

Date: 2/11/21

**GROUP CAPITAL CALCULATION (E) WORKING GROUP**

**Thursday, February 25, 2021**

**12:30 p.m. – 1:30 p.m. ET / 11:30 a.m. – 12:30 p.m. CT / 10:30 – 11:30 a.m. MT / 9:30 – 10:30 a.m. PT**  
**WebEx Call-in**

**ROLL CALL**

John Rehagen, Chair	Missouri	Justin Schrader	Nebraska
Kathy Belfi, Vice Chair	Connecticut	Dave Wolf	New Jersey
Susan Bernard	California	Bob Kasinow	New York
Philip Barlow	D.C.	Jackie Obusek	North Carolina
Ray Spudeck	Florida	Dale Bruggeman/Tim Biler	Ohio
Carrie Mears	Iowa	Greg Lathrop	Oregon
Kevin Fry	Illinois	Melissa Grenier/Kim Rankin	Pennsylvania
Roy Eft	Indiana	Trey Hancock	Tennessee
Gary D. Anderson	Massachusetts	Jamie Walker/Doug Slape	Texas
Judy Weaver	Michigan	Doug Stolte/David Smith	Virginia
Kathleen Orth	Minnesota	Amy Malm	Wisconsin

NAIC Support Staff: Dan Daveline/Lou Felice

**AGENDA**

1. Consider Accreditation Recommendations to the Financial Condition (E) Committee  
— John Rehagen (*MO*)
  - a. Revised Memorandum Attachment 1
  - b. Revised Standard Attachment 2
  - c. Summary of Comments and NAIC Staff Recommendations Attachment 3
  - d. Comment Letters Attachment 4
2. Consider Recommendation to the Financial Condition (E) Committee Regarding New Group  
— John Rehagen (*MO*) Attachment 5
3. Other Matter Brought Before the Working Group
4. Adjournment

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**MEMORANDUM**

To: Financial Condition (E) Committee

From: Group Capital Calculation (E) Working Group

Date: ~~February 25~~ ~~January 19~~, 2021

Re: 2020 Revisions to *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450)

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**Executive Summary**

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). These revisions implemented a Group Capital Calculation (GCC) for the purpose of group solvency supervision and Liquidity Stress Test (LST) for macroprudential surveillance. This memorandum makes recommendations with respect to the accreditation standards that this Working Group believes is appropriate with respect to only the GCC, and expect the Financial Stability (EX) Task Force to make separate recommendations to the Committee with respect to the LST.

The GCC was developed as a result of discussions which began in 2015. State insurance regulators believed that such a capital tool would represent a natural extension of work that had already begun on group supervision as a result of the lessons learned from the 2008 financial crisis. While state insurance regulators currently have the authority to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist state insurance regulators in identifying risks that may emanate from a holding company system. More specifically, the GCC and related reporting provides more transparency to state insurance regulators regarding insurance groups and make risks more identifiable and more easily quantified.

In addition, the GCC is intended to comply with the requirements under the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. On Dec. 18, 2018, a similar Covered Agreement was signed with the United Kingdom (UK). The GCC is intended to meet the requirement that the states have a “worldwide group capital calculation” in place by Nov. 7, 2022 in order to avoid the EU from imposing a group capital assessment or requirement at the level of the worldwide parent undertaking. Failure of any state to do so for any U.S. group operating in such jurisdiction raises the potential for any supervisor in the EU or UK to impose its own group capital calculation (e.g. Solvency II capital requirements) on that group and therefore all of the U.S. insurers within that group.

**A statement and explanation of how the potential standard is directly related to solvency surveillance and why the proposal should be included in the standards:**

The current *Insurance Holding Company Systems* accreditation standard requires that state law shall contain the significant elements from Model #440 and Model #450. These models have provided state insurance departments the framework for insurance group supervision since the early 1970s. Following the 2008 financial crisis, state regulators identified group supervision as an area where improvements could be made to the U.S. system. In December 2010, the NAIC adopted changes to the models enhancing the domestic legal structure under which holding companies are supervised. In December 2014, the NAIC adopted revisions to clarify legal authority and powers to act as a group-wide supervisor for internationally active insurance groups. These changes are newly required elements of the NAIC Accreditation Program and have been satisfactorily adopted by nearly all accredited U.S. jurisdictions. As discussed in the preceding paragraphs, the GCC was designed to enhance these same standards that were previously included as accreditation standards.

**A statement as to why ultimate adoption by every jurisdiction may be desirable:**

The Group Capital Calculation (E) Working Group believes that all states that are the lead state for a group subject to the GCC should be required to adopt the model revisions. The GCC is a tool intended to help protect the policyholders in all states from the risk that can emanate from outside the domestic insurer and will be an input into the Group Profile Summary (GPS). After an initial filing by all insurance groups, the GCC is required for all U.S. insurance groups with greater than \$1 billion in premium. The groups subject to the GCC are expected to have domestic insurers in most U.S. states. Therefore, it is recommended that the new significant elements apply to all states.

**A statement as to the number of jurisdictions that have adopted and implemented the proposal or a similar proposal and their experience to date:**

We are not currently aware of any states that have adopted the 2020 revisions to Model #440 and Model #450, although we have been advised that many states have begun their legislative processes for adoption of these revisions.

**A statement as to the provisions needed to meet the minimum requirements of the standard. That is, whether a state would be required to have “substantially similar” language or rather a regulatory framework. If it is being proposed that “substantially similar” language be required, the referring committee, task force or working group shall recommend those items that should be considered significant elements:**

The current accreditation standard for Model #440 and Model #450 requires state adoption on a substantially similar basis. Therefore, the Group Capital Calculation (E) Working Group supports the attached proposed significant elements (Attachment A) be adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Group Capital Calculation (E) Working Group recommends that the accreditation standard become effective Nov. 7, 2022, the end of the 60-month period contemplated under the Covered Agreement, with enforcement of the standard to commence Jan. 1, 2023. **However, the Working Group is also supportive of the effective date being bifurcated to allow those states that are not the Group Wide Supervisor of a group with operations in the EU or UK to be subject to a later effective date in line with the normal accreditation timeline, which would result in an effective date of January 1, 2026.**

There were also revisions made to Section 8 of Model #440 regarding Confidential Treatment. The Group Capital Calculation (E) Working Group strongly supports the use of language similar to that contained in Section 8G of

Model #440. This language was considered very critical to the GCC as its very important that members of the insurance industry (or regulators) not be allowed to make the results of the GCC public in any way as they are designed as regulatory-only tools. Unlike RBC that has regulatory trigger points, the GCC does not and the regulators of these groups believed it would be detrimental if these tools were used by insurers as a means to advertise their relative solvency strength.

**An estimate of the cost for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it, if reasonably quantifiable:**

The NAIC has not performed a cost/benefit analysis with respect to the 2020 revisions to Model #440 and Model #450, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, the possible exemptions allowed under Model #450 are specifically designed to consider the cost to complete the GCC by the insurance company and the benefits of the GCC to the lead-state commissioner. More specifically, all insurers are required to submit the GCC at least once, after which time the expectation is that the lead state commissioner will evaluate the added insight brought to the state from GCC; then, provided the group has premium less than \$1 billion, no international business, no risky non-regulated entities and no banks or similar capital regulated entities in the group, the lead state commissioner can exempt the group from filing in the future.

In addition, the construction of the GCC also considers cost of completion and specifically provides a principle-based approach where the insurance company can exclude non-risky affiliates from the calculation and also provides the insurance company to group the information of multiple non-insurance/non-regulated affiliates as a means to further reduce the burden of completion. In short, the GCC is only as complex as the insurance group has structured itself, and therefore the GCC already inherently considers the cost to comply.

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## 6. Insurance Holding Company Systems

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State law should contain the NAIC *Insurance Holding Company System Regulatory Act* (#440), or an act substantially similar, and the department should have adopted the NAIC *Insurance Holding Company System Model Regulation* (#450).

### *Insurance Holding Company Systems – continued*

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#### Changes to Existing

- k. Filing requirements for the enterprise risk filing similar to those specified in Section 4L(1) of the Model #440?

#### New

- l. Filing requirements for the group capital calculation filing similar to those specified in Section 4L(2) of Model #440?

i. The ultimate controlling person of every insurer subject to registration shall annually concurrently file with the registration and annual a group capital calculation completed in accordance with the NAIC Group Capital Calculation Instructions as directed by the lead state commissioner similar to section 4L(2)?

ii. Provision for exempting an insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer, substantially similar to 4L(2)(a)?

iii. Provision for exempting an insurance holding company system that is required to perform a group capital calculation specified by the U.S. Federal Reserve? If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the GCC, substantially similar to 4L(2)(b)?

iv. Provision for exempting an insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital, substantially similar to 4L(2)(c)?

v. Provision for exempting an insurance holding company system that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program and whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts the GCC as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, substantially similar to 4L(2)(d)?

vi. Provision that gives the lead state the authority to require the GCC for U.S. operations of any non-U.S. based insurance holding company system where after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace, substantially similar to 4L(2)(e)?

#### Changes to Existing

- cc. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.

#### New

- m. Provision prohibiting the making, publishing, disseminating, circulating or placing before the public in any way the group capital calculation and resulting group capital ratio under Section 4L(2) and/or the liquidity stress test along with its results and supporting disclosures required under Section 4L(3), by any insurer, broker, or other person engaged in any manner of the insurance business, except if the sole purpose of the announcement is to rebut a materially false statement, substantially similar to Section 8G of Model #440?

New

- n. Filing requirements for the group capital calculation filing similar to those specified in Section 21 of Model #450?
  - i. Provision that gives the lead state the authority to exempt the filing of the group capital calculation provided the criteria are substantially similar to those allowed under Section 21A of Model #450?
  - ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are substantially similar to those allowed under Section 21B of Model #450?
  - iii. Provision that gives the lead state the authority to require the group capital calculation of any group that previously met an exemption or submitted a limited filing if any insurer in the holding company system either triggers an RBC action level event, is deemed in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer, substantially similar to those allowed under Section 21C of Model #450?
  - iv. Provision that sets forth the criteria for a jurisdiction to be included on the NAIC listing that “recognize and accept the group capital calculation” substantially similar to that required under Section 21D and Section 21E of Model #450?



## Comments on Exposure

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

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

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue 1- Support of Proposed Standards	Liberty Mutual strongly supports your draft recommendation that amendments become Accreditation Standards. As the memo points out, “the GCC will serve as an additional financial metric that will assist state insurance regulators in identifying risks that emanate from a holding company system...It should become an NAIC accreditation standard because uniform adoption of the GCC across the states is crucial so that the U.S. can meet its obligations under its covered agreements with the EU and the UK.	Liberty Mutual	3

Recommended Action Issue #1:

No further points or recommendations from NAIC staff.

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue #2- Expeditious Adoption of the Standards	ACLI strongly supports the memo’s recommendation that the F Committee should consider a waiver of procedures....so that they become effective by November 7, 2020...We encourage the NAIC, as a standard setting body, to actively communicate the importance and consequences of the November 7, 2022 deadline, to the regulatory community.	ACLI	1
	NAMIC members do not agree that the F Committee should waive any procedures that would avoid seeking public input on these important changes...NAMIC members do not agree with the aggressive timeline for <u>all states</u> to adopt the changes to Model #440 and #450 as suggested in the memo. We suggest a comprehensive review of FIOs preemption authority.	NAMIC	6
	The VT DFR has concerns about broadly applying an accreditation standard for GCC to all risk retention groups within a holding company system and respectfully requests additional time to consider appropriate ways to include, exclude, or develop iterations specifically for retention groups given their unique structure.	Vermont	13

## Comments on Exposure

### Recommended Action Issue #2:

NAIC Staff notes that originally the Financial Regulation Standards and Accreditation (F) Committee did NOT waive its standard timeline for the changes to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) Regulation to become an accreditation standard due to the covered agreement, however that was ultimately changed by the Committee. We continue to recommend the expedited timeline be utilized; however, we would recommend the memorandum be modified to allow a bifurcated accreditation effective date for those states who are not the Group Wide Supervisor for a U.S. group operating in the EU or the UK. We include that revised wording using track changes in the attached draft memorandum for the Working Group's consideration. With respect to the request from Vermont as it pertains to Risk-Retention Groups, due to the fact that there are separate accreditation standards, we are not opposed to that making its way to the Financial Regulation Standards and Accreditation (F) Committee in a separate track. However, it should be clear that the NAIC developed the GCC on the basis that an aggregation method group capital tool would be helpful to the group supervision of all groups and that the GCC is only as complex as the organizational structure of holding company. The Working Group was very conscience in developing exclusions and exemptions in a way that allows each commissioner to determine if the ongoing completion (after an initial filing) of the GCC is cost beneficial for groups under \$1 billion in premium. This should be understood by the Risk-Retention Group (E) Task Force who will be discussing the GCC in the near future.

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue #3- Requirement for Groups Not Operating Internationally	The accreditation standard to file a GCC should be limited to those with international operations and provide the lead state commissioner the discretion to require any group file a GCC.	Texas DOI	9

### Recommended Action Issue #3:

NAIC staff does not recommend a change. NAIC staff believes the GCC was developed as a tool to help with the group supervision of all groups and not just for those that have international operations. It is expected that the tool will become a major input into the Group Profile Summary (GPS) completed by all lead states for all US groups. We expect the current flexibility given to the lead states within the model for groups that have less than \$1 billion after receiving one filing will allow states to respond to questions from other states on the group's capital position and judge whether further collection of the GCC is cost/beneficial.

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue #4- Subgroup Reporting	Texas recommends deleting the phrase “for ensuring competitiveness of the insurance marketplace” from the accreditation standard because this phrase is not found in the covered agreement.	Texas DOI	10

## Comments on Exposure

### Recommended Action Issue #4:

NAIC staff does not recommend a change. NAIC staff highlights that the language in the model and the proposed standard includes the word “may”, meaning the Commissioner is not required to take any action, but having the language in the state’s law allows the state to act if deemed appropriate.

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue #5- Concurrently File	ACLI recommends changing the filing period to “annual” instead of “concurrently” with the Form B.	ACLI	1
	Texas is supportive of modifying this standard to generally refer to the filing of the GCC annually and not tie that filing to submission of the registration statement.	Texas DOI	10

### Recommended Action Issue #5:

NAIC staff is supportive of a change to “annual” and we have included revised wording using track changes in the attached draft standards for the Working Group’s consideration

Issue	Summary of Comment	Party Making Comments	Page Number in Attachment (All comments)
Issue #6- Confidentiality Requirements	<p>ACLI supports the adoption of “substantially similar” confidentiality provisions, but we believe additional significant elements are warranted...including:</p> <ul style="list-style-type: none"> <li>• Provisions for maintaining the confidentiality of GCC (or Liquidity Stress Test) materials submitted to the Department (section 8A(1)).</li> <li>• Provisions for information sharing agreements that maintain the confidential and privileged status of the documents (section 8C(4)(a))</li> </ul>	ACLI	2

### Recommended Action Issue #6:

NAIC staff highlights that the Insurance Holding Company Systems accreditation standard currently contains a significant element regarding confidentiality. Staff therefore recommends updating the current significant element to include the underlined clauses as follows: “Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third party consultants is permitted, appropriate

## Comments on Exposure

**confidentiality protections should be included.” These revisions align the language with the equivalent significant element in the ORSA standard.**


**Mariana Gomez-Vock**

Vice President and Associate General Counsel  
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Feb. 9, 2021

Mr. John Rehagen  
Chair of the NAIC Group Capital Calculation (“E”) Working Group  
301 W. High St., Room 530  
Jefferson City, MO 65101  
[via e-mail to [ddaveline@naic.org](mailto:ddaveline@naic.org)]

**Re: NAIC Group Capital Calculation Exposure Memo (dated Jan. 19, 2020) to the E Committee regarding accreditation standards for the 2020 revisions to the *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation* (#450).**

Dear Mr. Rehagen,

The ACLI appreciates the opportunity to respond to the NAIC Group Capital Calculation (“GCC”) working group’s exposed memo to the NAIC “E” Committee (dated January 19, 2021). The memo addresses the GCC working group’s proposed accreditation standards for the 2020 revisions to incorporate the GCC into the Insurance Holding Company System Model Act (#440) and Insurance Holding Company System Model Regulation (#450).

**ACLI supports the waiver of procedure & expeditious adoption of the standards.**

ACLI strongly supports the memo’s recommendation that the F Committee should consider a waiver of procedure, as provided for in the Accreditation Program Manual and expeditiously consider adoption of the GCC-related standards, so they become effective by November 7, 2022. We encourage the NAIC, as a standard setting body, to actively communicate the importance and consequences of the November 7, 2022 deadline, to the regulatory community. As the memo correctly notes, the deadline is especially consequential for lead-state regulators who supervise insurance entities or groups that operate in the E.U. or U.K. Those states have a very limited amount of time to pass the revisions. ACLI has launched initial outreach efforts to discuss the 2020 amendments to the Holding Company Act, and we are ready and willing to assist with the timely passage of these important amendments.

**ACLI recommends changing the filing period to “annual” instead of “concurrently” with Form B.**

ACLI recommends a minor change to the accreditation standard for the filing requirements for the group capital calculation. We recommend replacing “shall concurrently file with the registration and annual group capital calculation” with “shall annually file a group capital calculation” in item (l)(i). This would ensure states

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and the respective insurance groups they supervise have sufficient time to develop and aggregate the information needed to complete the GCC filing (e.g., final year-end statutory results for subsidiaries, international affiliates, etc., some of which would not be available until after the registration is filed).

### **ACLI supports the adoption of “substantially similar” confidentiality provisions.**

The confidentiality of the GCC (and the Liquidity Stress Test) calculation, including group capital information shared by the Federal Reserve or international regulators, is highly important to our members. The memo’s proposed list of “significant elements” of the 2020 revisions to the Model Act and Regulation includes one confidentiality-related element, item “m”, which prohibits insurers from sharing information about the GCC or LST to advertise. ACLI supports the inclusion of this section in the standards, but we believe additional significant elements are warranted.

ACLI strongly prefers that the significant elements for accreditation incorporate all substantive revisions made to section 8G.<sup>1</sup> At a minimum, the significant elements should also include these items:

- Provisions for maintaining the confidentiality of GCC (or Liquidity Stress Test) materials submitted to the Department (section 8A(1) ~~8G(A)(1)~~);<sup>2</sup>
- Provisions for information sharing agreements that maintain the confidential and privileged status of the documents (section 8C(4)(a) ~~8G(4)(a)~~)<sup>3</sup>

Similar confidentiality protections, such as the Own Risk Solvency Act (#550) are already afforded status as “significant elements” of the “substantially similar” accreditation status.<sup>4</sup> Given that most states have already enacted similar confidentiality provisions for ORSA materials – it is reasonable to expect the same levels of confidentiality for the GCC and LST related materials.

### **Conclusion**

Thank you for the opportunity to share our comments on the exposed memo to the E Committee. ACLI always appreciates the chance to engage with the Working Group on this important issue. If you have any questions or concerns about our comments, please feel free to contact me. We look forward to continuing to work together in the future.

Sincerely,



Mariana Gomez

<sup>1</sup> This section inadvertently referred to section 8G. The intent was to state our belief that all material changes to section 8 should be included in the standards, and the standards should not be limited to amended section 8G.

<sup>2</sup> Similarly, we believe that is equally important to deem section 8A(2) ~~8G(A)(2)~~ a “significant element.” Section 8A(2) ~~8G(A)(2)~~ protects the confidentiality of liquidity stress test results and data.

<sup>3</sup> The final accreditation standards for the 2020 revisions should also include significant elements that are LST-related, including, but not limited to: (i) a provision exclude materials or information collected through the liquidity stress test from being stored in a permanent database once the initial analysis is completed (8C(4)(c), ~~8G(4)(c)~~); (ii) provisions requiring notification and identification of third-party consultants who will receive LST materials (8C(4)(f)). ~~(8G(4)(f))~~.

<sup>4</sup> The significant elements from the Own Risk Solvency Assessment (#505) accreditation standard require states to: “Include substantially similar provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators. If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.” [https://content.naic.org/sites/default/files/inline-files/committees\\_f\\_orsa\\_significant\\_elements](https://content.naic.org/sites/default/files/inline-files/committees_f_orsa_significant_elements).



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January 25, 2021

VIA EMAIL ([ddaveline@naic.org](mailto:ddaveline@naic.org))

Dan Daveline  
Director – Financial Regulatory Services  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-219

Re: Draft Memorandum from Group Capital Calculation (E) Working Group to Financial Condition (E) Committee

Dear Mr. Daveline:

Liberty Mutual strongly supports your draft memorandum and its recommendation that the 2020 amendments to the *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation* (#450) become accreditation standards.

Liberty Mutual has been an early and stalwart advocate of the NAIC's now fully developed and adopted Group Capital Calculation (GCC). As the memo points out, "the GCC will serve as an additional financial metric that will assist state insurance regulators in identifying risks that emanate from a holding company system." Importantly, the GCC is the result of years of careful and responsible regulatory study and analysis during a process that offered ample opportunity for all interested persons to express their views and participate in its development.

As the memo correctly notes, action on the GCC is needed more today than when the NAIC began its development. It should become an NAIC accreditation standard because uniform adoption of the GCC across the states is crucial so that the U.S. can meet its obligations under its Covered Agreements with the EU and the UK. Moreover, the GCC will form the basis for the U.S. to assert that it has developed an Aggregation Method that is comparable with the Insurance Capital Standard being finalized by the IAIS. This outcome is essential in order to ensure our strong and competitive insurance market is not materially weakened by the ICS.

In summary, we urge the NAIC to move promptly to adopt the GCC as an accreditation standard and stand ready to assist in achieving that objective.

Very truly yours,



Edmund C. Kenealy

Liberty Mutual Group  
Helping People Live Safer, More Secure Lives

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February 9, 2021

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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](mailto:ddaveline@naic.org); [lfelice@naic.org](mailto:lfelice@naic.org)

RE: NAMIC Comments on January 19, 2021 Memorandum to Financial Condition (E) Committee

Dear Chair Rehagen:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies<sup>1</sup> regarding the recommendations included in a memo dated January 19, 2021 from the NAIC Group Capital Calculation (E) Working Group to the Financial Condition (E) Committee.

The memorandum details several recommendations by the GCCWG for the E Committee to consider including a recommendation that all states that are the lead state for a group subject to the Group Capital Calculation should be required to adopt the revisions to the Insurance Holding Company System Model Act (#440) and Insurance Holding Company System Model Regulation (#450) by November 22, 2022. The memo further states that the new “significant elements” included as an appendix to the memo should apply to all states and be adopted by NAIC-accredited jurisdictions in a substantially similar manner. The GCCWG is also recommending the E Committee consider supporting a waiver of procedure to expeditiously consider adoption of the recent changes to the models that include the new GCC as an accreditation standard. Our comments will be limited to these three issues: timing for states to adopt, significant elements, and the requested waiver of procedure.

### Timing

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<sup>1</sup> 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.

NAMIC understands the importance of states complying with the requirements under both the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance as well as the similar agreement between the U.S. and U.K. (Covered Agreements). However, it appears there is a gap in understanding about the application of the group supervision requirements included in the Covered Agreements and a question about the Federal Insurance Office's preemption authority in this regard. We agree that the FIO was granted preemption authority over state laws that do not conform to the terms of the negotiated Covered Agreements as defined and provided for under the Dodd-Frank Act. And as it applies to reinsurance, the preemption authority is clear to us that any laws that would still require reinsurers to post collateral in the US would likely be stricken down. Where it is not entirely clear is whether the Covered Agreement's preemption authority extends to the creation/absence of a group capital requirement.

We suggest that the NAIC authorize a third-party legal analysis of the Covered Agreements preemption authority to determine if and how that applies to the GCC. Given the differences in interpretation, NAMIC members do not agree with the aggressive timeline for all states to adopt the changes to Model #440 and #450 as suggested in the memo. It is our understanding that U.S. groups with no operations in the EU or UK should not be impacted by the Covered Agreements. It does not appear to our members that the Covered Agreements would even apply to territories outside of the US and EU or US and UK. As such, a group that is not actively operating insurance activities in the EU or UK would not need to be regulated under a group supervision scheme designed for the Covered Agreements purposes.

The NAIC has completed its work on developing a group capital calculation. As states begin to consider the changes to the models, it is worth reviewing the stated purpose of the Covered Agreements. That is to create mutual acceptance of regulatory supervision of entities operating in both parties' territories in order to remove duplicative regulatory supervision of those entities. It is important to not lose site of the intent of these Covered Agreements. As far as group supervision, a US group with no operations in the EU/UK should not be impacted by the Covered Agreements. For these reasons, we suggest a comprehensive review of FIOs preemption authority.

### **Significant Elements**

The revisions to Models #440 and #450 include a new requirement for insurers in a holding company structure to file an annual GCC. This new requirement was developed largely to enhance group supervision capabilities and to quantify risk of insurance entities and their affiliates that may be exposed to risk from other entities in a large and complex holding company. While the calculation was developed to apply to complex entities and internationally active groups, the model law revisions include certain exemptions for single-state, single-insurer holding companies, groups required to perform a group capital calculation for the Federal Reserve Board, and certain internationally active insurers operating in Reciprocal Jurisdictions. These provisions are included as significant

elements and are being recommended as required provisions in order for states to maintain accreditation status with the NAIC. In addition to these exemption provisions, it is also recommended that states adopt the confidentiality provisions prohibiting the making, publishing, disseminating, circulating, or placing before the public the GCC or resulting GCC ratio in a substantially similar manner. NAMIC members agree with the inclusion of these significant elements as part of the Accreditation procedures.

Additional flexibility for the regulator is needed for the GCC.

As it applies to the significant elements included as part of the Model Act (#450), NAMIC members recommend the NAIC defer the inclusion of the Model #450 significant elements until regulators have had a chance to review the initial batch of GCC results. This would not impede states ability to adopt the model law changes or from insurance departments from implementing the changes to the model regulation but would give insurance departments more flexibility and time to consider the impact of the GCC, without having to adopt a regulation that provides little flexibility.

Regulatory discretion is already baked into the model law and regulation. Nearly every state that previously adopted the holding company act has the general authority to exempt a company from any or all of the provisions of the HCA registration requirements. It is part of the model law adopted by the NAIC and already made an accreditation standard. It is part of the flexibility that the NAIC intended to give regulators. Given that most all holding companies will be required to file at least one GCC, state insurance regulators should have an opportunity and time to determine the usefulness and value the GCC provides them for the domestic insurers they regulate.

### **Accreditation Waiver of Procedure**

Given our objection to the aggressive timeline for all states to adopt these standards and our request for an independent third-party assessment of FIO's preemption authority in regard to the GCC, NAMIC members do not agree that the F Committee should waive any procedures that would avoid seeking public input on these important changes to the Financial Regulation Standards and Accreditation Program. Historically when changes are made to solvency standards and those changes are considered for accreditation purposes, a set schedule of events are established in a deliberative process for interested parties to understand how/when key decisions will be made. It appears to us that the NAIC is suggesting waiving that process altogether and deeming the recent changes to the holding company models already accreditation standards. There is no need to rush the Accreditation process, particularly when you have states introducing and adopting credit for reinsurance legislation, an accreditation standard that went through the Accreditation approval process. In the meantime, it is more important to address some of these unanswered questions and to support impacted lead-states on adopting the changes to the model law. Therefore, NAMIC suggests that these proposed changes to the Accreditation



standards go through the normal 12-month approval process, including exposing for comment the significant elements included in the memo.

We appreciate the opportunity to take part in the process. 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,

A handwritten signature in black ink that reads "Jonathan Rodgers".

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



PO Box 12030 | Austin, TX 78711 | 800-578-4677 | tdi.texas.gov

February 9, 2021

John Rehagen, Chair  
Group Capital Calculation (E) Working Group

Dear Mr. Rehagen:

Texas appreciates the opportunity to provide comments on the exposed recommendation to the Financial Condition (E) Committee regarding accreditation standards associated with the group capital calculation (GCC) amendments to Models 450 and 460. Our comments are as follows:

**Exposed:**

l. Filing requirements for the group capital calculation filing similar to those specified in Section 4L(2) of Model #440?

i. The ultimate controlling person of every insurer subject to registration shall concurrently file with the registration and annual group capital calculation completed in accordance with the NAIC Group Capital Calculation Instructions as directed by the lead state commissioner similar to section 4L(2)?

n. Filing requirements for the group capital calculation filing similar to those specified in Section 21 of Model #450?

i. Provision that gives the lead state the authority to exempt the filing of the group capital calculation provided the criteria are substantially similar to those allowed under Section 21A of Model #450?

**Comments:**

Texas is opposed to the broad requirement that every group file a GCC as an accreditation requirement. The accreditation standard to file a GCC should be limited to those with international operations and provide the lead state commissioner the discretion to require any group file a GCC.

A state's accreditation status should not be threatened if all groups are not required to file the GCC once. As currently contemplated, if all groups are required to seek an exemption from the lead state commissioner annually, valuable resources that could be used to monitor solvency will be used in a bureaucratic process that does not enhance

solvency oversight of companies. Insurance department staff are already receiving ORSA filings, Form Bs, and Form Fs and have been completing group analyses for several years. The added filing of the GCC should only be required in situations where the lead state commissioner believes that it would add valuable insight and information to group oversight, not just because it is an accreditation requirement.

Through the supervisory college framework, other regulators would be able to raise concerns about a group's operations and discuss whether a GCC should be required. Because this approach would "achieve the objective of the standard," this approach should be accepted as substantially similar in effect.

Additionally, Texas is supportive of modifying this standard to generally refer to the filing of the GCC annually and not tie that filing to submission of the registration statement. In Texas the registration statement is due on April 1 each year, but the consolidated independent audit report of a group may not be completed by that time. Therefore, the GCC filing would be diminished in value. The lead state commissioner should have the discretion to determine the timing that would yield the most valuable information in situations where a GCC is required.

**Exposed:**

- vi. Provision that gives the lead state the authority to require the GCC for U.S. operations of any non-U.S. based insurance holding company system where after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace, substantially similar to 4L(2)(e)?

**Comments:**

Texas recommends deleting the phrase "for ensuring competitiveness of the insurance marketplace" from the accreditation standards because this phrase is not found in the covered agreement. We worry that a regulatory decision that relies on this language risks triggering scrutiny by the Joint Committee established under the covered agreement. Additionally, this provision does not promote sound insurance company financial solvency regulation which is the mission of the Accreditation Program. There are other avenues for addressing concerns with international jurisdictions.

**Conclusion:**

Texas opposes requiring GCC filings to be prepared by groups and reviewed by insurance departments when the filing is not needed to understand group operations. A state's accreditation should not be affected if:

- the state enacts a GCC law that requires filings from all groups with international operations and provides the lead state commissioner discretion to require all other groups file and
- aligns with the language included in the covered agreement.

In closing, Texas also suggests consideration be given to whether the accreditation standard applies to all states or a subset of states where the GCC will be more meaningful. As proposed, Texas sees no reason to apply this standard to all states, some of whom have a limited number of non-complex groups and are already receiving sufficient information via the other form filings. An all-state accreditation standard aligned with Texas' suggestions, however, could be more useful as it would give a lead state commissioner the authority to require a GCC if needed, but not require a filing.

Thank you for the opportunity to provide these comments.

Respectfully,

A handwritten signature in black ink that reads "Jamie Walker". The signature is written in a cursive, flowing style.

Jamie Walker  
Deputy Commissioner

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**State of Vermont**  
**Department of Financial Regulation**  
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[Insurance] 800-964-1784  
[Securities] 877-550-3907  
[www.dfr.vermont.gov](http://www.dfr.vermont.gov)

*via e-mail*

February 9, 2021

Mr. Dan Daveline  
Director, Financial Regulatory Services  
Group Capital Calculation (E) Working Group  
National Association of Insurance Commissioners

RE: GCC Recommendation to E committee with respect to accreditation standards related to 2020 Revisions to Insurance Holding Company System Model Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)

The Vermont Department of Financial Regulation – Captive Insurance Division (VT DFR) appreciates the opportunity to comment on the GCC Working Group’s recommendation to E Committee regarding the appropriateness of the GCC with respect to accreditation standards. The VT DFR has concerns about broadly applying an accreditation standard for GCC to all risk retention groups within a holding company system and respectfully requests additional time to consider appropriate ways to include, exclude, or develop iterations specifically for risk retention groups given their unique structure. Thank you for your consideration.

Sincerely,

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Christine Brown, Assistant Director  
Captive Insurance Division

cc: David Provost, Deputy Commissioner of Captive Insurance – VT DFR  
Sandy Bigglestone, Director of Captive Insurance – VT DFR

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## MEMORANDUM

To: Financial Condition (E) Committee

From: Group Capital Calculation (E) Working Group

Date: February 25, 2021

Re: Proposed New Charge for the Recognize and Accept Process

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). These revisions will enable the Group Capital Calculation (GCC) once adopted by the states. The revisions specifically include provisions that allow the Commissioner to exempt groups that has a group-wide supervisor that “recognize and accept” the GCC for U.S. groups in their jurisdiction; thereby embracing the concepts of mutual recognition and one group/one group wide supervisor. Model #450 provides a general framework for how the “recognize and accept” process will work and specifically contemplates the development of “a list” of such jurisdictions. This concept of a list in the context of mutual recognition is not a new one and is already used by the Qualified Jurisdiction (E) Working Group of the Reinsurance (E) Task Force. To that end, the Working Group recommends the Financial Condition (E) Committee reposition the group to report directly to the Committee, modify the charges of the Qualified Jurisdiction (E) Working Group as shown below, and revise the title of the group to be more encompassing, as also shown in the following:

2021 Charges

The ~~Qualified~~ Mutual Recognition of Jurisdictions (E) Working Group will:

1. Develop a process for evaluating jurisdictions that meets the NAIC requirements for recognizing and accepting the NAIC Group Capital Calculation (GCC).
2. Maintain the *NAIC List of Qualified Jurisdictions* and the *NAIC List of Reciprocal Jurisdictions* in accordance with the *Process for Evaluating Qualified and Reciprocal Jurisdictions*.
3. Perform a yearly due diligence review of Qualified Jurisdictions to determine whether there have been any significant changes over the prior year that might affect their status as Qualified Jurisdictions.
4. Consider evaluations of any additional jurisdictions for inclusion on the *NAIC List of Qualified Jurisdictions*.

If you have any questions, please contact NAIC staff support Dan Daveline (ddaveline@naic.org).