GROUP CAPITAL CALCULATION (E) WORKING GROUP
Friday, September 18, 2020
11:00 a.m. – 12:30 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:30 a.m. MT / 8:00 – 9:30 a.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 Kiffl New York
Philip Barlow District of Columbia Jackie Obusek North Carolina
Kevin Fry Illinois Dale Bruggeman Ohio
Roy Eft Indiana Andrew R. Stolfi Oregon
Carrie Mears Iowa Joe DiMemmo Pennsylvania
Gary Anderson Massachusetts Trey Hancock/Rachel Jrade-Rice Tennessee
Judy Weaver Michigan Mike Boerner/Doug Slape Texas
Kathleen Orth Minnesota David Smith/Doug Stolte Virginia
John Rehagen/Karen Milster Missouri Amy Malm Wisconsin

NAIC Support Staff: Dan Daveline/Lou Felice

AGENDA

1. Consider Comments on Exposed Changes to Model Act and Model Regulation—Commissioner David Altmaier (FL)
   a. Summary of Comments Attachment A
      o Consider Decision Regarding Subgroup Reporting
      o Other Comments
   b. Combined Comment Letters Attachment B

2. Consider Exposure of Revised Models to Address Comments—Commissioner David Altmaier (FL)
   c. Revised Model 440 with Subgroup Reporting Option Attachment C
   d. Revised Model 450 with Subgroup Reporting Option Attachment D
   e. Revised Model 440 without Subgroup Reporting Option Attachment E
   f. Revised Model 450 without Subgroup Reporting Option Attachment F

3. Adjournment
The following does NOT attempt to address all of the specific comments related to each of the issues, but rather a summary, and points the reader to the specific comments for further review. NAIC Staff would note that most of the comment letters provide different wording suggestions on how to address reciprocity.

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<tr>
<th>Core Issue</th>
<th>Summary of Comment</th>
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<tbody>
<tr>
<td>Issue 1-Subgroup Reporting Reciprocity</td>
<td>It is disappointing that this type of retaliatory measure is considered necessary to encourage level playing fields on a global basis and that this type of retaliatory measure is suggested instead of diplomacy and requesting that international regulators work together to eliminate unnecessary subgroup capital requirements.</td>
<td>Munich Re</td>
<td>6</td>
</tr>
<tr>
<td>Issue 1-Subgroup Reporting Reciprocity</td>
<td>Extreme care should be taken that “reciprocity” does not promote “escalation.” In particular, the updated draft appears to require application of a worldwide GCC if a non-U.S. jurisdiction were to apply its own capital measure to U.S. groups at a subgroup level. Such perceived inequities could impair relationships among supervisors and promote retaliation, with cross-border insurance groups from all jurisdictions caught in the middle.</td>
<td>Allianz / TransAmerica</td>
<td>2</td>
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<tr>
<td>Issue 1-Subgroup Reporting Reciprocity</td>
<td>There are several different ways to support a level regulatory playing field across multiple jurisdictions. APCIA’s comments below and suggested language for this “reciprocity” provision do not reflect the position of all APCIA members. APCIA continues to believe that the NAIC should develop a transparent process for determining whether a non-US jurisdiction recognizes and accepts the GCC. This process should involve consultation and coordination with US regulators international colleagues, and it should be made clear that the purpose of this process is to support mutual recognition and a level regulatory playing field.</td>
<td>APCIA</td>
<td>21</td>
</tr>
<tr>
<td>Issue 1-Subgroup Reporting Reciprocity</td>
<td>Our positions on these matters remain unchanged. However, because the RAA has always strongly believed that U.S.-based insurance groups should similarly be exempt from subgroup requirements in non-U.S. jurisdictions, we are willing to support some amendments to the holding company act and regulation that might encourage other jurisdictions to provide similar exemptions for U.S. subgroup in other jurisdictions. As you are aware, the RAA has U.S. and non-U.S.-based members that fall on both sides of this equation.</td>
<td>RAA</td>
<td>10</td>
</tr>
<tr>
<td>Issue 1-Subgroup Reporting Reciprocity</td>
<td>We believe the exemptions in Section 4L(2)(c) and 4L(2)(d) are appropriately conditioned on the GCC being reciprocally recognized in the non-US insurance group’s home jurisdiction, meaning that the supervisor of the non-US jurisdiction does not subject a US insurance group, at the worldwide group level, to its group capital standard or requirement (measure). We also strongly support inclusion of Section 4L(2)(e) so that such reciprocal treatment also applies at the subgroup level.</td>
<td>RGA/PRU/MET/ETC</td>
<td>26</td>
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### Comments on Exposure

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<td><strong>Issue 1- Subgroup Reporting Reciprocity</strong></td>
<td>ACLI supports including a subgroup reciprocity provision regarding the GCC and group capital regimes in other jurisdictions in the model law. 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. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.</td>
<td>ACLI</td>
<td>35-36</td>
</tr>
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**Staff Summary of the Issue:**
At question is whether non-US groups that would otherwise be exempt from filing the GCC with their lead state would be required to file the GCC for the US Subgroup if the group-wide supervisor for that non-US group requires subgroup reporting (e.g. requires a group calculation of the US business in a particular area or region in addition to solo/legal entity reporting).

**Recommended Action:**
This is a policy issue that needs to be discussed and decided by the Working Group. To the extent the Working Group chooses to accept the subgroup reporting reciprocity requirement, Attachment C & D should be exposed. If the Working Group chooses to reject the subgroup reporting reciprocity requirement, Attachment E & F (in their full form) should be exposed. Also, to the extent the Working Group supports the reciprocity issue, we are fully supportive of working with the ACLI and the rest of the industry to develop a process/procedures document under which the Working Group would follow in making future decisions on a jurisdiction being listed on the qualifying listing. While we understand that at least one interested party does not support such a process, we also support the recommendation by that same party that the lead-state have the discretion to exempt a group from a jurisdiction that does require subgroup reporting to allow a means for supervisors to work through these issues diplomatically if the lead state desires.

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<td><strong>Issue 2- Subgroup Reciprocity Details</strong></td>
<td>Section 4L(2)(e) Clarify that even if the US 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 charge, 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).</td>
<td>ACLI</td>
<td>42</td>
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**Staff Summary of the Issue:**
As you will recall, the language at issue was proposed by RGA.

**Recommended Action:**
While the Working Group supported reciprocity and agreed to expose the language, this question is best addressed to RGA and discussed by the Working Group thereafter for their determination on which approach is best.
## Comments on Exposure

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<td>Issue 3-County Mutual</td>
<td>For small county, town and farm mutual insurers that do not file an annual Risk-Based Capital report but write over $1,000,000 in direct premiums, filing a GCC report would be overly burdensome.</td>
<td>NAMIC</td>
<td>49</td>
</tr>
</tbody>
</table>

**Staff Summary of the Issue:**
NAMIC recommends the following change:

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 or (c) the ultimate controlling person is a U.S. regulated insurer that is not required by law to complete an annual Risk-Based Capital filing;

**Recommended Action:**
Staff's general impression was that most of the regulators that wanted to provide a county mutual exemption was that such insurers were smaller. Staff believes the current ORSA size threshold continues to be appropriate and has concerns with making one exception that may lead to other proposed exceptions.

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<td>Issue 4-Materiality and Covered Agreement</td>
<td>NAMIC agrees that the lead state commissioner should have discretion but suggests that it should include situation where there is an immaterial insurer that is domiciled outside of the US or one of its territories</td>
<td>NAMIC</td>
<td>49-50</td>
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**Staff Summary of the Issue:**
NAMIC recommends adding the following underlined language:

**Part 1) 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 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 material insurers within its holding company structure that are domiciled outside of the United States or one of its territories or in a jurisdiction subject to a covered agreement;
3) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;
4) 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
5) The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

Part 2) Similarly, Section 21B provides the lead-state commissioner discretion to either exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report on an annual basis if certain criteria are met. Again NAMIC members are largely supportive of these provisions but for similar reasons noted above suggest editing Section 21B(1) as follows:

“Provided the insurance holding company conducts no material insurance operations in a jurisdiction subject to a covered agreement, 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 any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or”
August 24, 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”) appreciate 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).

In our July 15 comment letter, we explored the tractability and viability of a “subgroup reciprocity” provision by identifying a number of practical and legal issues that would need to be addressed before “subgroup reciprocity” would be suitable for inclusion in an NAIC model.

It is our understanding that the updated exposure is intended to replace “subgroup reciprocity” with a modified approach for “recognizing and accepting” the worldwide GCC:

- For non-Reciprocal Jurisdictions, non-application of a jurisdiction’s subgroup capital measures is installed as an additional condition for “recognizing and accepting” the GCC, while
- Reciprocal Jurisdictions “recognize and accept” the GCC by virtue of the fact that NAIC models consider such jurisdictions to “recognize and accept” state-based group supervision and group capital.

Attachment 1 describes how we arrived at this interpretation of the NAIC’s intent.

If our understanding is correct, this approach would address a significant number of the issues that we had identified in our prior letter about “subgroup reciprocity.” These include:

- Needing to define “U.S. operations”;
- Developing, field testing, and calibrating a version of the GCC that is suitably tailored for “U.S. operations”;
- Identifying a regulatory meaning for a “U.S. operations GCC” and developing guidance for how it would be used within the context of group supervision;
- Navigating information availability challenges in light of confidentiality restrictions;
- Addressing jurisdictional issues that are unique to the European Union; and
- Ensuring that the model law and regulation comply with the U.S.-EU and U.S.-UK Covered Agreements.

Therefore, we regard the updated approach—provided that we understand it correctly—as more tractable and implementable than the previously exposed version.
We offer some drafting suggestions for the NAIC’s consideration as it finalizes these drafts:

- If our understanding of the NAIC’s intent is correct, it seems that model law 440, section 4L(2)(e) should be removed. Both model 440, section 4L(2)(d)(ii)b and model 450, section 21D1a) indicate that, if subgroup measures are applied, a worldwide GCC would be required.

- It appears that model law 440, section 4L(2)(d)(ii)b is intended to describe 4L(2)(d)(ii)a. Perhaps these two points could be combined, with the removal of the drafting note, which appears to be redundant.

- The reference to qualified jurisdictions within model 450, section 21D1 should probably be removed since it lacks relevance for group capital.

- There are some drafting challenges with structuring model 440, section 4L(2)(f) and model 450, section 21D. A possible way forward might be to create the following four “buckets” of jurisdictions (or five, if two sub-buckets below are separately listed):

  1. The EU and UK, provided such jurisdictions are subject to the current in-force covered agreements, as those jurisdictions are considered to recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those covered agreements.

  2. Other non-U.S. jurisdictions that are subject to in-force covered agreements, provided that such covered agreements recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those covered agreements.

  3. Reciprocal Jurisdictions that are not subject to an in-force covered agreement. Such jurisdictions, by definition, recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those of Reciprocal Jurisdictions.

  4. Non-U.S. jurisdictions that are neither subject to an in-force covered agreement nor are Reciprocal Jurisdictions, which recognize and accept the GCC. Two sub-buckets would exist:

     a. Non-U.S. jurisdictions in which U.S. groups operate. Such jurisdictions would be subject to verification provisions regarding non-applicability of capital measures.

     b. Non-U.S. jurisdictions in which no U.S. groups operate. Such jurisdictions would be subject to verification provisions regarding certain communications to the IAIS.

Additional considerations:

We understand that not all non-U.S. groups are proposed to be excluded from the GCC. In particular, groups based in non-Reciprocal Jurisdictions would be potentially subject to the tool. We offer some additional thoughts about the proposed construct applicable to these groups:

- Extreme care should be taken that “reciprocity” does not promote “escalation.” In particular, the updated draft appears to require application of a worldwide GCC if a non-U.S. jurisdiction were to apply its own capital measure to U.S. groups at a subgroup level. Such perceived inequities could impair relationships among supervisors and promote retaliation, with cross-border insurance groups from all jurisdictions caught in the middle.
We have found it difficult to draft legal language that reliably captures the “subgroup” concept that is proposed to be applicable to U.S. groups that are active in non-U.S. jurisdictions. “Operations” is vague and could be challenging to implement. The NAIC’s draft uses the term “parent of a U.S. entity operating in that jurisdiction.” However the “parent of a U.S. entity” could be a legal entity insurer, subject to legal entity capital requirements, with a subsidiary insurer. Another challenge relates to the fact that groups can have non-insurers (banks, asset managers) that are subject to various levels of capital requirements; we think it is necessary to limit any sort of trigger to insurance subgroup capital requirements. Finally, insurance group supervision within some insurance holding company systems is already applied at a “subgroup” level that excludes non-insurance parent entities. A possible way forward might be to link the capital measure with insurance subgroup supervision within broader insurance group supervision, as subgroup supervision is typically more identifiable in that context. However, as noted in our prior letter, confidentiality limitations in some jurisdictions might be an impediment to disclosure of this information.

The inclusion of the subgroup clause communicates that the NAIC believes that subgroup supervisors outside the U.S. should rely on the U.S. GCC instead of local measures. Therefore we continue to believe it would be necessary to create a “subgroup” GCC that could be used by such supervisors in fulfillment of their duties.

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.

As cross-border insurance groups, we have an interest in orderly and effective group-wide supervision, which generally aligns capital measures with supervisory responsibilities. The proposal applies the GCC, in certain circumstances, to insurance groups for which a U.S. state regulator is not the recognized group-wide supervisor and does not perform group-wide supervision. The regulatory use of the GCC in such circumstances is unclear to us. We suggest that the under-development guidance for the Financial Analysis Handbook should describe how regulators should use the GCC when the U.S. state regulator is not the group-wide supervisor.

We hope these comments are useful 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: Steve Kelley, Commissioner, Minnesota Department of Commerce
    Doug Ommen, Commissioner, Iowa Insurance Division
Attachment 1

Interpretation of the NAIC’s Exposure

1. In both the model law 440, section 4L(2)(f) and model regulation 450, section 21D, there is a differentiation between “recognizes and accepts” (R&A) the state regulatory approach to group supervision and group capital and R&A the group capital calculation.

2. The structuring within both model law 440 (section 4L(2)(f)) and model regulation 450 (section 21D) indicates that all jurisdictions that R&A the state regulatory approach to group supervision and group capital are considered to R&A the group capital calculation. Putting it differently, the jurisdictions that R&A group supervision and group capital are a subset of the jurisdictions that R&A the group capital calculation.

3. Model regulation 450, sections 21D1 and 21D2 are essentially copied from two of the necessary provisions for non-Covered Agreement (CA) Reciprocal Jurisdictions in model regulation 786 (section 9B(3)(c) and 9B(3)(d)). The text in 21D1 refers to recognizing the U.S. state regulatory approach to group supervision and group capital. Therefore the drafting considers that all non-CA Reciprocal Jurisdictions R&A the state regulatory approach to group supervision and group capital.

4. Because Reciprocal Jurisdiction conditions were intended to mimic the major provisions of the U.S.-EU and U.S.-UK Covered Agreements (model law 785, section 2F(1)(a)(iii) defines reciprocal jurisdictions as accredited, non-Covered Agreement, qualified jurisdictions that meet certain additional requirements “consistent with the terms and conditions of in-force covered agreements”) and not to add substantively to those provisions, Covered Agreement Jurisdictions would also be considered to R&A the state regulatory approach to group supervision and group capital. This might also be indicated by the drafting in model law 440, section 4L(2)(f)(i).

5. Model Regulation 440, Section 4L(2)(f)(iii), describes the creation of a list of jurisdictions that R&A the group capital calculation. There is a single R&A list for all GCC purposes, and model regulation 450 Section 21D outlines the criteria for this list. Section 21D1 includes jurisdictions that R&A the U.S. state regulatory approach to group supervision and group capital, and Sections 21D1a and 21D1b describe conditions for additional jurisdictions to be added to this list (“may also be included”; “can be included”).

6. The subgroup trigger language in model law 440, section 4L(2)(e) refers to the non-application of a group capital standard to the parent of a U.S. entity. The only other reference to “parent” in model law 440 is in section 4L(2)(d)(ii)b, which describes exempted non-U.S. groups whose group-wide supervisor is based in an additional R&A jurisdiction. This is consistent with the reference to “parent” in section 21D1a in model regulation 450, which again refers to “parent companies of U.S. subsidiaries” in the context of additional R&A GCC jurisdictions. Therefore 21D1a establishes two criteria by referring to “[a jurisdiction’s] own reporting requirements” at both (1) the worldwide level (“to U.S. insurance groups”) and (2) the subgroup level (“or to parent companies of U.S. insurance subsidiaries”). It is likely that 4L(2)(d)(ii) has the same objective, although the use of “or” to connect three clauses creates some confusion.

7. Therefore we understand the exposure to indicate that the subgroup provision is applicable only to these additional jurisdictions that R&A the group capital calculation, and that provision is not applicable either to Covered Agreement jurisdictions or to non-Covered Agreement Reciprocal Jurisdictions, as such jurisdictions are considered to R&A the state regulatory approach to group supervision and group capital.

5
August 24, 2020

VIA EMAIL
ddaveline@naic.org

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

Mr. Dan Daveline
Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Re: Draft Amendments to the NAIC Insurance Holding Company System Regulatory Act – Model 440

Dear Commissioner Altmaier:

Munich Re US appreciates the opportunity to comment on the recently exposed amendments to NAIC Insurance Holding Company System Regulatory Act (Model Act 440) to implement the Group Capital Calculation provisions. Our comments today focus on draft Model Act 440 sections 4L(2)(e) and 4L(2)(g).

Munich Re US supports level regulatory playing fields and supports meaningful regulation of insurance groups, including regulation that ensures that each insurance group will only be subject to one group capital regulatory measure, which should be mandated by the group-wide supervisor where the ultimate holding company is domiciled. Efforts to impose subgroup capital measures and duplicative or conflicting group capital measures should be deterred. To the extent that subgroup capital measurements exist under current laws, they should be eliminated. To the extent that jurisdictions are including group capital measures into the law for the first time, they should be avoided.

As drafted, Model Act 440 attempts to encourage a level regulatory playing field by including a “reciprocity” provision, which would impose the Group Capital Calculation on U.S. subgroups of non-U.S. groups whose group-wide supervisors impose subgroup capital requirements on U.S. subgroups. It is disappointing that this type of retaliatory measure is considered to be necessary to encourage level regulatory playing fields on a global basis and that this type of retaliatory measure is being suggested instead of diplomacy and requesting that international regulators work together to eliminate unnecessary subgroup capital requirements.

To the extent that the NAIC will move forward with this “reciprocity” provision, we recommend several revisions to it, which are designed to encourage a level playing field, to create an objective standard that
is focused on determining whether a non-US supervisor is subjecting U.S. subgroups to subgroup capital requirements and to allow U.S. regulators to decide whether imposing the Group Capital Calculation on U.S. subgroups of non-U.S. groups serves any regulatory purpose. These recommendations are included in our suggested edits to Model Act 440, which are attached for your consideration and are briefly summarized below:

- First, we recommend deleting the term "recognizes and accepts" from section 4L(2)(e) and replacing it with a more objective term that has not been separately and differently defined in Model Act 440. This "reciprocity" provision that is included with the Group Capital Calculation provisions should only focus on whether a non-U.S. supervisor is applying its group capital requirements on U.S. subgroups. Using the term "recognizes and accepts" implies that the inquiry is broader than subgroup capital measures. The concept of reciprocity should be more streamlined. The scope of the inquiry should be focused only on the imposition of subgroup capital requirements – not on a more broad inquiry into the acceptance of the U.S. insurance regulatory system.

- Second, we recommend that the NAIC should develop a transparent process for determining whether a non-U.S. jurisdiction is applying its group capital requirements on U.S. subgroups. We hope that the numbers of jurisdictions that are imposing subgroup capital requirements are low and will continue to shrink over time. Focusing on the jurisdictions that impose subgroup supervision will reduce the burden on the NAIC.

- Third, we recommend allowing a U.S. lead regulator to decide whether imposing subgroup capital requirements serves any regulatory purpose. If not, then the lead U.S. regulator should have the discretion not to retaliate and not to impose the Group Capital Calculation on U.S. subgroups of non-U.S. groups. Subgroup capital measures impose burdens on the insurance group that must comply with the measure and impose burdens on the regulator that must review the report. In each circumstance, regulators should be able to weigh the benefit of these retaliatory measures and decide whether it is necessary.

- Fourth, we recommend several other changes that are more procedural in nature, as reflected in the attached draft.

Thank you for your attention to these issues. If you have any questions, we are happy to discuss our recommendations further.

Sincerely,

Bonnie L. Guth
Munich Re America Services, Inc.

Paige S. Freeman
Munich American Reassurance Company
e. Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner may require shall not apply to the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if its non-U.S. 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 jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection to address jurisdictions that apply their own version of a group capital standard, assessment or report, as determined through the NAIC Committee Process.

A jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;

(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

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 criteria 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. If a determination is made that the U.S. operations of a non-U.S. insurance holding company is subsequently required to file under Section 4L(2)(e), the U.S. operations of the non-U.S. insurance holding company shall have one (1) year following the year in which that determination is made to make its initial filing under Section 4L(2)(e).
Via Electronic Mail
August 24, 2020

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

Mr. Dan Daveline
Director, Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Comments on Draft Amendments to the NAIC Holding Company Act & Regulation

Dear Messrs. Altmaier and Daveline:

The Reinsurance Association of America (RAA), headquartered in Washington, D.C., is the leading trade association of property and casualty reinsurers doing business in the United States. The RAA is committed to promoting a regulatory environment that ensures the industry remains globally competitive and financially robust. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis.

The RAA appreciates the opportunity to comment on the draft amendments to the NAIC Insurance Holding Company System Regulatory Act Model #440 (holding company act) and the Insurance Holding Company System Model Regulation Model 450 (regulation) regarding the scope of application of the GCC and confidentiality protections. These comments are informed by the recommendations that we made in July on an earlier draft of the holding company act and in February 2020, when the Group Capital Calculation Working Group (GCCWG) sought feedback on the referral letter to the Group Solvency Issues Working Group (GSIWG) on the same topics. We agree that the holding company act and regulation (NAIC Models 440 and 450) are the appropriate locations to incorporate the regulatory authority and guidance for annual GCC reporting.

**Holding Company Act - Scope Exemptions in Section 4.L.(2)d.**

As stated in our prior letters addressing the scope of the annual GCC requirement, RAA’s position on group capital measures is centered on the premise that insurance groups should only be subject to a single group capital measure and should only be subject to group supervision administered by their global group-wide supervisor. Similarly, the RAA believes that insurance groups should not
be subject to multiple group capital measures and related requirements applied extraterritorially, whether they involve U.S. based multinational insurance groups operating globally or non-U.S. groups with operations in the United States. Stated simply, the RAA believes in one group, one group supervisor and one group capital measure/requirement.

In our last comment letter, the RAA expressed its opposition to the elimination of the scope exemption for U.S. subgroups of non-U.S. supervised insurance groups as proposed in the new “reciprocal treatment” language. We argued that requiring annual subgroup GCC filings for U.S. subgroups would not support the supervisory objectives of group supervision and that the reciprocal treatment requirement would unlikely be effective in ensuring that non-U.S. subgroups of U.S. supervised insurance groups are not subject to similar requirements elsewhere.

We opined that the reciprocal jurisdiction requirement should not result in mandatory subgroup GCC filings, which would not enhance policyholder protection and serves only as a threatening gesture. Instead, we urged the NAIC and other members of Team U.S.A. to engage through the E.U./U.S. dialogue and other fora to work together cooperatively eliminate subgroup capital requirements everywhere.

Our position on these matters remains unchanged. However, because the RAA has always strongly believed that U.S.-based insurance groups should similarly be exempt from subgroup requirements in non-U.S. jurisdictions, we are willing to support some amendments to the holding company act and regulation that might encourage other jurisdictions to provide similar exemptions for U.S. subgroups in other jurisdictions. As you are aware, the RAA has U.S. and non-U.S.-based members that fall on both sides of this equation.

**Proposed Amendment to the Holding Company Act**

In the interest of resolving these issues and promoting comity among U.S. and non-U.S. supervised groups and their supervisors, the RAA could support the following proposal, which we believe could advance a productive discussion among global supervisors to ultimately eliminate subgroup capital requirements and filings everywhere. Attached to this letter is a revised draft of the holding company act and regulation for your consideration.

Subsection L.(2)d.
- Retain subsection (ii)b. – which provides an exemption for U.S. subgroups supervised by jurisdictions that do not apply their own capital regimes on U.S. subgroups;
- Retain subsection (ii)c. – which provides an exemption for U.S. subgroups supervised by jurisdictions recognize the GCC as an acceptable standard in writing;
- Eliminate subsection (ii)a. – which provides and exemption for U.S. subgroups supervised by jurisdictions that “recognize and accept” the GCC for U.S. insurance groups that operate in their jurisdiction.

Subsection L.(2)e.
- Eliminate all references to “recognize and accepts” in describing when these exemptions do not apply and clarify that the exemptions for U.S. subgroups still may apply at the discretion of the lead state commissioner.
Subsection L.(2)f.
- Eliminate this entire section that attempts to describe the meaning of “recognize and accepts” for jurisdictions that may or may not be subject to a covered agreement.

Proposed Amendment to the Regulation
In order to make conforming changes to the draft model regulation, the RAA recommends that the entirety of section 21D. be eliminated.

Rationale for RAA’s Proposed Amendments
While our first preference would be to exclude subgroup reporting from the GCC scope, leaving the requirement in the model act and regulation may provide a basis to begin a cooperative discussion with other jurisdictions to ultimately eliminate subgroup reporting everywhere. We believe it is vastly preferable to have a simple, objective criteria for this exemption rather than the complex, subjective and in our opinion, confusing discussions about the definitions and criteria for recognizing and accepting the U.S. GCC for U.S. subgroups operating in non-U.S. jurisdictions. We are concerned that the recognize and accepts language may not be consistently described throughout these two drafts and are troubled that the regulation also creates a new NAIC process to establish, monitor and maintain a list of jurisdictions that meet this standard.

Equally important, the RAA believes that ultimately the requirement for a U.S. subgroup of a non-U.S. supervised insurance group to file an annual GCC should not be mandatory and should be subject to the discretion of the lead state commissioner. Such treatment is consistent with the U.S./E.U. Covered Agreement, which states the Host supervisor may (emphasis added) exercise group supervision at the level of the parent undertaking in the Host territory. Such discretion is also consistent with subsection 2L.(2)g., which allows commissioner discretion to exempt other categories of insurance groups that might otherwise be subject to an annual GCC filing. Finally, given the weight of objective evidence that subgroup capital requirements are not consistent with the goals of group supervision, the holding company act and regulation should not require states to review and analyze subgroup GCC filings, when it would not be the best use of state resources.

The recommendations above reflect the RAA’s longstanding policy on group supervision, which is to oppose duplicative, unnecessary and extraterritorial group capital requirements. It is also important for the working group to understand that several of our members who are U.S.-based reinsurers are subject to subgroup capital requirements in Solvency II jurisdictions. As stated above, the RAA opposes subgroup capital filings everywhere.

Our U.S.-based members strongly believe that mandatory subgroup filings for U.S. subgroups supervised by jurisdictions that do not recognize and accept the U.S. GCC should be included in the adopted revisions to the holding company act and regulation. These members believe that such an approach is the best way to ensure insurance groups led from these jurisdictions aren’t relieved from such subgroup capital reporting requirements under the US GCC system if their home regulator imposes these same capital reporting requirements on the local operations of U.S. insurance groups.

Thank you for the opportunity to provide these comments. We look forward to continued discussion of these issues at future working group meetings.
Sincerely,

[Signature]

Joseph B. Sieverling
Senior Vice President
L. Enterprise Risk Filing.

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

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person 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 as detailed in the NAIC
Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

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

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

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

a. 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

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

e. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group’s operations in that group-wide supervisor’s jurisdiction. A jurisdiction is deemed to “recognize and accept” the group capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction; provided that, if the exemptions in Sections 4L(2)(c) and 4L(2)(d) do not apply pursuant to this section 4L(2)(e), then the lead state commissioner of the U.S. operations of the non-U.S. insurance holding company has the discretion to require that the U.S. operations of the non-U.S. insurance holding company file the report required by this Section 4L(2).

A jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:

--- A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;
A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

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 criteria 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.
RAA Proposed Amendments to the July 23, Draft Holding Company Regulation
(includes only amended sections to conserve space)

Section 21. Group Capital Calculation

A. 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 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) 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

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

B. The lead-state commissioner has the discretion to either accept or exempt the ultimate controlling person from filing a limited group capital filing or report on an annual basis if either:

1) Provided the insurance holding company conducts no insurance operations in a jurisdiction subject to a covered agreement, 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 any non-insurers within the holding company system do not pose a material 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 the following additional criteria are met:

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

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

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

C. For an insurance holding company that has previously met an exemption under either 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.

A non-U.S. 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 capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, 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 by the qualified jurisdiction; and

- 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;

- 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 Supervisors. In this case this will serve as the documentation otherwise required in 21D(1);

- Provides written 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 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.

— A list of jurisdictions that “recognize and accepts” 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).

— The commissioner may remove a jurisdiction from the list of jurisdictions that “recognize and accepts” 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.
August 24, 2020

Commissioner David Altmaier, Chair
Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners

Re: Proposed Revisions to the Model Holding Company Act and Regulation

Dear Commissioner Altmaier:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to comment on the Group Capital Calculation (E) Working Group’s proposed revisions to the Model Holding Company Act and Regulation to incorporate the Group Capital Calculation (GCC). APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA appreciates that the NAIC continues to move with the appropriate speed to develop the GCC and help incorporate it into state law. We likewise thank the Working Group and NAIC staff for their continued efforts to advance this important project.

Exemptions for Non-U.S. Groups - Model Act Section 4(L)(2)(d)

Section 4(L)(2)(d) of the Model Act provides exemption criteria for a group whose non-U.S. group-wide supervisor is located outside a Reciprocal Jurisdiction. To qualify for an exemption under Section 4(L)(2)(d)(ii)(a), an insurer’s group-wide supervisor must “recognize and accept” the GCC for U.S. insurers operating in that jurisdiction. However, this subsection does not define “recognize and accept” and that same phrase appears in two other subsections of the Model Act (i.e., subsections 4(L)(2)(e) and 4(L)(2)(f)), for presumably different purposes. For clarity, APCIA recommends modifying Section 4(L)(2)(d) using the following underlined language:

d. An insurance holding company:
   (i) …
   (ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:
      a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, 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 by the jurisdiction; or

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

(iii) Whose non-U.S. group-wide supervisor provides written 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 new Section 4(L)(2)(d)(ii)(a) above would provide clarity and ensure that qualifying jurisdictions recognize the U.S. state regulatory approach to group capital at the worldwide level. A nearly identical requirement already exists in order for a jurisdiction to qualify as a Reciprocal Jurisdiction under the Credit for Reinsurance Model Regulation. Therefore, the new Section 4(L)(2)(d)(ii)(a) above would require all non-U.S. jurisdictions to recognize the U.S. state regulatory approach to group capital in order for a group based in that jurisdiction to qualify for a GCC exemption at the worldwide level—regardless of whether the group is exempt under Section 4(L)(2)(c) (for Reciprocal Jurisdictions) or (d) (for other non-U.S. jurisdictions).

Likewise, the information sharing requirement we propose in new Section 4(L)(2)(d)(iii) above is nearly identical to the information sharing requirement that Reciprocal Jurisdictions must meet under the Credit for Reinsurance Model Regulation. Accordingly, the new Section 4(L)(2)(d)(iii) above would similarly align the requirements that non-U.S. jurisdictions must meet in order for groups based in those jurisdictions to qualify for a GCC exemption at the worldwide level.

“Reciprocity” Provision – Model Act Section 4(L)(2)(e)

APCIA reiterates our support for the concept that each insurance group should be subject to only one group capital calculation, and that no jurisdiction should apply capital calculations at the subgroup level. As described in our comment letter last month, we believe the principle that groups should be subject to one group capital measure naturally requires subgroup reciprocity. This principle is critical to supporting a level regulatory playing field for U.S.-based and non-U.S.-based companies in both the U.S. and abroad. Therefore, we understand the concern that is addressed by Section 4(L)(2)(e)’s “reciprocity” provision, under which U.S. subgroups of a non-
U.S. group would be subject to the GCC if that group’s home jurisdiction imposes a subgroup capital requirement on U.S. groups operating in that jurisdiction.

There are several different ways to support a level regulatory playing field across multiple jurisdictions. APCIA's comments below and suggested language for this "reciprocity" provision do not reflect the position of all APCIA members.

APCIA continues to believe that the NAIC should develop a transparent process for determining whether a non-U.S. jurisdiction recognizes and accepts the GCC. This process should involve consultation and coordination with U.S. regulators’ international colleagues, and it should be made clear that the purpose of this process is to support mutual recognition and a level regulatory playing field. Therefore, if the Working Group’s revisions to the Model Act include the reciprocity provision, we suggest the following language for this provision (deleted language omitted):

e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for the U.S. operations of a non-U.S. insurance holding company 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. 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 as determined through the NAIC Committee Process.

These revisions to Section 4(L)(2)(e) would establish that the assessment of whether a jurisdiction “recognizes and accepts” the GCC for purposes of this subsection is determined through a transparent NAIC process.

“Recognize and Accept” – Model Act Section 4(L)(2)(f)

The most recent draft Model Act includes a new Section 4(L)(2)(f), which provides criteria for determining whether a jurisdiction is deemed to “recognize and accept” the GCC. APCIA recommends deleting the new Section 4(L)(2)(f).

As explained above, the multiple references to “recognize and accept” can create confusion because the phrase appears three times in differing contexts. For example, the reference to “recognize and accept” in Section 4(L)(2)(e) is intended to have a different meaning than that same phrase in this subsection. We understand the reference to “recognize and accept” in this Section 4(L)(2)(f) is intended to provide criteria for determining whether a jurisdiction recognizes the GCC as an adequate worldwide group capital assessment. This objective can be accomplished with more clarity by amending Section 4(L)(2)(d)(ii)(a) as we recommend above. Our proposed revisions to Section 4(L)(2)(d)(ii)(a) would ensure all non-U.S. jurisdictions recognize the U.S. state regulatory approach to group capital in order for a group based in a non-U.S. jurisdiction to qualify for a GCC exemption at the worldwide level. Therefore, this subsection should be deleted.
Model Regulation Section 21(D)

Similarly, APCIA recommends deleting Section 21(D) of the proposed Model Regulation. Section 21(D)(1) of the Model Regulation provides criteria for determining whether a non-U.S. jurisdiction recognizes the GCC as an adequate worldwide group capital assessment, and Section 21(D)(2) of the Model Regulation provides information sharing requirements that non-U.S. jurisdictions must meet. We believe these requirements are more appropriately codified in Section 4(L)(2)(d) of the Model Act, as we propose above. After all, Reciprocal Jurisdictions must already meet nearly identical recognition and information sharing requirements under the Credit for Reinsurance Model Regulation. These requirements would be duplicative for any groups that qualify for a GCC exemption at the worldwide level because their group-wide supervisor is located in a Reciprocal Jurisdiction. Accordingly, these requirements are only necessary for evaluating non-Reciprocal Jurisdictions, so Section 21(D) of the Model Regulation should be deleted and Section 4(L)(2)(d) of the Model Act should be modified as recommended above.

Please contact us if you have any questions, and we look forward to discussing our comments with you and the Working Group.

Sincerely,

______________________________
Stephen W. Broadie
Vice President, Financial & Counsel
L. Enterprise Risk Filings.

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

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person 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 as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

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

a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, 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 by the jurisdiction; 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

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

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

f. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for the U.S. operations of a non-U.S. insurance holding company 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. 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 as determined through the NAIC Committee Process.

f. A jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;

(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

g-f. Notwithstanding In addition to 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.

h-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. If a determination is made that the U.S. operations of a non-U.S. insurance holding company is subsequently required to file under Section 4L(2)(e), the U.S. operations of the non-U.S. insurance holding company shall have one (1) year following the year in which that determination is made to make its initial filing under Section 4L(2)(e).

i-h. The commissioner may promulgate regulations necessary for the administration of this section.
Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
[via-email: ddaveline@naic.org]

August 24, 2020

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

Dear Commissioner Altmaier:

The undersigned U.S. companies appreciate the opportunity to comment on the NAIC Group Capital Calculation (E) Working Group’s (“the Working Group”) revised draft amendments to the Model Insurance Holding Company System Regulatory Act (“Model Act”) and Regulation (“Model Regulation”). We support the proposed amendments to include a requirement, subject to specified exemptions, that every insurance group operating in the U.S. must file the Group Capital Calculation (“GCC”).

We strongly support mutual recognition of supervisory regimes across jurisdictions, particularly with respect to group supervision, as a condition for non-U.S. group exemptions to the requirement to file the GCC. As U.S. insurance groups with international operations, we believe this should include recognition and acceptance of the robust system of state-based group supervision and tools, including the GCC, by foreign jurisdictions and supervisors. We therefore support the Working Group’s decision to take steps to promote mutual recognition of the GCC as part of its updates to the Model Act and Model Regulation.

We believe the exemptions in Sections 4L(2)(c) and 4L(2)(d) are appropriately conditioned on the GCC being reciprocally recognized in the non-U.S. insurance group’s home jurisdiction, meaning that the supervisor of the non-U.S. jurisdiction does not subject a U.S. insurance group, at the worldwide group level, to its group capital standard or requirement (“measure”). We also strongly support inclusion of Section 4L(2)(e) so that such reciprocal treatment also applies at the subgroup level. We note that the NAIC has already developed a process to determine the lead state regulator for all the U.S. operations, or the subgroup, of non-U.S. based groups, as well as for U.S. based groups.

Sections 4L(2)(c), 4L(2)(d), and 4L(2)(e), which relate only to group capital, would not have an impact on or interfere with existing solvency supervision and reporting authority pertaining to individual or “solo” insurance entities within a jurisdiction. Further, these three provisions are drafted in a manner that respects both 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 – see attachment 1 for details. The inclusion of reciprocity at the subgroup level, as well as the worldwide group level, is critical to ensure that only jurisdictions that fully support mutual recognition of the GCC will be entitled to a complete exemption from the GCC. To safeguard the ability of the U.S. to promote mutual recognition, as well as consistent and fair application of these provisions across all groups...
and subgroups from all jurisdictions, we believe that these important reciprocal provisions should not be subject to individual commissioner discretion.

To make these provisions effective, we believe a clear definition of “recognize and accept” is needed and that this definition would be best positioned within the Model Regulation. In attachment 2 we have proposed revisions that are intended to streamline the Working Group’s draft amendments and eliminate sometimes inconsistent “recognize and accept” definitions currently housed in both the draft Model Act and Model Regulation.

We also support the Working Group’s efforts to create a transparent and objective process for keeping track of the jurisdictions that recognize and accept the GCC at the worldwide and/or subgroup level. We have provided some suggested revisions to the proposed process that we believe will further ensure it is fair and transparent, while maintaining state authority as well as adherence to the EU-U.S. and UK-U.S. Covered Agreements.

Thank you for the opportunity to provide these comments. We would be happy to discuss these recommendations.

Sincerely,

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

Attachment 1
Attachment 2

L. Enterprise Risk Filings.

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

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person 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 as detailed in the
NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements: recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor,

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

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

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

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

d. Notwithstanding the provisions of The exemptions in Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require an application to the group capital calculation for the U.S. operations of a non-U.S. insurance holding company 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. insurance group’s operations in that non-U.S. group-wide supervisor’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 as determined through the NAIC Committee Process. A jurisdiction is deemed to “recognize and accept” the group capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.

e. Jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:

(1) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 3313 and 314, that is

Commented [A1]: Update to L(2)d(i)

We find this point repetitive and suggest eliminating it.

Commented [A2]: Removal of L(2)d(i)a, L(2)d(i)b, L(2)d(i)c

The current draft includes several references to the meaning or definition of “recognize and accept”. We recommend streamlining the documents by establishing the exemption in the Model Act and defining what “recognize and accepts” is in the Model Regulation.

Commented [A3]: Updates to L(2)e

We believe our proposed modifications provide clarity while retaining the intent and substance of the provision.

With respect to the last sentence that we have deleted in this section, the current draft includes several references to the meaning or definition of “recognize and accept”. We recommend streamlining the documents by establishing the exemption in the Model Act and defining what “recognize and accepts” is in the Model Regulation.

Commented [A4]: Updates to L(2)f

The current draft includes several references to the meaning or definition of “recognize and accept”. We believe our proposed modifications provide clarity while retaining the intent and substance of the provision.

Commented [A5]: Updates to L(2)f(i)

This subparagraph should be deleted in its entirety. The “recognize and accept” concept does not apply to Section 4L(2)e and reciprocal jurisdictions already include those that are subject to a covered agreement.

“Recognize and accepts” does apply to section 4L(2)e and if this language was maintained it would create a conflict by potentially making certain reciprocal jurisdictions (i.e., those subject to a covered agreement) not subject to the subgroup reciprocity provisions in section 4L(2)e.

4L(2)e should apply to all jurisdictions, including those subject to a covered agreement, as the covered agreements do not preclude the application of group capital measures to subgroups within the respective jurisdictions.
currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;

(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

g.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 criteria as specified by the commissioner in regulation.

h.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.

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

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.

[Model Regulation]

Section 21. Group Capital Calculation

A. 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 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 a specified regulatory capital framework within its holding company structure;

4) 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

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

B. The lead-state commissioner has the discretion to either accept or exempt the ultimate controlling person from filing a limited group capital filing on an annual basis if either:

1) Provided the insurance holding company conducts no insurance operations in a jurisdiction subject to a covered agreement, 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 any non-insurers within the holding company system do not pose a material 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 the following additional criteria are met:

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

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

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

C. For an insurance holding company that has previously met an exemption under either 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:

Commented [A9] Updates to 21B1
We recommend deleting this because it could result in preferential treatment for some U.S. groups versus other based on the location of their foreign operations (i.e., in jurisdictions subject to a covered agreement).
Moreover, the NAIC has already declined to allow a similar exemption in the past drafts.
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.

D. A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it meets the following requirements (shall mean):

1) With respect to [insert cross-reference to Section 4L(2)(d) of the Model Act], the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, 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 lead state commissioner or the commissioner of the domiciliary 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 qualified non-U.S. jurisdiction; and

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

3) A 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 U.S. insurance groups operate can be included in 21D(1) as recognizing the group capital calculation as is an acceptable international group capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors. In this case this This will serve as the documentation otherwise required in 21D(1).

4) Provides written 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

Commented [A10]: Updates to 21D

We recommend housing the definition of “recognize and accepts” cohesively in a single section within the Model Regulation.
International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

E. A list of non-U.S. 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 non-U.S. jurisdiction’s 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 “recognize and accept” which meets the requirements of Section D(1) and Section D(2).

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 shall provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed may remove a jurisdiction from the list of jurisdictions that “recognize and accepts” 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.
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.”

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 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 phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

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.

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**Model Regulation (450)**

**ACLI modifications REDLINED**

**Section 21.**

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

1) 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 $1,000,000,000; 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 4L(2)(f) or 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:

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.
ACL comments on the exposed Model Act and Regulation

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.

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
Appendix 2. Full text of ACLI technical comments

ACLI comments on the Model Act (#440)

<table>
<thead>
<tr>
<th>#</th>
<th>Model section</th>
<th>ACLI comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4L(2)</td>
<td>[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.</td>
</tr>
<tr>
<td>2</td>
<td>4L(2)</td>
<td>[Comment 2] The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the &quot;controlling person&quot; as determined by the lead state, as well as specifying the situations where this may be necessary.</td>
</tr>
<tr>
<td>3</td>
<td>4L(2)(a)</td>
<td>[Comment 3] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., &lt; $1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with &lt; $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</td>
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</table>
ACLI comments on the exposed Model Act and Regulation

<table>
<thead>
<tr>
<th>#</th>
<th>Model section</th>
<th>ACLI comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>4L(2)(b)</td>
<td>[Comment 4] ACLI supports 4L(2)(b) as it is written.</td>
</tr>
<tr>
<td>5</td>
<td>4L(2)(c)</td>
<td>[Comment 5] Appears unnecessary – recommend deleting to shorten text.</td>
</tr>
<tr>
<td>6</td>
<td>4L(2)(d)</td>
<td>[Comment 6] Changed to match how the terminology in the NAIC Financial Analysis Handbook.</td>
</tr>
<tr>
<td>7</td>
<td>4L(2)(d)</td>
<td>[Comment 7] Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i).</td>
</tr>
<tr>
<td>8</td>
<td>4L(2)(d)(iii)</td>
<td>[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.”</td>
</tr>
<tr>
<td>9</td>
<td>4L(2)(e)</td>
<td>[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).</td>
</tr>
<tr>
<td>10</td>
<td>4L(2)(e)</td>
<td>[Comment 10] intended to align the Model Act with the ACLI Board-approved principles.</td>
</tr>
<tr>
<td>11</td>
<td>4L(2)(f)</td>
<td>[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.</td>
</tr>
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</table>

ACLI comments on the Model Regulation (#450)

<table>
<thead>
<tr>
<th>#</th>
<th>Model section</th>
<th>ACLI Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Section 21A</td>
<td>[Comment 12] A clean version incorporating ACLI’s changes would read as…</td>
</tr>
<tr>
<td>13</td>
<td>Section 21A</td>
<td>[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.</td>
</tr>
<tr>
<td>14</td>
<td>Section 21A(1)</td>
<td>[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).</td>
</tr>
<tr>
<td>15</td>
<td>Section 21A(1)(a)</td>
<td>[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.</td>
</tr>
<tr>
<td>16</td>
<td>Section 21A(1)(b)</td>
<td>[Comment 16] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., &lt; $1 billion in annual premiums).</td>
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<tr>
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<td></td>
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<td>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.</td>
</tr>
<tr>
<td>17</td>
<td>Section 21A(1)(c)</td>
<td>[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.</td>
</tr>
<tr>
<td>18</td>
<td>Section 21A(1)(c)(ii)</td>
<td>[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.</td>
</tr>
<tr>
<td>19</td>
<td>Section 21A(1)(c)</td>
<td>[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.</td>
</tr>
<tr>
<td>20</td>
<td>Section 21C</td>
<td>[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.</td>
</tr>
<tr>
<td>21</td>
<td>Section 21D</td>
<td>[Comment 21] The proposed changes are intended to align the Model Act with ACLI’s Board approved principles</td>
</tr>
<tr>
<td>22</td>
<td>Section 21D</td>
<td>[Comment 22] provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.</td>
</tr>
<tr>
<td>23</td>
<td>Section 21E</td>
<td>[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.</td>
</tr>
</tbody>
</table>
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 phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

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.

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**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 $1,000,000,000; 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-
ACL comments on the exposed Model Act and Regulation

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.
August 24, 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 Mr. Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies1 regarding proposed changes to both the NAIC Model 440: Insurance Holding Company System Regulatory Act and Model 450: Insurance Holding Company System Model Regulation. NAMIC members are appreciative of the opportunity to provide comments on the most recent proposed changes to the holding company act and regulation and are pleased with the direction the working group has taken in regard to scope of application and exemption criteria.

In a previous comment letter to the working group, dated July 15, 2020, NAMIC noted the working group proposal of a new filing requirement – an annual GCC report – to be filed by the ultimate controlling parent with the lead state regulator. The proposed changes to Model #440 also included exemption criteria to determine who is required to file the GCC, added new definitions, and inserted new confidentiality language. Since that proposal, it appears that the working group has changed direction with regards to how to deal with exemption criteria. The current proposal gives the insurance commissioner the authority to provide exemptions by rule and has moved some of the exemption criteria from Model #440 to Model #450.

By moving some of the detailed exemption criteria to the model regulation, the working group also proposed changes to Model #440 Section 4L(2)(g) to add language providing an exemption from either the annual GCC or the “limited group capital filing” so to rely on Model #450 for the criteria as specified by the commissioner. NAMIC members are supportive of providing basic exemption criteria in Model #440 for groups that may potentially be subject to more than one group capital

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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.
standard or for small county, town, or farm mutual insurers and deferring to Model #450 for specific criteria such as if an ultimate controlling person already completes an annual Risk-Based Capital filing or including size-related thresholds.

Before we discuss our suggested changes to Model 450, we would like to highlight an issue that may have been overlooked in moving some of the exemption criteria from Model 440 to Model 450. For small county, town, and farm mutual insurers that do not file an annual Risk-Based Capital report but write over $1,000,000 in direct written premiums, filing a GCC report would be overly burdensome. Lead state regulators of small insurance groups in this position would not be able to point to Sections 21A or 21B to exempt these insurers because they do not file an annual RBC report. In turn, these insurers would not be able to qualify for the exemption in Model 440 Section 4L(2)a. Therefore, we suggest the following change to model 440:

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 or (c) the ultimate controlling person is a U.S. regulated insurer that is not required by law to complete an annual Risk-Based Capital filing;

A new Section 21A and 21B in the model Regulation has been added to provide specific exemption criteria that NAMIC members largely support. Section 21A includes language to provide lead-state commissioner discretion to exempt the ultimate controlling person from filing the GCC if they have already previously filed a GCC. NAMIC agrees that the lead state commissioner should have discretion but suggests that it should include situations when there is an immaterial insurer that is domiciled outside the United States or one of its territories or in a territory not subject to the covered agreement. The lead state commissioner will be able to determine whether the GCC provides any additional information in these situations particularly after receiving an initial GCC filing. NAMIC suggests the following changes to Section 21A:

A. 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 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 material insurers within its holding company structure that are domiciled outside of the United States or one of its territories in a jurisdiction subject to a covered agreement;

3) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;
4) 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

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

Similarly, Section 21B provides the lead-state commissioner discretion to either exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report on an annual basis if certain criteria are met. Again NAMIC members are largely supportive of these provisions but for similar reasons noted above suggest editing Section 21B(1) as follows:

“Provided the insurance holding company conducts no material insurance operations in a jurisdiction subject to a covered agreement, 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 any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or”

We believe inserting the term “material” into the above provisions and making them consistent properly recognizes the risk-focused nature of state insurance regulation. Several NAIC model laws contain the concept of materiality, including both Model #440 and #450. The lead-state regulator is in the best position to determine whether to require a GCC or a “limited group capital filing” and therefore are also in the best position to determine whether any affiliate within the group poses a material risk to the insurance operations of the group. We think making this change recognizes the intent behind allowing regulator discretion.

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
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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.
“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.

“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.

“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).

“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].

“NAIC" means the National Association of Insurance Commissioners.

“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.

“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.

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

“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:

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.

States should consider applicability of this model act to fraternal societies and captives.
(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, 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(11), 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 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:

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>4%</td>
<td>4% or more</td>
</tr>
<tr>
<td>10%</td>
<td>2% or more</td>
</tr>
<tr>
<td>15%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>5% or more</td>
</tr>
<tr>
<td>10%</td>
<td>4% or more</td>
</tr>
<tr>
<td>15%</td>
<td>3% or more</td>
</tr>
<tr>
<td>19%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

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

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

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

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

(iii) Another involved insurer’s market is two percent (2%) or more.
(c) For the purposes of Section 3.1D(2):

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

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

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

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

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

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

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

E. Orders and Penalties

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

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

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

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

(i) There is a hearing;

(ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
(iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

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

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

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

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

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

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

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

Section 4. Registration of Insurers

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

(1) Section 4;

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

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

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

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

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

(2) The identity and relationship of every member of the insurance holding company system;
(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

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

(b) Purchases, sales or exchange of assets;

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

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

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

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

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

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

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

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

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

Alternative Section 4B(7):

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

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

C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer’s admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation.

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

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

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

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

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

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

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

L. Enterprise Risk Filings.

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

(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, 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.
An insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC—National Association of Insurance Commissioners, unless one of the following exemptions for the insurance holding company systems described below are exempt from filing the group capital calculation is met:

a. An insurance holding company system that 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 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 allowable by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis. If the calculation specified by the United States Federal Reserve cannot be filed with the commissioner, the insurance holding company 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;

d. An insurance holding company:

   (i) That provides information to the accredited 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
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 worldwide capital assessment for U.S. groups, as determined in accordance with the principles of Section 7.1, meets one of the following requirements:

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

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

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

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

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

d. A jurisdiction is considered to “recognize and accept” the group capital calculation if it is one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital; or

(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and...
shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

(iii) The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation. The commissioner’s list shall include any non-U.S. jurisdiction subject to a covered agreement as defined under section (i), and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee process. The commissioner may remove a jurisdiction from the list upon a determination that the jurisdiction no longer meets one or more of the requirements in accordance with a process set forth in regulations issued by the commissioner, except that the commissioner shall not remove from the list any non-U.S. jurisdiction subject to a covered agreement as defined under subsection 4L(2)(f)(i).

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 United 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 that qualifies for an exemption subsequently no longer meets one or more of the requirements for an exemption for an exemption from filing the group capital calculation under this section, 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 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 have one (1) year to comply with the requirements of this Act.

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;
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; and

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

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.

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.

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.

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:

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

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.

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 office 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 hereunder 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, 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;
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.

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.

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

1997 Proc. 4th Quarter 11 (amendments adopted).
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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 either accept in lieu of the group capital calculation a limited group capital filing or exempt the ultimate controlling person from filing a limited group capital filing or group capital calculation on an annual basis if either:

1) The insurance holding company conducts no insurance operations in a jurisdiction subject to a covered agreement, 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 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) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and

   (b) The holding company does not include no banking, depository or other financial entity that is subject to an identified regulatory capital framework; and
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 under 4L(2)(f) or either Section 21A or 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) 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.

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, A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement as defined under Section 4L(2)(f)(i) of [Insurance Holding Company System Regulatory Act] 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 or meets the following requirements for “recognize and accept” shall mean:

1) With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act], the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters whose lead state is in this state or another jurisdiction 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 commissioner or the commissioner of the domiciliary 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 qualified non-U.S. jurisdiction;

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 requirements to the operations of U.S. insurance groups within its jurisdiction, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor, may also be included in Section 21D(1) if it provides written confirmation;

3) A 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 U.S.-based insurance groups operate can
be included in 21D(1) as recognizing the group capital calculation as is an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors. This will serve as the documentation otherwise required in Section 21D(1).

4) Provides written 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. 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 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) The lead state commissioner shall provide the home jurisdiction’s non-U.S. jurisdictions 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) 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) The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation. The commissioner’s list shall include any non-U.S. jurisdiction subject to a covered agreement as defined under Section 4L(2)(f)(i) of [Insurance Holding Company System Regulatory Act]. A list of jurisdictions that “recognize and accept” 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 the list any non-U.S. jurisdiction subject to a covered agreement as defined under Section 4L(2)(f)(i) of [Insurance Holding Company System Regulatory Act].

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 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, except that the commissioner shall not remove from the list any non-U.S. jurisdiction subject to a covered agreement as defined under Section 4L(2)(f)(i) of [Insurance Holding Company System Regulatory Act].

2) A non-U.S. jurisdiction that is a reciprocal jurisdiction as referenced under Section 4L(2)(c) of [Insurance Holding Company System Regulatory Act] shall be considered meeting the criteria of 21(D)(1) and the criteria of 21(D)(2) and therefore considered recognize and accept.
Section 242. 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 223.  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
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.  IDENTIFY 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: OBBLIGATION 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.

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

2013 3rd Quarter (editorial revision).
Insurance Holding Company System Regulatory Act

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

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

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

e. The exemptions in shall not apply to its group-wide supervisor. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to “recognize and accept” the group capital calculation. A jurisdiction is deemed to “recognize and accept” the group capital calculation for a U.S.-based insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.

b. A jurisdiction is considered to “recognize and accept” the group capital calculation if it is one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital.

(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.

(iii) The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation. The commissioner’s list shall include any non-U.S. jurisdiction subject to a covered agreement as defined under section (ii) and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee process. The commissioner may remove a jurisdiction from the list upon a determination that the jurisdiction no longer meets one or more of the requirements in accordance with a process set forth in regulations issued by the commissioner, except that the commissioner shall not remove from the list any non-U.S. jurisdiction subject to a covered agreement as defined under subsection 4L(2)(f)(i).

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
Insurance Holding Company System Model Regulation
with Reporting Forms and Instructions

(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 under 4L(2)(f) or either Section 21A or 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) 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.

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, A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement as defined under Section 4L(2)(f)(i) of [Insurance Holding Company System Regulatory Act] 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 if it meets the following requirements for “recognize and accept” shall mean:

1) With respect to [insert cross-reference to Section 4L(2)(d) of the Model Act], the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters whose lead state is 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 lead state commissioner or the commissioner of the domiciliary 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 qualified non-U.S. jurisdiction;

2) A non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the lead state with a copy of the International Association of Insurance Supervisors that U.S.-based insurance groups operate can be included in 21D(1) as recognizing the group capital calculation and an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors. This will serve as the documentation otherwise required in Section 21D(1).