changes to 4L(2)(h):

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

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

[ACLI strongly recommends consulting with the NAIC Office of General Counsel, the Federal Reserve Board, and the U.S. Treasury regarding the following provisions]:

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

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

~~(iv)~~ (iii) otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the

type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

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

PART III. COMMENTS ON THE PROPOSED CONFIDENTIALITY PROTECTIONS

Like other supervisory tools, the confidentiality of the GCC and similar materials submitted by non-U.S. or Federal Reserve Board group capital filers, is of paramount importance to ACLI, and we appreciate the NAIC's sustained acknowledgment of its importance. Any collection, use and disclosure of confidential, company information must be necessary for the supervision of insurance legal entities or groups and shall take place subject to current laws regarding confidentiality and only in and to the extent of the exercise of the governmental agency or regulator's statutory authority. The expanded universe of highly sensitive information required to be filed, as well as the novelty of the calculation heightens concerns about confidentiality protections for the information.

Confidentiality protections and potential vehicles for these protections should be thoughtfully considered and examined and must be well-established in law before the GCC is implemented and we support the NAIC's efforts to incorporate these confidentiality protections alongside the filing authority for the GCC in the Model Holding Company Act. We appreciate the Working Group's longstanding commitment to maintaining the confidentiality of the GCC, as well as the Working Group's efforts to work with industry to develop a GCC confidentiality framework that meets the needs of all parties.

As ACLI has noted in past comment letters, non-regulators who view the GCC do not have insight into the details of the calculation to be able to interpret and understand the GCC results. As a result, there is a strong likelihood the GCC may be misused to make comparisons between companies instead of being used as a sophisticated regulatory tool that is "intended to provide comprehensive accounting and transparency to state insurance regulators and facilitate earlier engagement with company management regarding potential business operations of concern and communication with other insurance regulators."[6]

The NAIC has historically acknowledged and recognized the potential for the misuse of certain regulatory filings like non-public RBC reports or plans by limiting the ability of companies or regulators to disclose these reports. We support the NAIC's proposed restrictions and limitations on the sharing of GCC results and information.

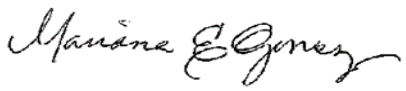
CONCLUSION

Thank you for the opportunity to provide comments on the proposed revisions to the Holding Company Act. ACLI appreciates the efforts the NAIC has made to engage the stakeholder

[6] Source: NAIC Proposed Group Capital Calculation Memo, May 29, 2019, p. 1.

community in the development of the Model Holding Company Act, and we would welcome the opportunity to discuss our comments with you in greater detail.

Sincerely,



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August 24, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation (E) Working Group
Florida Office of Insurance Regulation

Re: NAIC Group Capital Calculation ("E") Working Group Revisions to the NAIC's Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act ("Model Act") and Model Holding Company Regulation ("Model Regulation"). We appreciate the significant and thoughtful work being done by the NAIC on this project and receptivity to discussing our members' recommended changes in the previous exposure.

Our engagement in this initiative continues to be guided by the following principles that ACLI's diverse set of members support. These principles were adopted by ACLI's Board of Directors:

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).

2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.

3. Subgroup reciprocity:

    a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.

    b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.

    c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.

4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment ("ORSA") group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.

5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

We appreciate that the latest version of the Model Holding Company Act and Model Holding Company Regulation reflect updates to address some of the points we raised in response to the prior consultation. As with any iterative process, we have additional comments and recommended changes to the exposure. We have provided a high-level summary of some of our comments below, which is followed by a more detailed set of technical comments and a redline, in Appendix 1, which includes the rationale for each suggested change. Appendix 2 is a clean version of ACLI's recommended modifications.

High-level summary of ACLI comments on the Model Act and Regulation:

- We believe there is an opportunity to streamline the drafting and harmonize the text in the Model Act and the Model Regulation. Our detailed comments apply updates to sharpen the focus of the Model Act and Regulation. Most of our modifications are aimed at clarifying the text, while retaining the overarching intent of the original language as many of our members understand it.
- As stated in our previous comments, ACLI supports including a subgroup reciprocity provision in Section 4L(2)(e) and believes this concept needs to be included in the Model Law.
- At the same time, we believe subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.
- We believe that, following an initial filing and notwithstanding the reciprocity provisions, insurance groups that are exempt from having to file an ORSA because of their size should be exempt from the GCC. We support the Working Group's proposed exemption for insurance holding company groups who are required to file group capital calculation specified by the Federal Reserve Board and we appreciate the recent changes that address information sharing and confidentiality requirements.
- We believe further work is necessary to define "materiality" and "financial entity" in the NAIC GCC Instructions. There Instructions should also include information around "other controlling persons" (per our recommendation in section 4L(2)) as well as additional guidance on what information is included in a "limited group capital filing or report."

ACLI comments on the exposed Model Act and Regulation

We appreciate that the latest version of the Model Holding Company Act and Model Holding Company Regulation reflect updates to address points ACLI raised in response to the prior consultation. As with any iterative process, we have additional comments and recommended changes to the exposure. In addition to our high-level views, expressed above, we have enclosed a more detailed set of technical comments and a redline, in the appendix (Appendix 1), as well as a full set of our technical comments (Appendix 2), and a clean version of the Model Act and Regulation, as modified by our recommendations (Appendix 3).

Thank you for the opportunity to submit our comments. As always, we would be pleased to meet with your or your staff at your convenience to discuss our comments or provide additional detail.

Mariana Gomez-Vock

Patrick C. Reeder

Enclosures:

- **Appendix 1.** NAIC Model Act (440) and Regulation (450), with ACLI's suggested amendments, redlined and accompany technical comments and rationale in the comment bubbles.
- **Appendix 2.** Full text of ACLI technical comments
- **Appendix 3.** NAIC exposed Model Act and Regulation, with ACLI's suggested amendments – clean version

Appendix 1. NAIC Model Act (440) and Regulation (450), with ACLI's suggested amendments, redlined and accompanying technical comments/rationale in the comment bubbles.

Model Act – 440
ACLI Modifications Redlined

4L(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person or the controlling person as determined by the lead-state commissioner, as specified by the NAIC GCC Instructions, of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

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

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

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

d) An insurance holding company:

i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

ii) the lead state has determined that because of thisWhose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation is not required to be filed; andas the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or

1. Whose For non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:
   a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or

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

iii) For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writinga competent regulatory authority in such a jurisdiction provides written confirmation to the lead-state

Commented [MG1]: ***[Comment 1]*** 4L(2) currently requires the ultimate controlling person to submit the group capital calculation. However, it will likely be more appropriate for some insurance groups that may be required to file the GCC, including those that are part of non-financial conglomerates and the U.S. operations of foreign-based groups, to conduct the filing at a level below the ultimate controlling person. Our language broadens the model act to account for such circumstances.

Commented [MG2]: ***[Comment 2]*** *The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the "controlling person" as determined by the lead state, as well as specifying the situations where this may be necessary.*

Commented [M3]: ***[Comment 3]*** ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < $1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with < $1 billion in group premiums if the group has not filed a GCC at least once. That is why we are recommending, as an alternative to granting an exemption for groups who don't file an ORSA because of size, giving the lead-state the discretion to accept a limited group capital report for such groups, as long as they have filed a GCC at least once (see comments to 21A).

Commented [MG4]: ***[Comment 4]*** ACLI supports 4L(2)(b) as it is written.

Commented [MG5]: ***[Comment 5]*** Appears unnecessary – recommend deleting to shorten text.

Commented [MG6]: ***[Comment 6]*** *Changed to match how the terminology in the NAIC Financial Analysis Handbook.*

Commented [MG7]: ***[Comment 7]*** *Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i). If ACLI's changes are adopted, a clean version of (d) would read:*
"d. An insurance holding company
"(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or
"(ii) For non-U.S. jurisdictions where no U.S. insurance groups operate, a competent regulatory authority in such c

Commented [MG8]: ***[Comment 8]*** *Streamline and make the language more consistent with what is required of other jurisdictions, by striking reference to recognizing the GCC as an acceptable ICS and replacing with recognition as an "acceptable world-wide capital assessment for U.S. groups."*

commissioner, with a copy to the International Association of Insurance ~~Supervisor~~Supervisors recognizing the group capital calculation as an acceptable world-wide capital assessment for U.S. groups.

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

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

~~e)~~f) Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion ~~to exempt the ultimate controlling person from filing the annual group capital calculation or~~ to accept a limited group capital filing or report ~~consistent with~~, if the insurance holding company meets the criteria for such an exception, as specified by the commissioner in regulation.

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

~~g)~~h) The commissioner may promulgate regulations necessary for the administration of this section.

Model Regulation (450)

ACLI modifications REDLINED

Section 21.

21A. ~~Where an insurance holding company system has previously filed the annual group capital calculation, the~~ The lead-state commissioner has the discretion to ~~exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:~~

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

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

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

~~The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and~~

Commented [M9]: ***[Comment 9]*** *Clarify that even if the U.S. operations of a non-US group must file a GCC, this section does not invalidate the exemption at the world-wide level provided by 4L(2)(c) and (d). Without this change, the language could be interpreted as invalidating the exemption at the world-wide level, which we do not believe is what was intended with 4L(2)(e).*

Commented [MG10]: ***[Comment 10]*** *intended to align the Model Act with the ACLI Board-approved principles.*

Commented [M11]: ***[Comment 11]*** *This section appears to give the Commissioner broad authority to exempt groups from the GCC, even if they do not meet the criteria in the model law for exemption. If states have the broad authority to exempt any group – beyond those exemptions specified in the law, it creates the risk of an unlevel playing field. We recommend limiting this discretionary authority to accept a limited group capital report from companies who meet the criteria in the model regulation.*

Commented [M12]: ***[Comment 12]*** *A clean version incorporating ACLI's changes would read as:*

"21A. The lead-state commissioner has the discretion to accept a limited group capital filing report as specified by the NAIC GCC instructions, if the lead-state commissioner determines the insurance holding company can satisfy the following criteria:

1)if the insurance holding company has filed a group capital calculation at least once; and,

a.The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations, or

b.The insurance holding company:

(i)Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

(ii)Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and

(iii) the lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations."

~~The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.~~

~~21B.~~ ~~The lead-state commissioner has the **discretion** to either a~~ccept ~~or exempt the ultimate controlling person from filing~~ a limited group capital filing ~~or~~ report ~~on an annual basis if either:~~if the lead-state commissioner determines ~~that~~ ~~a limited group capital report provides sufficient information to evaluate the material risks posed by the group to the insurance entities in the group, and the insurance holding company can satisfy the following criteria:~~

1) ~~Provided~~~~if~~ the insurance holding company ~~conducts no insurance operations in~~has filed a ~~jurisdiction subject to a covered agreement, the~~group capital calculation at least once; and,

~~a.~~ The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations~~;~~, or

~~a.~~

b. ~~ORSA size exampetion~~the insurance holding company system has annual direct written and unaffiliated assumed premiums (including international direct and assumed premiums), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,0000,000; or

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

c. The insurance holding company ~~system has no~~:

(i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

(ii) ~~The holding company includes no~~ Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and

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

21B. ~~**21C.**~~ For an insurance holding company that has previously met an exemption under ~~either~~**4L(2)(f) or** Section 21A ~~or Section 21B~~ of this regulation, the commissioner may require ~~at any time~~ the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

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

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

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

Commented [MG13]: ***[Comment 13]*** *ACLI suggests limiting the discretion to accept a limited group capital report (vs. also allowing an exemption), because we heard multiple regulators on the GCCWG express a desire to collect at least one full group capital calculation before a group could become eligible for a limited filing reporting obligation. Alternatively, if the regulators would prefer the ability to exempt eligible groups from filing any GCC-related report, collecting at least one full-GCC prior to granting the exemption may help regulators determine the extent of material risk within the group's non-insurance operations.*

Commented [MG14]: ***[Comment 14]*** *21A(1)(a-c) are not exemptions - a group would still have to file a full GCC at least once, and then an annual limited group report. 21A recognizes that there are some groups that may not meet the criteria for exemption in 4L(2)(a)-(d), but the GCC filing may not add new information that a lead state commissioner needs in order to meet the obligation as a group wide supervisor – per 21(A)(1).*

Commented [MG15]: ***[Comment 15]*** Additional work is needed to define "materiality" with respect to the GCC, including how to determine whether a non-US insurance operation was material, and what impact, if any, this might have on the Covered Agreement. This information could be included in the FAH and/or GCC Instructions.

Commented [MG16]: ***[Comment 16]*** ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < $1 billion in annual premiums). However, if such an approach is not acceptable to regulators, then we propose adding a section to 21A to give regulators the discretion to accept a limited annual group capital filing from these groups, as long as the group has filed a full GCC at least once.

Commented [MG17]: ***[Comment 17]*** *21(A)(1)(c) recognizes that there may be some groups where the lead-state has sufficiently clear line of sight into each of the holding company's material entities, and fully understands the holding company's financial position without the full GCC, they should have the same level of discretion as thos* ...

Commented [MG18]: ***[Comment 18]*** *Assuming the intent was to capture depository institutions or other bank-like entities that are not subject to insurance department regulation, then we recommend adding "material non-insurance" before financial entity, especially because the definition of financial entity remains unclear and may evolve as regulators get more experience with the GCC. This wou* ...

Commented [MG19]: ***[Comment 19]*** *We recommend deleting this section, because these transactions are likely to be captured in a limited group filing that a supervisor will be able to review prior to determining if this discretion is appropriate. In addition, there are material intra-group transactions that occur in the ordinary course of business that we do not think should automatically disqualify a gro* ...

21C. For the purposes of [insert cross reference to Model Holding Company Act section 4L(2)(d)], a ~~**21D.** A~~ non-U.S. jurisdiction that is not a reciprocal jurisdiction, is considered to "recognize and accept" the group capital calculation ~~if it meets the following requirements:~~

~~Recognizes the U.S. state regulatory approach to group supervision and group~~ as a world-wide capital~~, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and~~ assessment for U.S. insurance groups ~~that are domiciled or maintain their headquarters in this state or another~~ who operate within the jurisdiction ~~accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision~~of the group-wide supervisor, if it satisfies the following criteria:

~~1.~~ The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy at the level of the worldwide parent undertaking of the insurance or reinsurance group ~~by the qualified jurisdiction; and~~

1) ~~A non-U.S. jurisdiction that does not apply its own group capital reporting requirements~~ to U.S. insurance groups~~, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor, may also be included in 21D(1) if it provides written confirmation;~~ who operate within that jurisdiction.

2) ~~A non-U.S. jurisdiction where no U.S. insurance groups operate can be included in 21D(1) as recognizing the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor. In this case this will serve as the documentation otherwise required~~ A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

~~a.~~ **21D.** ~~in 21D(1).~~

~~Provides written confirmation by a~~ [use language from 21C] For the purposes of [insert cross reference to 4L(2)(e)], a non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation for any U.S. insurance group's operations in that non-U.S. jurisdiction if it satisfies the following criteria:

1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy for any U.S. insurance or reinsurance group's operations in that non-U.S. jurisdiction.

~~1)~~ A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding ~~insurers and~~the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

Commented [MG20]: ***[Comment 20]*** *Proposed changes are intended to align the Model Regulation in line with the ACLI Board approved policy on the scope of the GCC.*

Commented [MG21]: ***[Comment 21]*** *The proposed changes are intended to align the Model Act with ACLI's Board approved principles*

Commented [MG22]: ***[Comment 22]*** *provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.*

2)

21E. A list of jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process.

1) The lead state commissioner shall provide the home jurisdiction's confirmation to the NAIC for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.

2) A list of jurisdictions that "recognize and ~~accepts~~"accept-" the group capital calculation is published through the NAIC Committee Process. The commissioner may approve a jurisdiction that does not appear on the NAIC list of "recognize and accept" which meets the requirements of ~~Section D(1) and Section D(2).~~this Act.

~~3)~~ The commissioner may remove a jurisdiction from the list of jurisdictions that "recognize and ~~accepts~~accept" the group capital calculation upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions.* Included will be processes for revocation or suspension of the status as a Accepts and Recognizes, provided that such process would not conflict with the terms of an in-force covered agreement.

Commented [MG23]: ***[Comment 23]*** *Subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.*

Appendix 2. Full text of ACLI technical comments

ACLI comments on the Model Act (#440)

#	Model section	ACLI comment
1	4L(2)	**[Comment 1]** 4L(2) currently requires the ultimate controlling person to submit the group capital calculation. However, it will likely be more appropriate for some insurance groups that may be required to file the GCC, including those that are part of non-financial conglomerates and the U.S. operations of foreign-based groups, to conduct the filing at a level below the ultimate controlling person. Our language broadens the model act to account for such circumstances.
2	4L(2)	**[Comment 2]** The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the "controlling person" as determined by the lead state, as well as specifying the situations where this may be necessary.
3	4L(2)(a).	**[Comment 3]** ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < $1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with < $1 billion in group premiums if the group has not filed a GCC at least once. That is why we are recommending, as an alternative to granting an exemption for groups who don't file an ORSA because of size, giving the lead-state the discretion to accept a limited group capital report for such groups, as long as they have filed a GCC at least once (see comments to 21A).
4	4L(2)(b)	**[Comment 4]** ACLI supports 4L(2)(b) as it is written.
5	4L(2)(c)	**[Comment 5]** Appears unnecessary – recommend deleting to shorten text.
6	4L(2)(d)	**[Comment 6]** Changed to match how the terminology in the NAIC Financial Analysis Handbook.
7	4L(2)(d)	**[Comment 7]** Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i).
8	4L(2)(d)(iii)	**[Comment 8]** Streamline and make the language more consistent with what is required of other jurisdictions, by striking reference to recognizing the GCC as an acceptable ICS and replacing with recognition as an "acceptable world-wide capital assessment for U.S. groups."
9	4L(2)(e)	**[Comment 9]** Clarify that even if the U.S. operations of a non-US group must file a GCC, this section does not invalidate the exemption at the world-wide level provided by 4L(2)(c) and (d). Without this change, the language could be interpreted as invalidating the exemption at the world-wide level, which we do not believe is what was intended with 4L(2)(e).
10	4L(2)(e)	**[Comment 10]** intended to align the Model Act with the ACLI Board-approved principles.
11	4L(2)(f)	**[Comment 11]** This section appears to give the Commissioner broad authority to exempt groups from the GCC, even if they do not meet the criteria in the model law for exemption. If states have the broad authority to exempt any group – beyond those exemptions specified in the law, it creates the risk of an unlevel playing field. We recommend limiting this discretionary authority to accept a limited group capital report from companies who meet the criteria in the model regulation.

ACLI comments on the Model Regulation (#450)

#	Model section	ACLI Comment
12	Section 21A	**[Comment 12]** A clean version incorporating ACLI's changes would read as…

ACLI comments on the exposed Model Act and Regulation

#	Model section	ACLI comment
13	Section 21A	**[Comment 13]** ACLI suggests limiting the discretion to accept a limited group capital report (vs. also allowing an exemption), because we heard multiple regulators on the GCCWG express a desire to collect at least one full group capital calculation before a group could become eligible for a limited filing reporting obligation. Alternatively, if the regulators would prefer the ability to exempt eligible groups from filing any GCC-related report, collecting at least one full-GCC prior to granting the exemption may help regulators determine the extent of material risk within the group's non-insurance operations.
14	Section 21A(1)	**[Comment 14]** 21A(1)(a-c) are not exemptions per se - a group would still have to file a full GCC at least once, and then an annual limited group report. 21A recognizes that there are some groups that may not meet the criteria for exemption in 4L(2)(a)-(d), but the GCC filing may not add new information that a lead state commissioner needs in order to meet the obligation as a group wide supervisor – per 21(A)(1).
15	Section 21A(1)(a)	**[Comment 15]** Additional work is needed to define "materiality" with respect to the GCC, including how to determine whether a non-US insurance operation was material, and what impact, if any, this might have on the Covered Agreement. This information could be included in the FAH and/or GCC Instructions.
16	Section 21A(1)(b)	**[Comment 16]** ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < $1 billion in annual premiums). However, if such an approach is not acceptable to regulators, then we propose adding a section to 21A to give regulators the discretion to accept a limited annual group capital filing from these groups, as long as the group has filed a full GCC at least once.
17	Section 21A(1)(c)	**[Comment 17]** 21(A)(1)(c) recognizes that there may be some groups where the lead-state has sufficiently clear line of sight into each of the holding company's material entities, and fully understands the holding company's financial position without the full GCC, they should have the same level of discretion as those companies covered by (a) to allow a limited annual filing, as long as the group has filed a full GCC at least once.
18	Section 21A (1)(c)(ii)	**[Comment 18]** Assuming the intent was to capture depository institutions or other bank-like entities that are not subject to insurance department regulation, then we recommend adding "material non-insurance" before financial entity, especially because the definition of financial entity remains unclear and may evolve as regulators get more experience with the GCC. This would avoid disqualifying groups who may have a broker-dealer that exists solely to support investing for the insurer from being able to qualify for a limited reporting schedule. A broker dealer that is immaterial (if materiality was defined at 2-5% of total assets) to the group is not going to have a significant impact on the GCC or pose a material risk to policyholders.
19	Section 21A(1)(c)	**[Comment 19]** We recommend deleting this section because these transactions are likely to be captured in a limited group filing that a supervisor will be able to review prior to determining if this discretion is appropriate. In addition, there are material intra-group transactions that occur in the ordinary course of business that we do not think should automatically disqualify a group from being able to file a limited group capital report. Some of these material transactions include the periodic payment of dividends, which requires regulatory notification and in the case of extraordinary dividends, regulatory approval; the use of non-insurance service companies to share overhead and operating costs among insurance subsidiaries, and tax-sharing agreements among affiliates.

ACLI comments on the exposed Model Act and Regulation

#	Model section	ACLI comment
20	Section 21C	**[Comment 20]** Proposed changes are intended to align the Model Regulation in line with the ACLI Board approved policy on the scope of the GCC.
21	Section 21D	**[Comment 21]** The proposed changes are intended to align the Model Act with ACLI's Board approved principles
22	Section 21D	**[Comment 22]** provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.
23	Section 21E	**[Comment 23]** Subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.

Appendix 3. NAIC exposed Model Act and Regulation, with ACLI's suggested amendments – clean version

MODEL ACT – 440

WITH ACLI MODIFICATIONS (CLEAN)

4L(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person or the controlling person as determined by the lead-state commissioner, as specified by the NAIC GCC Instructions, of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, unless one of the following exemptions for the Insurance Holding Company System is met:

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

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

c. An insurance holding company whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

d. An insurance holding company

i. That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

ii. Whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or

iii. For non-U.S. jurisdictions where no U.S. insurance groups operate, a competent regulatory authority in such a jurisdiction provides written confirmation to the lead-state commissioner, with a copy to the International Association of Insurance Supervisors recognizing the group capital calculation as an acceptable world-wide capital assessment for U.S. groups.

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

e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require a group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation, for any U.S. insurance group's operations in that non-U.S. jurisdiction.

f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to accept a limited group capital filing or

report, if the insurance holding company meets the criteria for such an exception, as specified by the commissioner in regulation.

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

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

MODEL REGULATION (450)

WITH ACLI MODIFICATIONS (CLEAN)

Section 21.

21A. The lead-state commissioner has the discretion to accept a limited group capital filing report, as define if the lead-state commissioner determines that:

2) the insurance holding company has filed a group capital calculation at least once; and,

   a. The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations, or

   b. the insurance holding company system has annual direct written and unaffiliated assumed premiums (including international direct and assumed premiums), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,0000,000; or

   c. The insurance holding company:
      (i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

      (ii) Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and

      (iii) the lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

21B. For an insurance holding company that has previously met an exemption under Section 21A of this regulation, the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

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

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

6) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and

volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

21C. For the purposes of [insert cross reference to Model Holding Company Act section **4L(2)(d)],** a non-U.S. jurisdiction that is not a reciprocal jurisdiction, is considered to "recognize and accept" the group capital calculation as a world-wide capital assessment for U.S. insurance groups who operate within the jurisdiction of the group-wide supervisor, if it satisfies the following criteria:

1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy at the level of the worldwide parent undertaking of the. insurance or reinsurance group to U.S. insurance groups who operate within that jurisdiction.

2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21D. [use language from 21C] For the purposes of [insert cross reference to 4L(2)(e)] , a non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation for any U.S. insurance group's operations in that non-U.S. jurisdiction if it satisfies the following criteria:

1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy for any U.S. insurance or reinsurance group's operations in that non-U.S. jurisdiction.

2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21E. A list of jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process.

1) The lead state commissioner shall provide the home jurisdiction's confirmation to the NAIC for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.

2) A list of jurisdictions that "recognize and accept-" the group capital calculation is published through the NAIC Committee Process. The commissioner may approve a jurisdiction that does not appear on the NAIC list of "recognize and accept" which meets the requirements of this Act.

3) The commissioner may remove a jurisdiction from the list of jurisdictions that "recognize and accept" the group capital calculation upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions.* Included will be processes for revocation or suspension of the status as a Accepts and Recognizes, provided that such process would not conflict with the terms of an in-force covered agreement.

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INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

Section 1. Definitions note

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

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

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

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

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

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

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

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

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

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

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

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

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

J. "NAIC" means the National Association of Insurance Commissioners.

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

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

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

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

Section 2. Subsidiaries of Insurers

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such

further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

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

A. Filing Requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L(1), for so long as control exists;

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

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

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

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

C. Alternative Filing Materials.

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

D. Approval by Commissioner: Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

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

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

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

B. Scope

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

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

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

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

(c) The acquisition of already affiliated persons;

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

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

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

(iii) In no market would

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

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

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

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

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

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

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

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

D. Competitive Standard

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Orders and Penalties

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

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

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

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

(i) There is a hearing;

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

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

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

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

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

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

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

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

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

Section 4. Registration of Insurers

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

(1) Section 4;

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

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

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

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

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

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

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

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

(b) Purchases, sales or exchange of assets;

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

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

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

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

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

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

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

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

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

Alternative Section 4B(7):

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

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

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

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

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

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

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

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

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

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

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

L. Enterprise Risk Filings.

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

(2) Group Capital Calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the

procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:

a. An insurance holding company system that ~~that~~ has only one insurer within its holding company structure that only only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer~~does not conduct business outside of the U.S. and either: (a) has no more than one insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than $1,000,000 in any calendar year~~;

b. An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. ~~Instead, the insurance holding company system shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation.~~ The lead-state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the ~~calculation specified by the United States~~ Federal Reserve Board cannot share the calculation with the lead-state ~~be filed with the~~commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

c. An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital;

Drafting Note: On September 22, 2017, the United States and the European Union (EU) entered into the "*Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.*" A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements are considered to be a "covered agreement" entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that addresses the U.S. state regulatory approach to group supervision and group capital, and provides that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group. Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to the EU and UK Covered Agreements treated as Reciprocal Jurisdictions, but any other Qualified Jurisdiction can also qualify as Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.

d. An insurance holding company system:

(i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

(ii) Whose non-U.S. group-wide supervisor that is not a Reciprocal Jurisdiction recognizes and accepts, as specified by the Commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction; or

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

e. Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner ~~has the discretion to~~shall require the group capital calculation for U.S. operations of any non-

U.S. based insurance holding company system if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. based insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation.

f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d) ~~and with respect to an insurance holding company system that has no insurers within its holding company structure that are domiciled outside of the Unites States or one of its territories~~, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

g. If the lead-state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead-state commissioner based on reasonable grounds shown.

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

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

A. Transactions Within an Insurance Holding Company System

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

(a) The terms shall be fair and reasonable;

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

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

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

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

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

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing

of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

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

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

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

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

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

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

(c) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

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

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

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

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

or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

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

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

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

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

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

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

B. Dividends and other Distributions

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

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

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

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

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

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

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

C. Management of Domestic Insurers Subject To Registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Examination

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

B. Access to Books and Records.

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

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

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

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

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

Section 7. Supervisory Colleges

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

(1) Initiating the establishment of a supervisory college;

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

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

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

(5) Establishing a crisis management plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Governance, risk assessment and management,

(b) Capital adequacy, and

(c) Material intercompany transactions;

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

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

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

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

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

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

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

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

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

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

Section 8. Confidential Treatment

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

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

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

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

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

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

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

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

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

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

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

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

remains with the commissioner and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner:

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

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

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

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

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

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

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

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

Section 9. Rules and Regulations

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

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

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

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

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

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

Section 11. Sanctions

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

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

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

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

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

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

Section 12. Receivership

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

Section 13. Recovery

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

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

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

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

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

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

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

Section 15. Judicial Review, Mandamus

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

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

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

Section 16. Conflict with Other Laws

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

Section 17. Separability of Provisions

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

Section 18. Effective Date

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

APPENDIX
ALTERNATE PROVISIONS

Alternative Section 1. Findings

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

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

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

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

(4) Implement sound tax planning conclusions; and

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

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

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

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

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

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

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

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

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

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

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

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

Alternative Section 2. Subsidiaries of Insurers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Group Capital Calculation Working Group: 10/15/2020 Draft (With Subgroup Reporting)

INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING FORMS AND INSTRUCTIONS

Table of Contents

Section 1. Authority

These regulations are promulgated pursuant to the authority granted by Sections [insert applicable sections] and [insert applicable section] of the Insurance Law.

Note: Optional for those states in which similar provisions are normally used.

Section 2. Purpose

The purpose of these regulations is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the NAIC Insurance Holding Company System Regulatory Act [insert applicable sections] of the Insurance Code hereinafter referred to as "the Act." The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.

Editor's Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

Drafting Note: Optional for those states in which similar provisions are normally used.

Section 3. Severability Clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

Drafting Note: Optional for those states in which similar provisions are normally used.

Section 4. Forms - General Requirements

A. Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by Sections 3, 3.1, 4, and 5 of the Act. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. [Insert number] complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of [insert state and address], Attention: [insert name - title]. At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

C. If an applicant requests a hearing on a consolidated basis under Section 3D(3) of the Act, in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

D. Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Drafting Note: Section 4 may be omitted if it is included as instructions on Forms A, B, C, D, E and F.

Section 5. Forms - Incorporation by Reference, Summaries and Omissions

A. Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

Drafting Note: Section 5 may be omitted if it is included as instructions on Forms A, B, D, E and F.

Section 6. Forms-Information Unknown or Unavailable and Extension of Time to Furnish

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Commissioner a separate document:

A. Identifying the information, document or report in question;

B. Stating why the filing thereof at the time required is impractical; and

C. Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within [XX] days after receipt thereof enters an order denying the request.

Drafting Note: Section 6 may be omitted if it is included as instruction on Forms A, B, C, D, E and F.

Section 7. Forms - Additional Information and Exhibits

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: "Change No. [insert number] to" and shall indicate the date of the change and not the date of the original filing.

Drafting Note: Section 7 may be omitted if it included as instructions on Forms A, B, C, D, E and F.

Section 8. Definitions

A. "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

B. "Ultimate controlling person" means that person which is not controlled by any other person.

C. Unless the context otherwise requires, other terms found in these regulations and in Section 1 of the Act are used as defined in the Act. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.

Drafting Note: If regulation Section 2 is not adopted by the state, the following definition should be added to this section:
"The Act" means the Insurance Holding Company System Regulatory Act [insert applicable sections of the Insurance Code].

Section 9. Subsidiaries of Domestic Insurers

The authority to invest in subsidiaries under Section 2B of the Act is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

Section 10. Acquisition of Control - Statement Filing

A person required to file a statement pursuant to Section 3 of the Act shall furnish the required information on Form A, hereby made a part of this regulation. Such person shall also furnish the required information on Form E, hereby made a part of this regulation and described in Section 13 of this regulation.

Section 11. Amendments to Form A

The applicant shall promptly advise the Commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.

Section 12. Acquisition of Section 3A(4) Insurers

A. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 3A(4) of the Act, the name of the domestic insurer on the cover page should be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company."

B. Where a Section 3A(4) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 13. Pre-Acquisition Notification

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Section 3A(1) of the Act, that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to Section 3.1C(1) of the Act.

Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 3.1 of the Act, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 3.1 as set forth in Section 3.1B(2).

In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

Section 14. Annual Registration of Insurers - Statement Filing

An insurer required to file an annual registration statement pursuant to Section 4 of the Act shall furnish the required information on Form B, hereby made a part of these regulations.

Section 15. Summary of Registration - Statement Filing

An insurer required to file an annual registration statement pursuant to Section 4 of the Act is also required to furnish information required on Form C, hereby made a part of these regulations.

Section 16. Amendments to Form B

A. An amendment to Form B shall be filed within fifteen (15) days after the end of any month in which there is a material change to the information provided in the annual registration statement.

B. Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. [insert number] to Form B for [insert year]" and shall indicate the date of the change and not the date of the original filings.

Drafting Note: Section 16 may be omitted if Section 5A(2) of the Model Act has been adopted and amendments to the registration statement are therefore not required by the Act.

Section 17. Alternative and Consolidated Registrations

A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 4 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

(1) The statement or report contains substantially similar information required to be furnished on Form B; and

(2) The filing insurer is the principal insurance company in the insurance holding company system.

B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

C. With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Subsection A above.

D. Any insurer may take advantage of the provisions of Section 4H or 4I of the Act without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

Section 18. Disclaimers and Termination of Registration

A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

(1) The number of authorized, issued and outstanding voting securities of the subject;

(2) With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;

(3) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;

(4) A statement explaining why the person should not be considered to control the subject.

B. A request for termination of registration shall be deemed to have been granted unless the Commissioner, within thirty (30) days after receipt of the request, notifies the registrant otherwise.

Section 19. Transactions Subject to Prior Notice - Notice Filing

A. An insurer required to give notice of a proposed transaction pursuant to Section 5 of the Act shall furnish the required information on Form D, hereby made a part of these regulations.

B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

(1) Identify the person providing services and the nature of such services;

(2) Set forth the methods to allocate costs;

(3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;

(4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(6) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(7) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(9) Include standards for termination of the agreement with and without cause;

(10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(11) Specify that, if the insurer is placed in receivership or seized by the commissioner under the State Receivership Act:

(a) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and,

(b) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(12) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the State Receivership Act; and

(13) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under the State Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Section 20. Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 4L(1) of the Act shall furnish the required information on Form F, hereby made a part of these regulations.

Section 21. Group Capital Calculation

A. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

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

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

3) Has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5) The non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead-state commissioner has the discretion to accept in liu of the group capital calculation a limited group capital filing if either:

1) The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act], and the holding company system conducts no insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction as determined by the lead-state commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations; or

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

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

(b) Does not includea banking, depository or other financial entity that is subject to an identified regulatory capital framework; and

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

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation Section 21A or 21B of this regulation, the lead-state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

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

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

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

D. ~~For the purposes of [insert cross-reference to Model Holding Company Act section 4L(2)(d), a non-U.S. jurisdiction that is not a Reciprocal Jurisdiction, is considered~~A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation ~~as a world-wide capital assessment for U.S. insurance groups who operate within the jurisdiction of the group-wide supervisor~~if it satisfies the following criteria~~for "recognize and accept"~~:

1) With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]

(a) the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(b) ~~With respect to [insert cross-reference to Section 4L(2)(d), the non-U.S. jurisdiction~~where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1)(a).

2) With respect to [insert cross reference to Section 4L(2)(e) of the Model Act], the non-U.S. jurisdiction does not apply its own group capital reporting measures to the operations of U.S. insurance groups within its jurisdiction;

~~1) With respect to [insert cross-reference to Section 4L(2)(d), the non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1).~~

3) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

E. A list of non-U.S. jurisdictions that ~~are Reciprocal Jurisdictions or~~"recognize and accept" the group capital calculation will be published through the NAIC Committee Process:

1) A list of jurisdictions that "recognize and accept" the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)] and of jurisdictions that "recognize and "accept" the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(e) of the Model Act], is published through the NAIC Committee Process to assis the lead-state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to Sections 4L(2)(d)] or [insert cross-reference to Sections 4L(2)(c)] but is not exempted from filing under 4L(2)(e).~~The lead-state commissioner shall provide the non-U.S. jurisdictions confirmation to the NAIC for recommendation that it be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.~~

2) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Section D will serve as support for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.

~~3) A list of jurisdictions that "recognize and accepts" the group capital calculation is published through the NAIC Committee Process to assist the lead-state commissioner in determining which insurers shall file an annual group capital calculation. The lead-state commissioner may approve a jurisdiction that does not appear on the NAIC list of jurisdictions except that the Commissioner shall not remove from the list any non-U.S. jurisdiction that is a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital. Such Reciprocal Jurisdictions will automatically be included on the NAIC List.~~

~~3)~~ If the lead-state commissioner makes a determination pursuant to Section 4L(2)(d) and/or 4L(2)(e) that differs from the NAIC List, the lead-state commissioner shall provide thoroughly documented justification to the NAIC and other states.

4) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to "recognize and accept" the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that "recognize and accepts" the group capital calculation.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC *Process for Evaluating Reciprocal and Qualified Jurisdictions.* Included will be processes for revocation or suspension of the status as a Accepts and Recognizes, provided that such process would not conflict with the terms of an in-force covered agreement.

Section 2~~1~~2. Extraordinary Dividends and Other Distributions

A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(1) The amount of the proposed dividend;

(2) The date established for payment of the dividend;

(3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(a) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years;

(5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

B. Subject to Section 5B of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsection A(4).

Section 2~~2~~3. Adequacy of Surplus

The factors set forth in Section 5D of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

FORM A

**STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

_____
Name of Domestic Insurer

BY

_____
Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

_____
(State of domicile of insurer being acquired)

Dated:_____, 20_____

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

_____

ITEM 1. METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

(a) Name and business address.

(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(c) Material occupations, positions, offices or employment during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.

(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.

(b) Explain the criteria used in determining the nature and amount of such consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which

there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding 5 fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or regulation Sections 4

and 6.

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 3 of the Act _____ has caused this application to be duly signed on its behalf in the City of _____ and State of on the _____ day of _____, 20_____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20_____, for and on behalf of _____(Name of Applicant); that (s)he is the _____(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of_____

By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

(a) Name;

(b) Home office address;

(c) Principal executive office address;

(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;

(e) The principal business of the person;

(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

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

(b) Purchases, sales or exchanges of assets;

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

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

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

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders;

(h) Consolidated tax allocation agreements; and

(i) Any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 4 of the Act.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

Drafting Note: Commissioner may by rule, regulation or order provide otherwise.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or regulation Sections 4 and 6.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 4 of the Act, Registrant has caused this annual registration statement to be duly signed on its behalf of the City of _____ and State of _____ on the _____ day of _____, 20 _____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, 20_____, for and on behalf of _____(Name of Applicant); that (s)he is the _____(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

FORM C

SUMMARY OF CHANGES TO REGISTRATION STATEMENT

Filed with the Insurance Department of the State of_____

By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory

threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

Pursuant to the requirements of Section 4 of the Act, Registrant has caused this annual registration statement to be duly signed on its behalf of the City of _____ and State of _____ on the _____ day of _____, 20 _____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, 20_____, for and on behalf of _____(Name of Applicant); that (s)he is the _____(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the State of_____

By

_____

Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

(a) Name;

(b) Home office address;

(c) Principal executive office address;

(d) The organizational structure, i.e. corporation, partnership, individual, trust, etc.;

(e) A description of the nature of the parties' business operations;

(f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;

(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or

in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

(a) A statement as to whether notice is being given under Section 5A(2)(a), (b), (c), (d), or (e) of the Act;

(b) A statement of the nature of the transaction;

(c) A statement of how the transaction meets the 'fair and reasonable' standard of Section 5A(1)(a) of the Act; and

(d) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by Section 5A(2)(c)(ii) of the Act, or a reinsurance pooling agreement or modification thereto as described by Section 5A(2)(c)(i) of the Act, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.

For management and service agreements, furnish:

(a) A brief description of the managerial responsibilities, or services to be performed;

(b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

(a) A brief description of the purpose of the agreement;

(b) A description of the period of time during which the agreement is to be in effect;

(c) A brief description of each party's expenses or costs covered by the agreement;

(d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;

(e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;

(f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and

(g) A statement regarding compliance with the *NAIC Accounting Practices and Procedure Manual* regarding expense allocation.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 5 of the Act, _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the _____ day of _____, 20 ____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, 20_____, for and on behalf of _____(Name of Applicant); that (s)he is the _____(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)_____

(Type or print name beneath)_____

FORM E

PRE-ACQUISITION NOTIFICATION FORM REGARDING THE POTENTIAL COMPETITIVE IMPACT OF A PROPOSED MERGER OR ACQUISITION BY A NON-DOMICILIARY INSURER DOING BUSINESS IN THIS STATE OR BY A DOMESTIC INSURER

_____
Name of Applicant

_____
Name of Other Person
Involved in Merger or
Acquisition

Filed with the Insurance Department of

_____

Dated:_____, 20 _____

Name, title, address and telephone number of person completing this statement:

_____

_____

_____

_____

ITEM 1. NAME AND ADDRESS

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in Section 3.1D of the Act. If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

Drafting Note: State Insurance Departments may additionally choose to make these calculations using their own data or data provided by the National Association of Insurance Commissioners.

FORM F

ENTERPRISE RISK REPORT

Filed with the Insurance Department of the State of_____

By

_____
Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name Address

_____

_____

_____

_____

Date:_____, 20_____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

ITEM 1. ENTERPRISE RISK

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in [insert cross reference to definition of Enterprise Risk in Section 1F of the Act], provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;
- Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;
- Business plan of the insurance holding company system and summarized strategies for the next 12 months;
- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in

the last year;

- Identification of insurance holding company system capital resources and material distribution patterns;

- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and

- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

ITEM 2: OBLIGATION TO REPORT.

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

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

1970 Proc. IIB 1055-1066 (printed).
1971 Proc. I 54, 58, 134, 149 (adopted).
1986 Proc. II 12, 19-20, 93-94, 109-123 (amended).
1993 Proc. 1st Quarter 3, 33, 362, 364-370 (amended).
2011 Proc. 1st Quarter I 3-11 (amended).
2013 3rd Quarter (editorial revision).

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