Date: 5/20/20

Conference Call

GROUP CAPITAL CALCULATION (E) WORKING GROUP
Tuesday, June 2, 2020
2:00 p.m. ET / 1:00 p.m. CT

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. Discuss Further Modifications to Exposed Exemptions to Consider Incorporating into Draft Holding Company Act Revisions—Commissioner David Altmaier (FL)
   - ORSA or Similar Size and International Activity/Covered Agreement
     (NAMIC, NWML/NYLife/Travelers, RAA, APCIA, AHIP, ACLI)
   - Accept RBC ratio as the GCC for Top-Tiered Company
     (NAMIC, State Farm, AHIP)
   - Groups Filing the BBA with the Federal Reserve
     (TIAA, State Farm, RAA, Prudential)
   - Reciprocal or Qualified Jurisdictions
     (NWML/NYLife/Travelers, RAA, AHIP, RGA, Prudential)
   - Unintended Exemption?
     (ACLI)
   - Commissioner Discretion Concern
     (RAA, APCIA)
   - Confidentiality
     (Coalition, TIAA, NAMIC, RAA, NWML/NYLife/Travelers, AHIP, ACLI, Prudential)
   - Comments Letters
   - Exposed Exemptions Incorporated into Draft HCA
     Attachment A

2. Discuss Any Other Matters Brought Before the Working Group
   —Commissioner David Altmaier (FL)

3. Adjournment

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1 State Farm Plaza
Bloomington, IL 61710-0001

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Via Electronic Delivery
Commissioner David Altmaier
Florida Office of Insurance Regulation
Attention: Mr. Dan Daveline
J. Edwin Larson Building
200 E. Gaines Street, Room 101A
Tallahassee, Florida 32399

RE: Draft Memorandum from the Chair of the Group Capital Calculation (E) Working Group to the Chair of the Group Solvency Issues (E) Working Group

Commissioner Altmaier:

State Farm Mutual® Automobile Insurance Company and its affiliates ("State Farm"), appreciate the opportunity to submit these comments concerning the Draft Memorandum ("Draft Memo") from the Group Capital Calculation (E) Working Group (the "Working Group") to the Chair of the Group Solvency Issues (E) Working Group ("GSI"), Mr. Justin Schrader (NE). The Working Group is charged with constructing a U.S. group capital calculation (the "GCC") using a risk-based capital ("RBC") aggregation approach.

The stated purpose of the Draft Memo is to seek assistance from the GSI in drafting changes to existing National Association of Insurance Commissioners ("NAIC") model laws. The noted needed changes are to create a requirement that the GCC be completed annually and that confidentiality be provided. To that end the Draft Memo makes the following suggested changes to two different sections of NAIC’s Holding Company Act, Model #440:

Section 4
- Require a new item “M” that requires submission of an annual GCC to the lead state regulator (like Item L Enterprise Risk Filing) through a new Form G filing required by the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450).
- Specify the following entities as being exempt from the GCC:
  - Small mutual insurance companies (similar to the exemption in the Annual Financial Reporting Model Regulation (#205)).
  - Groups required to file with the U.S. Federal Reserve, but separately require that such groups provide a copy of the filing with the Federal Reserve to file to the lead state.
  - Groups for which the group-wide supervisor is a reciprocal or qualified jurisdiction per the Credit for Reinsurance Model Law (#785).
• Group not considered a reciprocal or qualified jurisdiction but for which the group-wide supervisor: i) accepts the GCC for any U.S. insurance group; or ii) recognizes the GCC as an acceptable international capital standard to the International Association of Insurance Supervisors (IAIS); and iii) has been sponsored by an accredited lead-state.

• With respect to the exemptions, the model should provide the lead state commissioner the authority to require the GCC of any group otherwise determined to be exempt, like the language in the Own Risk and Solvency Assessment (ORSA). Also, with respect to a company previously exempt, the model should provide appropriate transition guidance.

Section 8.1
• Confidentiality language consistent with that recommended by a comment letter directed to the Working Group from the Coalition (see attached) which, among other things, prohibits the filing of the report with the NAIC unless supported by a confidentiality agreement (similar to the Risk Management and Own Risk and Solvency Assessment Model Act [#505]).

State Farm appreciates the effort and transparency the Working Group has utilized in developing the GCC. State Farm participated as a volunteer group and provided feedback as to the GCC calculation and its supporting informational elements during its development. State Farm understands that the GCC provides an evaluation tool for domestic regulators to consider along with various other risk information provided by groups such as the ORSA Report filing.

However, State Farm is concerned that the Draft Memo should include additional exemptions and recognitions. As noted above, State Farm participated as a volunteer company with the development of the GCC, but it also participated in the Qualitative Impact Study (“QIS”) on the U.S. Federal Reserve Notice of Proposed Rulemaking (“NPR”) concerning its development of group capital calculation and corresponding capital requirements. State Farm notes that the calculation of the NPR is very similar to the GCC and both generated very similar results for State Farm. This similarly was by design as noted by the NAIC President’s opening remarks at the Fall 2019 meeting.¹

State Farm noted that the similarity in results is due to the basis of the calculations that start with an aggregation method based on the Risk Based Capital (“RBC”) calculation for insurers, the assets and liabilities being measured are predominately derived by the business of insurance and the parent of the holding company is itself a regulated insurance entity. In fact, the NPR, GCC, as well as the RBC, generate substantially the same ratio results. State Farm asserts if the

Working Group is suggesting that groups filing with the Federal Reserve or other equivalent regulatory schemes should be exempt, that a similar exemption should be included for groups when the expected results of the GCC are similar to the RBC for a regulated insurer parent of a group that predominately derives its assets and liabilities from the business of insurance as it is another equivalent regulatory framework used by regulators.

State Farm appreciates the Working Group recognizing the duplicative effort and willingness to utilize other equivalent regulatory processes and information. In the case of State Farm, and other similarly situated groups, it should be recognized that State Farm Mutual Automobile Insurance Company’s (“State Farm Mutual”) RBC provides equivalent regulatory information that should be accepted in lieu of the GCC. State Farm Mutual’s RBC rolls up the assets and liabilities of its affiliates and subsidiaries utilizing the same aggregate approach after which the GCC is modeled, with only those non-insurance entities receiving a slightly different scaled calculation in the GCC that makes up less than a few percentage points of State Farm’s overall assets and liabilities. As a result of the assets and liabilities being so heavily based on the business of insurance, the results of the GCC are not significantly different than the RBC. The result was expected by the Working Group and State Farm, and unsurprisingly, the Federal Reserve also expected the NPR, under the similar aggregation method, would produce near the same result as the RBC for State Farm Mutual.

The domestic regulator that manages the solvency of the entities that make up such a group, which receives an abundance of financial information such as receiving quarterly and annual financial statements, holding company filings, ORSA, Form F and individual legal entity RBC calculations, is in the best position to determine if such exemption is appropriate. This is especially true when the group is predominately conducting the business of insurance. Furthermore, as proposed in the Draft Memo, the domestic regulator will have the ability to require a group to complete the GCC regardless of the exemption. Groups should not be required to complete the GCC for the sake of uniformity especially when the proposal is already exempting groups for the various stated reasons and when completion of the GCC does not provide any additional insight to the domestic regulator who is charged with the responsibility to regulate solvency.

The GCC is requesting information that the domestic regulator already receives or has access to if the domestic regulator deems it necessary to evaluate the risk of the group. State Farm is not aware of any specific information contained in the GCC that is not already available to its domestic regulators and does not believe that the GCC needs to apply to State Farm, or any other group, for that purpose. The domestic regulator has information on financial institutions it does not regulate, such as State Farm Bank, as a result of Supervisory Colleges and through the provisions of the Holding Company Act.
Since the Working Group is willing to exempt a group on the basis of its filing with the Federal Reserve presumably being deemed equivalent to the GCC as well as the other stated exemptions, the Working Group should not argue against an exemption for a group, such as State Farm, for the reason that the GCC provides new information. There is no new information provided in the GCC that is not already provided to the domestic regulator and, if there is any information not already provided, it most likely pertains to an immaterial aspect of the group that is mainly an insurance business.

State Farm is concerned that the GCC may be needlessly applied to State Farm and other similarly situated insurers for the purported purpose of satisfying an international regulatory standard and Covered Agreement.\(^2\) State Farm does not believe that uniform application of the GCC is necessary when such groups are not internationally active and there is an equivalent regulatory tool. A group like State Farm should not have to pass along the costs to its policyholders as a result of a uniform application of the GCC so that internationally active groups are not confronted with dual regulation. The presumed driver of this is the Covered Agreement, however, State Farm is not aware that the Covered Agreement requires the uniform application and suggests that for those internationally active groups that desire to be regulated under a single regulator that those groups can opt into completing the GCC.

State Farm urges the Working Group to include a stated exemption for a group when that group’s parent is a regulated insurance company that files under the Risk Based Capital provisions with an accredited lead state by amending the Draft Memo to include the following language in the suggested changes to Section 4 of Model #440:

> Specify the following entities as being exempt from the GCC:

Groups required to file with the U.S. Federal Reserve an equivalent group solvency calculation, but separately require that such groups provide a copy of the filing with the Federal Reserve to file to the lead state; or a group when that group’s parent is regulated insurance company that files under the Risk Based Capital provisions with an accredited lead state.

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As an alternative to an explicit exemption as suggested above, State Farm requests that the Working Group amend the Draft Memo to include generic authority to exempt a group from filing the GCC similar to the ORSA provision of Model #505 which provides:

D. An insurer that does not qualify for exemption pursuant to subsection A may apply to the commissioner for a waiver from the requirements of this Act based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

This would allow the domestic regulator to determine the need for a group to complete the GCC on a case by case basis and for any number of reasons. Adding such a provision also is balanced in that the Working Group in the Draft Memo is already suggesting that Section 4 include the ORSA provision to require a group to complete the GCC regardless of whether that group otherwise is exempted.

Finally, State Farm would like to take this opportunity to comment on the GCC calculation process. State Farm urges the Working Group to limit the “destacking” of entities within the GCC when entities are subsidiaries of RBC filing insurance companies. This dramatically reduces the burden in completing the GCC, especially for more streamlined organizations. In addition, State Farm requests that the Working Group consider a materiality threshold in the requirements to reduce the burden of including entities that do not impact the overall GCC result.

If the GSI proposes amendments to the NAIC’s Holding Company Act, Model #440, State Farm will comment more fully on the language of that proposal.

Thank you for your time and consideration in this project and to our comments. If there are any questions concerning the comments, please contact me.

Sincerely,

Chuck Feinen
State Farm Mutual Automobile Insurance Company
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February 13, 2020

Dan Daveline
Director, Financial Regulatory Services
NAIC
Submitted via Email

Re: Draft Letter to Chair of the Group Solvency Issues (E) Working Group Regarding Confidentiality of Group Capital Calculation

Dear Mr. Daveline:

Teachers Insurance and Annuity Association of America (“TIAA”) appreciates the opportunity to submit the following comments in response to the draft letter (the “Draft Letter”) from the Chair of the National Association of Insurance Commissioners’ (“NAIC”) Group Capital Calculation (E) Working Group (the “GCC Working Group”) to the Chair of the NAIC Group Solvency Issues (E) Working Group regarding the confidentiality of the proposed group capital calculation (“GCC”).¹ Below, we provide our thoughts in response to certain sections of the Draft Letter. We hope that our ideas and suggestions will assist the NAIC as it considers revising its Insurance Holding Company System Regulatory Act (#440) (“Model #440”).

About TIAA

Founded in 1918, TIAA is a life insurance company and the leading provider of retirement and financial services for those in academic, research, medical, and cultural fields. Over our century-long history, TIAA’s mission has always been to aid and strengthen the institutions and participants we serve and to provide life insurance and other financial products that meet their needs. To carry out this mission, we have evolved to include a range of financial services, including asset management and retail services. Today, TIAA manages over $1

trillion in assets, and our investment model and long-term approach aim to benefit the five million retirement plan participants we serve across more than 15,000 institutions.\textsuperscript{2} With our strong nonprofit heritage, we remain committed to the mission we embarked on in 1918 of serving the financial needs of those who serve the greater good.

**TIAA supports the proposed exemption for groups required to file with the Federal Reserve.**

The Draft Letter proposes that groups required to file with the Board of Governors of the Federal Reserve System (the “Federal Reserve”) be exempt from the requirement to file an annual GCC (as a prospective Form G or other filing), so long as they are separately required to provide a copy of their Federal Reserve capital requirement filings to their lead state regulator. TIAA strongly supports this proposed exemption. TIAA is subject to regulation and supervision by the Federal Reserve as a savings-and-loan holding company significantly engaged in the business of insurance (an “Insurance SLHC”). As the NAIC is aware, the Federal Reserve recently proposed capital requirements that are designed specifically for Insurance SLHCs, which we expect will be finalized later this year. The Federal Reserve’s proposed approach would construct “building blocks,” or groups of entities in the Insurance SLHC’s organization that are covered under the same capital framework, to calculate an entity’s combined, enterprise-level available capital and capital requirement. The Federal Reserve has also proposed a capital conservation buffer that Insurance SLHCs must meet to avoid certain restrictions in addition to the minimum capital requirement.

We believe the Federal Reserve’s proposed approach is not only appropriately tailored to the unique business model of insurers but also generally consistent with the approach and requirements of the GCC. As such, we think it is appropriate for Insurance SLHCs like TIAA and other groups required to file with the Federal Reserve to be exempt from the annual GCC filing requirement, so long as such entities provide a copy of their Federal Reserve capital requirement submission to their lead state regulator. This approach would ensure that Federal Reserve-supervised insurance companies are covered under a sufficiently stringent enterprise-wise capital framework (with sufficient line of sight for their state regulators), but are not subject to a needlessly duplicative regulatory regime under the GCC.

**TIAA supports the proposed addition of confidentiality language to Model #440.**

The Draft Letter proposes to include in Model #440 GCC-specific confidentiality language consistent with the NAIC’s Own Risk and Solvency Assessment (“ORSA”) confidentiality language, as set forth in the *Risk Management and Own Risk & Solvency Assessment*

\textsuperscript{2} Data are as of September 30, 2019.
Model Act ("Model #505"). This proposal echoes a recommendation made in a comment letter regarding GCC confidentiality directed to the GCC Working Group from a coalition of ten companies. TIAA supports the addition of the proposed confidentiality language. We believe entities’ GCC information, including any Federal Reserve capital requirement submissions to lead state regulators, should receive the highest level of confidential treatment, and should not be disclosed by the NAIC or any other entity for any non-regulatory purpose. For this reason, we believe that adding broad confidentiality provisions to Model #440, including provisions that would prevent public disclosure of any entity’s GCC filings, would be appropriate. We encourage the NAIC to adopt the approach recommended by the Coalition to ensure that sensitive GCC information is adequately protected.

Conclusion

TIAA commends the GCC Working Group for its focus on these issues, and we appreciate the opportunity to comment on the Draft Letter. We hope our suggestions above prove helpful as the NAIC continues working to formulate a robust GCC framework. We would welcome the opportunity to engage further on any aspects of this letter.

Sincerely,

Bret C. Hester

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Via Electronic Mail

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

February 14, 2020

RE: Comments on Group Capital Calculation Referral Letter

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 Group Capital Calculation (GCC) referral letter to the Group Solvency Issues Working Group regarding the scope of application of the GCC, confidentiality protections and establishing the regulatory authority to require annual GCC filings. We agree that the insurance 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.

Scope Exemptions:
The RAA’s longstanding position on group capital measures is centered on the premise that insurance groups should only be subject to a single group capital measure and only be subject to group supervision administered by their global group-wide supervisor. An important corollary to this position is 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 or Non-U.S. groups with operations in the United States. This position appears broadly held as it was a central theme in the coalition of U.S. insurance trades’ comments on the NAIC’s August 7, 2018 Scope of Group Testing Memorandum.
Viewed through this prism, the RAA supports the scope exemption proposals outlined in the draft referral letter, subject to the following suggestions or clarifications:

- We support an exemption for small groups but believe the $1M annual premium threshold referenced from NAIC model #205 is too low. While it is important that nearly all insurance entities have annual statutory audits, requiring a GCC for all these groups appears unnecessary and overly burdensome. The coalition of trades suggested in 2018 that a better exemption threshold would be the ORSA standard, which is $1B in annual premium. The RAA still supports an ORSA based threshold, but if the NAIC determines that this threshold is too high, we suggest it consider adopting a threshold such as the $500M threshold used in section 17 of model #205 regarding Management’s Report of Internal Control over Financial Reporting. The NAIC/AICPA working group annually monitors this threshold, which currently encompasses over 93% of U.S. gross premium.

- We support the proposed exemption for groups regulated by the Federal Reserve because it would avoid duplicative group capital filing requirements.

- We support the proposed exemptions for groups domiciled in a reciprocal or qualified jurisdiction under the Credit for Reinsurance Model Law and for groups supervised by jurisdictions that recognize the GCC as an acceptable international capital standard comparable with the ICS. This proposal is essentially identical to the industry position outlined in the August 2018 trade coalition letter on scope issues.

**Commissioner Discretion:**

The RAA is concerned that the proposal to grant commissioner discretion to require the GCC for insurance groups otherwise exempt could be too broad. The language in the referral letter refers to ORSA guidance, but that guidance is expansive. The ORSA guidance manual lists several very general factors as examples that could justify an otherwise exempt entity having to file an ORSA, but the judgment ultimately depends on “unique circumstances” that are undefined. The ORSA model #505, provides better and more specific examples such as triggering an RBC action level or being deemed to be in hazardous financial condition, but these are only examples used within a context of broad commissioner discretion.

The RAA believes that any provision for commissioner discretion to disregard the scope exceptions to the GCC described above should be both distinct and limited. The exercise of broad commissioner discretion in this regard could violate the terms of the US/EU Covered Agreement, which provides relatively narrow exceptions for Host supervisors to impose group solvency requirements on Home party insurance or reinsurance groups. Recognizing that the discretion granted in the covered agreement applies to both parties, it follows that states should prefer provisions that limit any potential application of multiple capital requirements to insurance groups, since they would affect U.S. based groups as well.

Except for narrow circumstances relating to identifiable solvency concerns, each insurance group should be subject to only one group capital requirement and only the single group-wide supervisor should require a group capital measurement. Foreign supervised insurance groups should generally be exempt from the GCC and U.S.-based insurance groups should be accorded reciprocal treatment in non-U.S. jurisdictions.
Confidentiality:
The RAA supports strong confidentiality protections to prevent disclosure of GCC results. Such protections should be both explicit and robust and should preclude disclosure of any group’s GCC outside the regulatory community, whether by regulators, their consultants or by insurance groups themselves. We reviewed the July 30, 2019 “confidentiality coalition” letter referenced in the referral memorandum and broadly agree with their recommended revisions to Section 8 of NAIC Model #440.

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

Sincerely,

Joseph B. Sieverling
Senior Vice President
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February 17, 2020

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

Re: “Confidentiality of Group Capital Calculation” Memorandum

Dear Commissioner Altmaier:

A coalition of 16 companies (Athene Holding Ltd., Brighthouse Financial, CNO Financial, Genworth Financial, Global Atlantic Financial Group, Hannover Life Reassurance Company of America, Jackson National Life Insurance, Lincoln Financial Group, National Life Group, Ohio National, Principal Financial Group, Protective Life, Reinsurance Group of America, Sammons Financial Group, Standard Insurance Company/StanCorp Financial Group, and Transamerica; collectively, the “Coalition”) appreciates the opportunity to respond to the memorandum (the “Memorandum”) from the Chair of the Group Capital Calculation (GCC) Working Group (GCCWG) to the Chair of the Group Solvency Issues Working Group (GSIWG), regarding “Confidentiality of Group Capital Calculation.” The Coalition’s primary purpose is to advocate for the creation of a GCC that is faithful to domestic state legal entity rules.

In its Memorandum, the GCCWG states that it seeks assistance from the GSIWG to open the Insurance Holding Company System Regulatory Act (#440) (the “Holding Company Act”) so that “confidentiality protection and other legal authorities needed for the GCC” can be incorporated into the Holding Company Act. The Coalition agrees that statutory authority is necessary to govern the confidentiality and scope (and potentially other facets) of the GCC, and that the use of the Holding Company Act is appropriate for this purpose.

The Coalition does not have a collective view on issues relating to scope, but scope is of interest to many Coalition companies, and individual companies may separately provide comments on the topic. Regarding confidentiality, we appreciate that Commissioner Altmaier’s Memorandum suggests to the GSIWG that the starting point for GCC confidentiality-related Holding Company Act amendments be the Coalition letter of July 30, 2019. As set forth in that letter, the Coalition believes that individual group GCCs be subject to the most robust confidentiality protection allowed by law. This would include prohibiting companies from disclosing their own GCC results, because doing so will help alleviate some of the competitive playing field issues that the GCC could create. We refer the GCCWG to the Coalition letter of July 30 for a comprehensive discussion of why such a high level of confidentiality would be needed for GCC results and for suggested amendments to the Holding Company Act to cover the confidentiality issue.

We also note that the NAIC’s accreditation standards require states to adopt the Holding Company Act in substantially similar form to the Model itself. Thus, in amending the Holding Company Act, the Coalition urges the NAIC to ensure that all of the due process
protections surrounding the adoption of accreditation standards are applied to GCC-related Holding Company Act changes.

Finally, the Coalition would oppose any effort to amend the Holding Company Act such that the GCC would be permitted to deviate from state legal entity rules, particularly with respect to the issue of “on-top adjustments” to statutory capital where such capital is included in an insurance company's RBC. It is the Coalition’s firm belief that it would be inappropriate for the GCC to deviate from legal entity rules, when such rules have been considered and passed by the NAIC with all necessary due process protections, and relied upon by many insurance companies in making now virtually irreversible capital deployment decisions. Our objection to permitting the GCC to deviate from legal entity rules includes not only to draft model law/model regulation language, but also to any guidance manual or similar NAIC document that would instruct groups as to how to complete the GCC.

The Coalition thanks the GCCWG for permitting us to comment on the Memorandum, and remains available to answer any questions that the GCCWG may have.

Regards,

Athene Holding Ltd.
Brighthouse Financial
CNO Financial
Genworth Financial
Global Atlantic Financial Group
Hannover Life Reassurance Company of America
Jackson National Life Insurance
Lincoln Financial Group
National Life Group
Ohio National
Principal Financial Group
Protective Life
Reinsurance Group of America
Sammons Financial Group
Standard Insurance Company/StanCorp Financial Group
Transamerica
February 17, 2020

Via Electronic Delivery

Commissioner David Altmaier
Florida Office of Insurance Regulation
J. Edwin Larson Building
200 E. Gaines Street, Room 101A
Tallahassee, Florida 32399

Attention: Dan Daveline

Re: GCC - Draft Memo on Confidentiality and Exemptions

Commissioner Altmaier:

We appreciate the opportunity to comment on your draft memo (the “Memo”) on behalf of the Group Capital Calculation (E) Working Group (“GCCWG”) addressed to the Chair of the Group Solvency Issues (E) Working Group regarding potential exemptions from the GCC requirement and confidentiality of GCC reporting.

We continue to support the NAIC’s development of a group capital calculation (“GCC”). We believe that the calculation, if designed appropriately, will provide a useful supervisory tool to assist lead states in analyzing the financial condition of insurance groups by complementing entity-based solvency requirements.

Our primary purpose in writing today is to address the Memo’s proposal on how to identify insurance groups that will be exempt from the GCC (i.e., those that will be outside the “scope of application” of the GCC). As we have observed in prior comments, the scope of application should be a function of the purpose that the GCC is expected to serve. The NAIC’s GCC proposal document as of December 7, 2019, references the need to provide a consistent and coherent analytical framework to better understand an insurance group’s financial risk profile for the purpose of enhancing protection of policyholders. The scope of application should be sufficiently broad such that this need is met, while at the same time avoiding unnecessary burdens for groups for which this perspective would not provide a supervisory benefit or would be duplicative of tools already available to state insurance regulators.

As we have previously commented, to the extent limits are placed on the scope of application, we believe these should align with other risk focused regulatory tools such as the Own Risk and Solvency Assessment (the “ORSA”). Doing so would ensure consistency across risk focused regulatory tools, provide enhanced insight into risk across a material portion of the U.S.
insurance market rather than a narrow subset of it, and maintain a level regulatory playing field for the industry.

With that background, we are generally supportive of the exemptions proposed in the Memo. We believe the exemptions could be improved, however, through better alignment with the concepts embodied in the Risk Management and Own Risk and Solvency Assessment Model Act (#505) and in the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual. First, the ORSA exemption for small companies sets a higher size threshold than that proposed in the Memo. The ORSA threshold may strike a better baseline balance between cost and benefit for the use of available state insurance regulatory and insurer resources. Second, ORSA provides that an insurer may comply with the reporting requirement by submitting a report including comparable information that is submitted to a supervisor or regulator of a foreign jurisdiction. This concept may be implied within the third and fourth bullets of the GCC exemption mechanism, but it may be desirable to fully articulate this in order to ensure that state insurance regulators have access to relevant group capital results applicable to the insurers that they regulate. Lastly, we support the provision in the Memo that gives the lead state commissioner the authority to require the GCC reporting of any group otherwise determined to be exempt, the same as the provision in the ORSA requirement.

We also note that the definition of “Reciprocal Jurisdiction” per the Credit for Reinsurance Model Law (#785) includes a U.S. jurisdiction that meets NAIC accreditation standards. We believe this reference is unintentional and would not be the basis for an exemption from the GCC; however, if it was intended to be included, additional explanation is needed to better understand the intent.

On the secondary issue, i.e., confidentiality of GCC reporting, now that the mechanism for establishing the GCC requirement has been confirmed, we do not object to the confidentiality treatment proposed by the Memo. That said, if it is desirable from a regulatory perspective for the NAIC to align the GCC confidentiality language to better match the terms of existing confidentiality language, our first preference would be the language used within the ORSA requirement and secondarily, the Holding Company Model Law.

* * *

* * *
We are grateful for your time and attention to our comments. If you would like to discuss this letter with us, please let us know.

Sincerely,

Douglas A. Wheeler  
Senior Vice President  
Office of Governmental Affairs  
New York Life Insurance Company

Andrew T. Vedder  
Vice President - Solvency Policy & Risk Management  
The Northwestern Mutual Life Insurance Company

D. Keith Bell  
Senior Vice President  
Corporate Finance  
The Travelers Companies, Inc.
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February 13, 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 Draft Memorandum to the Group Solvency Issues (E) Working Group from the Group Capital Calculation (E) Working Group Requesting Assistance on Drafting and Adopting Changes to NAIC Models

Dear Mr. Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies¹ regarding the draft memorandum to the Group Solvency Issues Working Group that was made public on January 8. The memorandum serves as a request for assistance from the GSIWG in drafting and adopting needed changes to the Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation (#450). We appreciate the opportunity to provide comments and to participate in discussions that will ultimately lead to the development and adoption of an insurance group capital assessment tool.

The changes currently contemplated and communicated in the memorandum would be to both Model #440 and #450, including adding a new filing requirement - an annual GCC report – to be filed by the ultimate controlling parent with the lead state regulator. This change will involve a similar process to what the NAIC did in 2010 when they added the annual enterprise risk report; that required a change to both Models, including adding a new filing form to Model #450. In this case, the memorandum recommends the addition of a Form G to collect GCC information. Additional changes contemplated by the working group to Model #440 include adding exemption criteria to determine who is required to file the GCC and amending the confidentiality section so that it is similar to the language included in the Risk Management and Own Risk and Solvency Assessment Model Act (#505).

¹ NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400-member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 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 members are supportive of amending both Model #440 and #450 as a means to provide exemptions based on certain criteria and to include strong confidentiality protection for documents, communications, and workpapers (created or received by regulators) used for the production of the GCC. However, we have significant concerns with the exemption criteria recommendation and suggest amending the memorandum before it is sent to the GSIWG. While we appreciate the thought given to exempting companies that may have to comply with more than one capital aggregation approach and companies of the very smallest size, NAMIC would suggest, as we have from the beginning of this project, for the NAIC to take a more proportional and principled approach to exemption criteria, similar to how other NAIC solvency models have incorporated these concepts. In addition to a size-threshold exemption similar to ORSA and the Model Audit Rule, NAMIC recommends that the lead-state regulator be allowed to accept the RBC results of a top-tier insurance regulated entity domiciled in their state if those results are substantially similar to expected GCC results. The remainder of our letter will go into more detail regarding our rational for these recommendations and will also provide other suggestions for the working group to consider.

Size-Related Exemption from Group Capital Calculation Reports

NAMIC recommends that small insurers – including those with less than $500 million in direct written premium – should be exempted from the proposed Group Capital Calculation Report (Form G) filing requirement. There is precedent for exempting small companies from the provisions of other NAIC models:

- The Risk Management Own Risk and Solvency Assessment model act exempts small companies (i.e., premium threshold of $500 million for individual insurers or $1 billion for an insurance group).
- The Model Audit Rule exempts insurers with less than $500 million of annual direct written and assumed premium from the requirement that they file a Management Report of Internal Control over Financial Reporting.

Small insurers are being treated to one-size fits all regulatory requirements related to many different NAIC models. The ERR (Form F) is just one of the many requirements that does not balance the cost vs. the benefit for small insurers. Further, the Corporate Governance Annual Disclosure provides no distinction to the size of insurer and requires corporate governance information for companies of all sizes. Each new requirement, filing, or report adds to the expense of providing insurance products. This added expense impacts small companies disproportionately. Mutual insurers feel a particular responsibility to their customers to do everything they can to make policymakers aware of the expense impact of each new requirement. Both the ERR and CGAD, along with RBC, help regulators assess the risk within an organization. Adding a new GCC filing form on top of the existing Form F will be viewed as duplicative for these smaller groups and others, as the purpose of both tools is to help regulators assess the risks coming from other non-insurance organizations within a groups’ structure.

It is important to understand that while any new requirement presents potential concerns and uncertainty for all companies, larger companies employ full-time legal, internal audit, accounting, finance, and enterprise risk management staff. There will
still be a cost for these large companies as there is for any new form requirement, but without a doubt, the cost of compliance and accuracy is a higher percentage of annual revenue for small companies. NAMIC strongly feels that proportionality needs to be part of the discussion when deciding on exemption criteria. Given that, NAMIC recommends modifying the second bullet in the draft memorandum regarding Section 4 to read:

Small mutual insurance companies that have annual direct written and unaffiliated assumed premiums of less than $500,000,000 for individual insurers or $1 billion for an insurance group (excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program) (similar to the exemption in the Annual Financial Reporting Model Regulation (#205 Risk Management Own Risk and Solvency Assessment Model Act (#505)).

Accept Ultimate Controlling Parent RBC if GCC Expected Results are Similar

The primary purpose of the GCC is to help regulators understand large and complex groups. NAMIC members have long held the view that where the ultimate controlling parent is an underwriting company that directly or indirectly owns or controls all of the other entities within the group, that the annual RBC report of the UCP should be an acceptable alternative to reporting a GCC. NAMIC members that have participated in field-testing exercises where the top-tier entity is an insurance underwriter that files RBC have concluded that annual RBC is substantially similar to the expected results of the GCC.

As we’ve stated in our comment letter to the Federal Reserve on their Building Block Approach to group capital, U.S. RBC for a top-tier insurance underwriting holding company is a proxy for consolidation. For a top-tier insurance underwriting holding company, all the activities and investments made, including in any subsidiary insurers are rolled up into the parent’s insurance RBC calculation. The existing insurance RBC formula already incorporates necessary adjustments for inter-affiliate transactions, such as capital invested in a subsidiary by the parent; thus, the top-tier insurance underwriting holding company RBC is, in effect a consolidated view of the group’s capital position. For these reasons, NAMIC believes the draft memorandum should be amended to include language that would exempt an UCP that is an RBC filer from having to file an annual GCC report. In lieu of requiring an annual GCC report, the lead-state regulator would accept the groups’ annual RBC, as these results would be substantially similar to the expected results of a GCC.

In consideration of including language around exempting an UCP that is an RBC filer, NAMIC recommends that an additional bullet be added to the list of entities exempt from the GCC in the draft memorandum:

The model should provide flexibility to accept annual RBC where the ultimate controlling parent is an underwriting company, as the expected results of the GCC would be substantially similar to RBC in lieu of requiring an annual GCC report.
Confidentiality

NAMIC is supportive of modifying the confidentiality provisions within the HCA to mirror the language included in the ORSA model. Of particular importance is including language about documents, communications, and workpapers that have been created by or received by other regulators as part of the analysis of the GCC. Because the information that will be submitted to regulators will be used to analyze various stress scenarios and testing options, protecting any information that would be created by regulators and subsequently shared with other regulators in order to complete their analysis of the GCC is of utmost importance to NAMIC members.

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
February 17, 2020

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

Re: Referral Memorandum on Changes to the *Insurance Holding Company Regulatory Act* (#440)

Dear Commissioner Altmaier:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to comment on the Group Capital Calculation (E) Working Group’s referral memorandum regarding amendments to the *Insurance Holding Company Regulatory Model Act* (#440) 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.

**Exemption for Groups Subject to Another Group-Wide Capital Assessment**

The referral memorandum specifies four classifications of groups to be exempt from the GCC. However, the memo also recommends that lead state commissioners have the authority to require the GCC of any group otherwise determined to be exempt. APCIA is concerned with the recommendation to grant commissioners the authority to require the GCC from exempt groups—particularly for groups that are already subject to a group-wide capital assessment. Insurers should not be required to comply with more than one group-wide capital measure. Groups subject to the Federal Reserve’s Building Block Approach (BBA), as well as insurers with a group-wide supervisor in a Reciprocal Jurisdiction outside the United States, should be, without exception, exempt from the GCC.

For groups required to file with the Federal Reserve, the exemption contemplated in the referral memorandum would require a copy to be filed with the lead state. Similarly, for insurers where the group-wide supervisor is a Reciprocal Jurisdiction under the *Credit for Reinsurance Model Law*, paragraph 10 of the August 2, 2019 GCC Field Testing Instructions specified conditions for a potential GCC exemption, including access to information for lead state regulators. Specifically, paragraph 10 of the field-test instructions provides the following:
…After field testing a determination will be made as to whether a non-U.S. based group (a group with a non-U.S. group-wide supervisor) may be exempt from the GCC based on the following:

i. The non-U.S. based group is based in a Reciprocal Jurisdiction that recognizes the U.S. regulatory regime and accepts the GCC from U.S. based groups to satisfy the Reciprocal Jurisdiction’s group capital requirement;

ii. The non-U.S. Group-Wide Supervisor’s home jurisdiction requires a group capital calculation be applied at a level that includes the same (or substantially similar) Scope of Application as would otherwise be determined by the Lead State Regulator in the absence of this exemption; and

iii. The Lead State Regulator can obtain information from the foreign group’s Group-Wide Supervisor either through a Supervisory College or otherwise, that allows the Lead State Regulator to understand the financial condition of the group and complete the expectations of other states in its Group Profile Summary (GPS).

With the assurance that lead state regulators have access to group-wide information through the conditions provided above, or through BBA filings, an exception to the GCC exemptions is not necessary. Therefore, APCIA believes that groups subject to the BBA, as well as insurers with a group-wide supervisor in a Reciprocal Jurisdiction outside the United States, should be exempt from the GCC without exception.

**Exemption for Insurers Not Required to File an ORSA**

Furthermore, APCIA also recommends adding an exemption from the GCC for insurers that are not required to file an Own Risk and Solvency Assessment (ORSA). The referral memorandum only recommends an exemption for small mutual insurers, which is expected to be similar to the exemption for small insurers in the Annual Financial Reporting Model Regulation, with an annual threshold of $1 million in premium. However, we believe the exemption criteria set forth in the model law for the filing of an ORSA is more relevant in the context of the GCC, as the purpose of both the GCC and an ORSA is to provide a group-level perspective on insurers’ capital and risk. An exemption for insurers that do not file an ORSA would recognize proportionality in the application of supervisory measures, and it would allow regulators to focus resources on companies and the areas within companies that pose the most risk. Therefore, we recommend an exemption from the GCC for insurers that fall below the premium thresholds (i.e., less than $500 million of direct written premium by the insurer and less than $1 billion of direct written premium by the insurer’s group) in Section 6(A) of the Risk Management and Own Risk and Solvency Assessment Model Act as well as an exemption like that in Section 6(D), which can be granted by a commissioner “based upon unique circumstances.”

**Process for Considering GCC Design Decisions**

While the Working Group’s memorandum is in the form of a referral to the Group Solvency Issues (E) Working Group, it appears to contain some preliminary decisions on GCC design (such as the scope issues mentioned above). In September 2018, APCIA’s predecessor associations and four other industry associations (Joint Trades) filed a comment letter with the Working Group in which we discussed our recommendations on a number of open design issues. Other interested parties did the same. Rather than engage in public discussion and resolution of those comments at that time, the Working Group decided to leave them open during 2019 field testing. While we
understand the rationale for that decision, there has still been no public discussion of these issues, yet apparently some of them have been decided, at least on a tentative basis. We look forward to an opportunity to engage in more thorough discussion of these issues before further decisions are made about the final design of the GCC.

Thank you for considering the points addressed in this letter, and we continue to support NAIC staff and the Working Group in their successful development of the Group Capital Calculation.

Sincerely,

___________________________
Stephen W. Broadie
Vice President, Financial & Counsel
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February 17, 2020

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

By e-mail to: Dan Daveline, NAIC, at ddaveline@naic.org

Re: Group Capital Calculation (E) Working Group Exposure

Dear Commissioner Altmaier:

America’s Health Insurance Plans (AHIP) is pleased to comment on the Draft Memorandum that you propose to send in your capacity as Chair of the NAIC’s Group Capital Calculation (E) Working Group (GCCWG) to the chair of the NAIC’s Group Solvency Issues (E) Working Group. The Draft Memorandum concerns suggested amendments to the Insurance Holding Company Regulatory Model Act (#440) proposed by the GCCWG to implement the Group Capital Calculation (GCC).

AHIP’s comments pertain to several aspects of the suggestions in the Draft Memorandum, i.e., regarding confidentiality, exemptions, and process.

Confidentiality:

The Draft Memorandum suggests that “Confidentiality language consistent with that recommended by a comment letter directed to the Working Group from the Coalition which, among other things, prohibits the filing of the report with the NAIC unless supported by a confidentiality agreement (similar to the Risk Management and Own Risk and Solvency Assessment [ORSA] Model Act [#505]).” The Coalition’s letter of July 30, 2019 includes a redline of the confidentiality provisions in Section 8 of Model #440, and AHIP generally supports these redline changes. However, two additional adjustments are in order.

First, the language in Section 8.C(1) which appears to allow a group’s GCC to be shared with “international regulatory agencies” should be modified to prohibit sharing with the IAIS unless the group or insurer grants its consent.
Second, language should be added to the end of Section 8.C(4)(iii) as follows: “…and require the NAIC or third-party consultant to provide certification or other proof satisfactory to the insurer or group that all such materials are no longer stored and have been destroyed, deleted, returned, or otherwise rendered inaccessible.”

Exemptions:

The Draft Memorandum suggests several situations for which it is suggested that a group be exempt from filing the GCC with its lead state regulator. Some of those situations parallel recommendations made in the September 20, 2018 letter submitted to the GCCWG by AHIP together with the American Insurance Association and the Property Casualty Insurers Association of America (now merged as the American Property Casualty Insurance Association), Blue Cross Blue Shield Association, the National Association of Mutual Insurance Companies, and the Reinsurance Association of America (the “Joint Trade Letter”). However, there are some variances from the Joint Trade Letter as well. These similarities and differences are presented below, as they serve to frame AHIP’s current comments on the related text in the Draft Memorandum:

1. Group size exemption: The Joint Trade Letter supported exemption of a U.S.-based group from filing a GCC if the group is not required to file an ORSA with its Lead State Regulator, i.e., if the insurance group of which the insurer is a member 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 billion. The Draft Memorandum suggests an exemption only for small mutual insurance companies, citing the exemption in the Annual Financial Reporting Model Regulation (#205), which has a threshold of $1 million in such premiums.

AHIP is concerned about the apparent wide chasm between the views of many in industry as expressed in the Joint Trade Letter and of GCCWG members as to the apparent value to the regulatory process that could be gained by requiring a large number of small(er) insurance groups to file the GCC. AHIP again suggests that the GCCWG consider the ORSA-like threshold and, after gaining experience with the utility of the GCC from its experience with larger groups that are subject to ORSA, that the threshold might then be lowered to a level (but likely much greater than $1 million in annual premiums) to include more groups but nonetheless balances the cost and benefit/utility of the GCC to groups and regulators alike.

2. Mutual company exemption: The Joint Trade Letter proposed an exemption for U.S. groups where the Ultimate Controlling Party (UCP) is an underwriting company that directly or indirectly owns all of the other entities within the Broader Group. In such a situation the UCP could provide its Annual RBC report as an acceptable alternative to the GCC. This suggestion has apparently not been considered for inclusion in the Draft Memorandum.
Memorandum, and AHIP would like to understand the basis for that exclusion (see “Process”, below). AHIP notes that the suggested exemption, if permitted, would not only pertain to many mutual insurance companies, but also to other types of entities such as non-profit health plans, both of which are among AHIP’s membership.

3. Groups regulated by the Federal Reserve Board (FRB): The Draft Memorandum suggests that groups required to file with the FRB be exempt from filing the GCC with their lead state regulator, but that those groups be required to provide a copy of the filing with the FRB to the lead state. AHIP appreciates this suggestion, which is consistent with the Joint Trade Letter.

4. Foreign-based groups: The Draft Memorandum provides two situations for which it is suggested that a foreign-based group be exempt from filing the GCC:
   a. If it is a reciprocal or qualified jurisdiction per the Credit for Reinsurance Model Law (#785);
   b. Other groups for which the group-wide supervisor otherwise accepts the GCC for any U.S. insurance group or recognizes the GCC as an acceptable international capital standard to the International Association of Insurance Supervisors (IAIS), and has been sponsored by an accredited lead-state.

   While this seems somewhat consistent with the Joint Trade Letter, there are some nuanced variances for which AHIP would appreciate a better understanding, e.g., the concept of being “sponsored by an accredited lead state” (see “Process”, below).

Process:

As mentioned previously, the Joint Trade Letter was submitted September 20, 2018, and was part of a series of exposures and comments from interested parties in 2018 leading up to the launch of GCC field testing in 2019. Despite the input sought by the GCCWG in 2018, and the numerous recommendations offered by Interested Parties, the GCCWG did not act to either adopt or reject many of those recommendations. Rather, the decision was made to leave those aspects open as options to be explored through field testing. With the 2019 field test exercise now completed, the open dialogue that might otherwise have occurred back in 2018 has still not occurred. However, the GCCWG Draft Memorandum appears to represent decisions (at least proposed decisions) that have since been made by the GCCWG in the absence of any related open dialogue with Interested Parties. In other written and oral submissions, recommendations were made on issues other than exemptions as well. This explains why AHIP looks forward to further policy-based discussions between regulators and Interested Parties before moving ahead with the memo to the GSIWG or other unresolved questions related to the GCC. We suggest those discussions could happen during the GCCWG meeting in Phoenix in March, and in subsequent conference calls as needed, but we would urge the Working Group to begin those discussions with an open exchange and inventory of pending issues, and an analysis of which can be answered now, and which must be further postponed due to lack of available information or other reasons.

* * * * *
AHIP appreciates this opportunity to comment and would be glad to address any questions you or other GCCWG members may have at your convenience.

Sincerely,

America’s Health Insurance Plans

Bob Ridgeway
Bridgeway@AHIP.org
501-333-2621
Commissioner David Altmaier  
Florida Office of Insurance Regulation  
Chair, NAIC Group Capital Calculation (E) Working Group  
[via-email: ddaveline@naic.org]

February 12, 2020

Re: Exposure Memorandum addressing confidentiality and scope of the Group Capital Calculation

Dear Commissioner Altmaier,

The American Council of Life Insurers\(^1\) appreciates the opportunity to share our views on the NAIC Group Capital Calculation (E) Working Group’s exposed draft memorandum to the Group Solvency Issues (E) Working Group. The memo recommends updating the Insurance Holding Company System Regulatory Act (#440) to create the legal filing mechanism and confidentiality protections for the Group Capital Calculation (“GCC”).

i. Confidentiality

As noted in many of our past comments on the GCC, ACLI strongly supports robust confidentiality protections to guard against disclosure of GCC results. The NAIC has historically acknowledged and recognized the potential for the misuse of certain regulatory filings like non-public RBC reports or plans by limiting the ability of companies or state insurance regulators to disclose these reports. The GCC, as contemplated by the NAIC, will be a regulatory tool that helps state insurance regulators “better understand an insurance group’s financial risk profile for the purpose of enhancing policyholder protections.” A high degree of regulatory acumen will likely be necessary to ensure that the results, and the nuances contained within them, are understood in the appropriate context. As such, we appreciate the NAIC’s apparent commitment to strong confidentiality protections for GCC data and results.

One area that may require additional consideration is protecting the confidentiality of reports and results submitted by holding companies regulated by the Federal Reserve Board (the “Board”). Nonpublic information submitted to the Board must be subject to similar confidentiality protections as GCC data and results.

ii. “Small mutual holding company” exemption

ACLI supports an exemption for small companies and groups, but we believe the Working Group should increase the proposed threshold. The memo proposes an exemption for “small mutual insurance companies” with less than $1,000,000 in annual premium and fewer than 1,000 policy or contract holders. We believe that a GCC small-company/group exemption level that mirrors the thresholds used in the Own Risk and Solvency Assessment (“ORSA”) Act would be more appropriate.

\(^1\) The ACLI advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers’ financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers’ products for peace of mind. ACLI members represent 95 percent of industry assets in the United States.

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American Council of Life Insurers  
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and a better use of supervisory resources.\(^2\) Further, given that the NAIC plans to use the GCC as a tool, not a standard or requirement, to “complement existing group supervisory tools already available to state insurance supervisors” including the Own Risk and Solvency Assessment Summary Report, Form F and Form B filings, we think it makes sense to align the threshold with ORSA. \(^3\) ACLI believes that requiring these small groups to perform the calculation would burden them and their regulators without providing any additional insight into the group as their structures are typically less complex and not difficult to understand. As such, we recommend increasing the exemption threshold to a requirement that will allow states to focus their resources on groups where additional transparency into the group and non-insurance financial entities may provide the most benefit to regulators and policyholders.

iii. Groups regulated by the Federal Reserve Board

ACLI supports the proposed exemption for groups that are regulated by the Federal Reserve Board (“Board”) who provide a copy of their Board filings to their lead state regulator. We believe this is appropriate and avoids duplicative requirements of having to file two group capital assessments at the world-wide parent level for Board-regulated insurance holding companies. To the extent those filings include non-public information, they must be protected by express confidentiality protections in section 8.

iv. Placement of the GCC within section 4 of the Insurance Holding Company System Regulatory Act (#440)

The placement of the GCC within section 4 of the Insurance Holding Company System Regulatory Act (hereafter the “Holding Company Act”) appears to create an implicit exemption that was not expressly discussed in the memo. As noted in the memo, the NAIC Group Capital Calculation Working Group recommends placing the regulatory authority for the GCC in section 4 of the Holding Company Act, which governs registration and reporting requirements for insurance companies who are part of an insurance holding company system.\(^4\) With that in mind, it appears that companies who do not file registration reports under section 4 of the Holding Company Act, are also exempt from filing the GCC, regardless of whether they exceed the proposed exemption for “small mutual insurance companies”\(^5\) or any of the other proposed exemptions. Additional clarification on this issue, as well as more fulsome analysis and rationale for each exemption and the scope of application, would benefit all stakeholders and permit stakeholders to provide input on those issues.

Conclusion

We look forward to continuing these discussions and appreciate the Working Group’s attention to scope of application. We look forward to continuing to engage on these important topics as more information becomes available on these or other topics required to implement an effective GCC. We encourage the NAIC GCCWG to release a proposed mark-up of section 4 and 8, which would help our

\(^2\) With some exceptions, insurers are exempt from ORSA if the insurer’s annual premiums are less than $500 million and they belong to a group with fewer than $1 billion in annual written/assumed premiums. ORSA also preserves supervisory discretion to exempt or apply ORSA to firms.

\(^3\) NAIC GCCWG Request for Model Law Development (October 30, 2019).

\(^4\) Section 1 of the NAIC Insurance Holding Company System Regulatory Act (#440) defines an insurance holding company system as two (2) or more affiliated persons, one or more of which is an insurer. An affiliate is defined as “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.”

\(^5\) Id. at 1.
members evaluate the proposed exemptions and confidentiality protections with greater certainty, and thus provide more detailed feedback.

Regards,

Mariana Gomez-Vock
Associate General Counsel
Marianagomez-vock@acli.com (202) 624-2313

Patrick Reeder
VP & Deputy General Counsel
patrickreeder@acli.com (202) 624-2195

David Leifer
VP & Associate General Counsel
davidleifer@acli.com (202) 624-2128
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Re: Comments on Group Capital Calculation Working Group Referral Memorandum

Dear Commissioner Altmaier:

Reinsurance Group of America, Incorporated (RGA) is a global life and health reinsurer headquartered in the United States. RGA appreciates the opportunity to comment on the NAIC Group Capital Calculation (E) Working Group’s exposed draft referral memorandum to the Group Solvency Issues (E) Working Group.

RGA supports amending the Insurance Holding Company System Regulatory Act (#440) to ensure confidentiality, appropriate scope, and legal authority for the Group Capital Calculation (GCC). We are writing specifically to request clarification with respect to the third and fourth proposed exemptions to the GCC to ensure that there is reciprocity for U.S. groups as intended:

- Groups for which the group-wide supervisor is a reciprocal or qualified jurisdiction per the Credit for Reinsurance Model Law (#785).

- Group not considered a reciprocal or qualified jurisdiction but for which the group-wide supervisor: i) accepts the GCC for any U.S. insurance group; or ii) recognizes the GCC as an acceptable international capital standard to the International Association of Insurance Supervisors (IAIS); and iii) has been sponsored by an accredited lead-state.

RGA supports the position that insurance and reinsurance groups should be subject to only one group capital calculation, standard or requirement (measure), which should be administered only by the group’s own group-wide supervisor. As such, we support excluding certain non-U.S. groups described in exemptions 3 and 4 from the Group Capital Calculation (GCC) requirement at the level of their worldwide group so long as those exemptions are conditioned on U.S. groups being accorded reciprocal treatment in those non-U.S. jurisdictions. We recommend that this reciprocity requirement be clearly stated in the exemptions.
We also request clarification on reciprocal treatment with respect to *subgroup* reporting, as opposed to reporting at the level of the worldwide group. As currently written, it appears that the GCC exemptions would apply to a group from a non-U.S. jurisdiction that imposes a group capital measure on a U.S. group’s subgroup located in that non-U.S. jurisdiction.

While we do not object to the NAIC exempting U.S. subgroups of non-U.S. groups from the GCC requirement, such exemption should be conditioned on that non-U.S. group’s home jurisdiction likewise abstaining from requiring a U.S. group to file a group capital measure at the subgroup level in that jurisdiction. Otherwise, the reciprocity principle as adopted in the U.S. will inadvertently disadvantage U.S. groups.

We note that the EU-U.S. and UK-U.S. Covered Agreements and the Credit for Reinsurance Model provisions on reciprocal or qualified jurisdictions do not appear to resolve the subgroup issue. While Article 4(b) of the EU-U.S. Covered Agreement generally prohibits a “Host” supervisory authority from exercising group supervision, including capital, at the *worldwide* group level, it does not prohibit the host supervisor from exercising group supervision over the “Home” group at the subgroup level, i.e., “at the level of the parent undertaking in the territory of the Host Party”. Article 4(b) further provides that “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.” (Emphasis added.)

Article 4(h) addresses group capital specifically and provides that with respect to a group capital assessment that fulfills certain criteria, “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.) Thus, the prohibition on the Host supervisor’s imposition of a group capital measure appears to be limited to the worldwide parent, and not the subgroup in that jurisdiction. Similarly, Sections 9(B)(1) and 9(B)(3) of the Credit for Reinsurance Model Regulation on reciprocal jurisdictions appear to address worldwide, but not subgroup, reporting.

RGA requests that the referral memorandum’s third and fourth exemptions be amended to clarify that reciprocity is required not only at the worldwide group level but at the subgroup level as well. Thank you for the opportunity to provide these comments. We would be happy to discuss this issue further.

Sincerely,

Michael L. Emerson
EVP & Head of U.S. and L/S Markets

16600 Swingley Ridge Road, Chesterfield, Missouri 63017 (t) 612 217-6101 memerson@rgare.com
February 20, 2020

Via Electronic Delivery

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chairman, NAIC Group Capital Calculation (E) Working Group
Via email to Dan Daveline (ddaveline@naic.org)

Re: The National Association of Insurance Commissioners (“NAIC’s”) Draft Confidentiality of Group Capital Calculation Memorandum (“the draft memorandum”)

Dear Commissioner Altmaier:

Prudential Financial, Inc. (“we”) thank the Group Capital Calculation Working Group (“Working Group”) for continuing to seek input on key elements of the Group Capital Calculation (“GCC”). We support the development of supervisory tools that enhance state regulators’ ability to protect policyholders and insurance markets.

We believe determining the companies to which the GCC applies should be a function of its overarching objective. The May 29, 2019 NAIC Proposed GCC document provided the following context on why the NAIC is developing the GCC and the objective it is intended to achieve:

“The GCC is a natural extension of work state insurance regulators had begun, in part driven by lessons learned from the most recent financial crisis, to better understand an insurance group’s financial risk profile for the purpose of enhancing policyholder protections. State insurance regulators already exercise their legal powers to obtain any information regarding the capital positions of affiliated business entities. However, there has not been a consistent or coherent analytical framework for evaluating such information and monitoring trends. As such, the GCC is designed to meet this need, delivering financial solvency regulators a panoramic, transparent view of the interconnectedness, business activities, and underlying capital support for an insurance group.”

We support the stated objectives and to achieve them, we believe the GCC should broadly apply to insurers operating in the U.S. with limited exceptions. Such an approach would ensure that policyholders benefit equally from the insights the GCC may provide, and that the panoramic view of the U.S. insurance market state regulators and the NAIC are pursuing is not subject to significant gaps. That said, we recognize the importance of exercising proportionality to avoid instances where application of a regulatory tool would introduce an undue burden on an insurer/insurance group. With these considerations in mind, we believe the following exemptions from completing the GCC would be appropriate:

1. Small insurance companies/groups
Rationale – We believe it is appropriate to extend existing exemptions from various risk related reporting requirements to the GCC.

2. Groups required to file with the U.S. Federal Reserve System ("the Fed"), but separately require that such a group provide a copy of the Fed filing to its lead state regulator.

Rationale – We believe insurance groups – at the worldwide parent level – should be subject to only one group capital calculation or requirement. While the GCC is intended to serve as an analytical tool, the framework the Fed imposes will be a binding requirement. Given this difference as well as the concerted efforts of the NAIC and Fed to align their respective frameworks to enhance regulatory consistency in the U.S., we believe it would be appropriate for the lead state to accept a copy of the filing with the Fed in lieu of requiring completion of the GCC.

3. Foreign-based insurance groups that are subject to a group capital calculation or requirement provided:
   i) The group-wide supervisor accepts the GCC for any U.S. insurance group; and
   ii) The group-wide supervisor shares relevant information with the lead state upon request

Rationale – As noted above, we believe insurance groups – at the worldwide parent level – should be subject to only one group capital calculation or requirement. Thus, in the case of foreign-based insurance groups, we believe the lead state should respect the sovereignty of the insurance regulator in the jurisdiction of the worldwide parent and not require the completion of a second group capital calculation. Similar deference should be provided by the insurance regulator of the foreign jurisdiction for U.S. companies operating in their respective market. Such an approach would be consistent with Article 1, Objectives (c) of the Bilateral Agreement between the U.S. and the EU on Prudential Measures Regarding Insurance and Reinsurance ("the Covered Agreement"), which outlines expectations for Host and Home supervisory authorities:

   “the role of the Host and Home supervisory authorities with respect to prudential group supervision of an insurance or reinsurance group whose worldwide parent undertaking is in the Home Party, including, under specified conditions, (i) the elimination at the level of the worldwide parent undertaking of Host Party prudential insurance solvency and capital, governance, and reporting requirements, and (ii) establishing that the Home supervisory authority, and not the Host supervisory authority, will exercise worldwide prudential insurance group supervision, without prejudice to group supervision by the Host Party of the insurance or reinsurance group at the level of the parent undertaking in its territory;

While we support an exemption from the GCC for the worldwide parent of foreign-based insurance groups, we believe the lead state should require submission of the GCC for its U.S. operations ("U.S. sub-group"). Requiring U.S. sub-group compliance with the GCC is appropriate and important for several reasons, including:

- Making sure policyholders receive the benefit of equal prudential oversight from state regulators;
- Securing a sufficiently panoramic view of the U.S. insurance market, which would better enable lead states and the NAIC to identify trends and emerging risks and position the GCC as a complement to tools being developed under the Macroprudential Initiative ("MPI");
• Avoiding an unlevel playing field – although the GCC has been framed as a tool rather than a requirement, we believe supervisors would feel compelled to act if presented with a concerning GCC ratio; and

• Aligning with practices and/or requirements in foreign markets, which have already determined there is value in receiving such information

More broadly, we believe language in the Covered Agreement does not preclude application of prudential tools at the sub-group level; rather, section (ii) of objective (c) implicitly recognizes that supervisors may feel the need to apply tools that encompass all operations within their jurisdiction

Finally, we are generally supportive of the suggested edits to the Insurance Holding Company System Regulatory Act (#440) text to address confidentiality protections for the GCC. However, we believe the text would be improved through the following changes:

Section 8.A. – “….. 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, but, Notwithstanding the foregoing, the commissioner shall seek to maintain the confidentiality of the group capital calculation and Group Capital Ratio, including in such documents during the course of any such regulatory or legal action. With respect to all other documents, materials or other information covered by this paragraph, the commissioner …..”

Rationale – We believe the proposed edits would better align the text with the NAIC’ intention for the GCC to serve as additional tool for identifying potential risks within the group rather than a minimum standard or requirement that triggers regulatory or legal action if breached.

Section 8.G. – “It is the judgment of the legislature that the group capital calculation and resulting Group Capital Ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurer groups generally. Therefore, except as otherwise may be required under the provisions of this Act or as may be customary for engagement with investors, 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, website or other publication, or in the form of a notice, circular, pamphlet, letter or poster, e-mail, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, 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, agent, 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 other amount to an insurer’s or insurance group’s group capital calculation or resulting Group Capital Ratio is published in any written or electronic 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 an announcement in a written or electronic publication if the sole purpose of the announcement is to rebut the materially false statement.”
**Rationale** – We believe the proposed edits would appropriately carve out the current market practice of sharing solvency related information with the investor community and modernize the disclosure to account for potential publication via electronic means.

We again thank the Working Group for seeking stakeholder input on key elements of the GCC and would welcome the opportunity to discuss the information included in this response should the Working Group or NAIC staff engaged in the GCC project wish to do so.

Sincerely,

Ann Kappler  
Senior Vice President, Deputy General Counsel and Head of External Affairs  
Prudential Financial, Inc.
INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

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Section 1. Definitions

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 GCC report, including group capital calculation instructions, as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
F. “Insurance Holding Company System.” An “insurance holding company system” consists of two (2) or more affiliated persons, one or more of which is an insurer.

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

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

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

H. “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).

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

J. “NAIC” means the national association of insurance commissioners.

K. “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.

L. “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.

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

N. “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

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

A. Filing Requirements.

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

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

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

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

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

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

(a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
(b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

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

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

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

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

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

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

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

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

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

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

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.
(12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L1, 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.

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 provision, to the contrary each ultimate controlling person of every insurer shall also file an annual group capital calculation, 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 and less than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year;

b. An insurance holding company whose non-U.S. group-wide supervisor is the United States Federal Reserve, who is permitted to instead file a copy of the calculation required by the United States Federal Reserve, with the lead state commissioner;

c. An insurance holding company whose group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within either a Qualified Jurisdiction or 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 and accepts the group capital calculation for any U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or
      b. 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 Supervisor.

e. Notwithstanding the exemptions stated in Section 4L(2)a through Section 4L(2)d, 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 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 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 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.

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

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

A. Transactions Within an Insurance Holding Company System

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

(a) The terms shall be fair and reasonable;

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

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

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

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

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

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

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

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

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

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer’s admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

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

(c) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

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

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

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

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

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

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

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

(4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
(5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation’s voting securities.

B. Dividends and other Distributions

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

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

1. Ten percent (10%) of the insurer’s surplus as regards policyholders as of the 31st day of December next preceding; or
2. The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer’s own securities.

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

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

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

C. Management of Domestic Insurers Subject To Registration.

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

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

3. Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.
(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Examination

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

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

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

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

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

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

Section 7. Supervisory Colleges

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

(1) Initiating the establishment of a supervisory college;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment B
(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 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.

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, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and 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, materials, or information reported pursuant to Section 4L1 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 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 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 pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries pursuant to this Act remains with the commissioner and the NAIC’s use of the information is subject to the direction of the commissioner;

(iii) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC pursuant to this Act is subject to a request or subpoena to the NAIC for disclosure or production; and

(iv) Require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries pursuant to this Act.

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 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.

Section 8.1. Confidential Treatment & Prohibition on Announcements for the Group Capital Calculation

A. For purposes of the information reported or provided to the Department of Insurance pursuant to Section 4L2, the aforementioned confidentiality requirements of Section 8 are modified as follows:

1. The commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio. With respect to all other documents, material or other information covered by this subsection, the commissioner will not make such 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.

2. 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.

3. In order to assist in the performance of the commissioner’s duties, the commissioner:

   a. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC, any third party consultants, and 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 documents, material or other information, and has verified in writing the legal authority to maintain confidentiality;

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

   c. May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, 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 documents, material or information; and

   d. Shall enter into written agreements with the NAIC and any third-party consultant 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 or a third-party consultant 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 confidentiality;

(ii) Specify that ownership of information shared with the NAIC or third-party consultant pursuant to this Act remains with the commissioner, and the NAIC’s or a third-party consultant’s use of the information is subject to the direction of the commissioner;

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

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

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

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer’s written consent.

(4) 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.

(a) No waiver of any applicable privilege or claim of confidentiality in the documents, propriety and trade-secret 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 (3).

(b) Documents, materials or other information in the possession or control of the NAIC 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.

(c) It is the judgement of the legislature that the group capital calculation and resulting group capital ratio 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 in any other way as an advertisement, announcement or statement containing arepresentation or statement with regard to the group capital calculation or group capital ratio of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting group capital ratio or an inappropriate comparison of any amount to an insurer’s or insurance group’s group capital calculation or resulting group capital ratio is published in any written publication and the insurer is
able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Section 9.  Rules and Regulations

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

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

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

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

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

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.
Section 11. Sanctions

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

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

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

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

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

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

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.
Section 13.  Recovery

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

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

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

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

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

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

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

Section 15.  Judicial Review, Mandamus

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

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

C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.
Section 16. Conflict with Other Laws

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

Section 17. Separability of Provisions

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

Section 18. Effective Date

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

ALTERNATE PROVISIONS

Alternative Section 1. Findings

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

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

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

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

(4) Implement sound tax planning conclusions; and

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

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

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

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

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

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

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

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

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

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

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

D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.
Alternative Section 2.  Subsidiaries of Insurers

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

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

2. Acting as an insurance broker or as an insurance agent for its parent or for any of its parent’s insurer subsidiaries;

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

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

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

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

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

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

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

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

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

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

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

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

1997 Proc. 4th Quarter 11 (amendments adopted).
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