

Draft: 8/10/21

Group Solvency Issues (E) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)
August 4, 2021

The Group Solvency Issues (E) Working Group met Aug. 4, 2021. The following Working Group members participated: Justin Schrader, Chair (NE); Jamie Walker, Vice Chair (TX); Kim Hudson (CA); Kathy Belfi (CT); Charles Santana (DE); Virginia Christy (FL); Kim Cross (IA); Cindy Andersen, Susan Berry and Eric Moser (IL); Roy Eft (IN); John Turchi (MA); Judy Weaver (MI); Shannon Schmoeger (MO); Diana Sherman (NJ); Margot Small (NY); Dale Bruggeman (OH); Doug Stolte (VA); and Amy Malm (WI).

1. Discussed Proposed Revisions to the *Financial Analysis Handbook*

Mr. Schrader stated that the primary purpose of the meeting is to discuss comments received on the public exposure of proposed revisions to the NAIC's *Financial Analysis Handbook* (Handbook), which were developed by the ComFrame Financial Analysis Drafting Group. The proposed revisions are intended to incorporate elements of the International Association of Insurance Supervisors' (IAIS') Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) deemed appropriate for the U.S. system of solvency regulation.

Mr. Schrader stated that the proposed revisions were exposed for a 60-day public comment period and that five comment letters were received during the exposure. Mr. Schrader stated that the focus of the meeting will be to discuss the comments received at a high level, before asking the Drafting Group to consider the development of a revised draft in response to the comments received.

Robert Neill (American Council of Life Insurers—ACLI) provided an overview of the topics covered in the ACLI comment letter, which included concerns related to the scope of insurers that proposed procedures could be applied to, the appropriateness of placing guidance on determining the head of an internationally active insurance group (IAIG) in the Handbook, and concerns regarding references to IAIS Insurance Core Principles (ICPs) and application papers within the Handbook. In addition, Mr. Neill recommended that the Handbook language allow for more flexibility in approaches to governance, control, and risk management functions and expressed concerns over language referencing the IAIS' insurance capital standard (ICS).

In response to the scoping issue, Mr. Schrader stated that the Drafting Group thinks that the newly proposed procedures should not restrict the existing ability of state insurance regulators to conduct holding company analysis and examination procedures as they see fit in accordance with a risk-focused approach to financial surveillance. Therefore, while they are primarily intended for use in conducting analysis of IAIGs, the proposed language states that analysts can use judgment in determining whether the procedures should be applied to a broader range of insurance groups. Mr. Schrader also stated that the Drafting Group is likely open to working on some additional clarifying language in this area. Ms. Belfi stated her agreement with this approach and asked how the proposed procedures exceed existing authority to regulate large insurance groups that do not currently qualify as non-IAIGs.

Mr. Neill stated that although broad authority is available to state insurance regulators in overseeing holding company groups, statutes do not go into detail in describing the type of procedures to be performed. Mr. Neill stated that ACLI members think that the ComFrame elements were designed for IAIGs and to extend them to a broader group of companies could be exceeding the intent of existing legal authority. Mr. Schrader stated that the intent of the Drafting Group was not to blur the lines of regulation between IAIGs and non-IAIGs, but rather to preserve the existing ability of state insurance regulators to conduct holding company oversight as they deem appropriate. Therefore, the Drafting Group can consider clarifying language in this area.

Mr. Schrader stated that the intent of the Drafting Group behind including guidance on determining the head of the IAIG in the Handbook was to encourage state insurance regulators to consider applying the ComFrame considerations at a level below the ultimate controlling person, when appropriate. Mr. Schrader stated that the requirements and oversight outlined in the *Insurance Holding Company System Regulatory Act* (#440) generally apply at the ultimate controlling person or holding company registrant level. However, there may be situations in a conglomerate group where the insurance operations are overseen at a subsidiary or intermediate holding company level. Therefore, providing guidance to assist state insurance regulators in using discretion in determining the level of the group to focus on in conducting analysis procedures was deemed appropriate for inclusion in the Handbook. Ms. Belfi asked whether the guidance would preclude the state insurance regulator from conducting

procedures at the ultimate controlling person level if that was deemed necessary, and Mr. Schrader stated that it would not. Ms. Berry added that the assessment of the head of the IAIG should be revisited periodically and is the responsibility of the group-wide supervisor, in consultation with other supervisory college members. Mr. Neill stated that he would share this perspective with the ACLI members, but that the way that head of the IAIG is defined within ComFrame may not be a perfect fit for the U.S. system of insurance regulation and should, therefore, be carefully considered and evaluated to determine whether it is in accordance with Model #440.

Mr. Schrader stated his agreement with the need to allow for flexibility in approaches to governance, control, and risk management functions within the Handbook guidance and believes that this was the intent of the Drafting Group. However, he stated that the Drafting Group can consider some additional clarifying language in that area. Mr. Schrader stated that the Drafting Group's intent behind including references to the ICS in the Handbook was not to expect or require ICS reporting by IAIGs, but rather to encourage group-wide supervisor review and consideration if ICS reporting is being prepared on a voluntary basis by certain IAIGs during the monitoring period. Mr. Schrader stated that given the key role that the ICS plays within ComFrame guidance and the ongoing implementation in other jurisdictions, that Handbook guidance would be incomplete without some background information on ICS.

Steve Broadie (American Property Casualty Insurance Association—APCIA) stated that APCIA members endorse the comments made by the ACLI in this area and oppose references to the ICS in the Handbook as a tool for group capital assessment because it is developed for a different system of evaluating group solvency and based on a different accounting system. Mr. Schrader stated that as several IAIGs are currently filing an ICS with their group-wide supervisor during the monitoring period, those supervisors would be expected to review the filing, and the Handbook guidance should so indicate. Ms. Weaver stated that it may also be helpful for other state insurance regulators who are involved in supervising non-U.S. based IAIGs to have some background information on the ICS so that they can understand how it is being used in other jurisdictions. Keith Bell (Travelers) stated that part of the issue here is that the ICS is currently in a monitoring period and not really a regulatory standard for anyone yet. As such, the Handbook should only address the ICS when and if it becomes a regulatory requirement for U.S.-based groups. Mr. Schrader stated that it is obvious that various interested parties have strong feelings on this topic and encouraged the Drafting Group to review and consider the comments received.

Bob Ridgeway (America's Health Insurance Plans—AHIP) provided an overview of the comment in the AHIP letter, which focused on the scope of companies that the proposed procedures could be applied to. He stated that the new guidance cites Section 7.1 of Model #440 as the authority to conduct the procedures, and that section of the act relates specifically to the group-wide supervision of IAIGs. Therefore, the law does not grant state insurance regulators to apply these measures to non-IAIG groups. Mr. Schrader stated that Section 7.1 is primarily focused on the identification of IAIGs and outlining the role of a group-wide supervisor but does highlight certain areas of group governance and risk exposures that should be assessed by the group-wide supervisor. However, Mr. Schrader said he does not interpret that to mean that these same areas cannot be reviewed for other groups, just that they are required to be reviewed for IAIGs. Ms. Belfi stated that other sections of Model #440, including Section 6 on examinations, provide broad authority to conduct procedures as deemed appropriate for all insurance holding company systems. Therefore, Ms. Belfi stated that such authority would allow such procedures to be performed on a broader range of insurers. Mr. Schrader asked NAIC staff to seek the opinion of its legal division on the regulatory authority outlined in Model #440 to conduct monitoring procedures for holding company groups and to return and report the results to the Working Group.

Mr. Broadie provided an overview of the APCIA letter and stated that it covers many of the same topics that were already discussed by the ACLI. Mr. Broadie stated that he will cover three topics from the letter that have not yet been discussed. First, he stated that APCIA members are opposed to including references to the IAIS ICPs and Application Papers within the Handbook as this could be seen as incorporating all IAIS standards by reference, which would not be appropriate for the U.S. system. Second, Mr. Broadie stated that proposed language in the Handbook appears to expect a group-wide Corporate Governance Annual Statement or Own Risk and Solvency Assessment (ORSA) Summary Report to be filed by IAIGs, which could exceed the authority granted by the existing legislation in those areas. Finally, Mr. Broadie stated that several areas in the proposed Handbook guidance appear to expect IAIGs to have group-wide processes or functions that are too prescriptive and would not allow appropriate flexibility for various types of corporate structures.

Mr. Schrader stated that the intent behind placing references to IAIS ICPs and Application Papers in the Handbook was to highlight additional background information and reference material to analysts and was not an attempt to incorporate by reference. Mr. Schrader stated that the Drafting Group should develop language to clarify the intent in this regard. Regarding the second comment, Mr. Schrader stated that it will be necessary for the supervisor to obtain information on group practices in certain areas to conduct the assessments outlined in ComFrame. As such, the Handbook guidance states that logical sources

for this information would be the Corporate Governance Annual Disclosure and the ORSA Summary Report, if they are provided at the head of the IAIG level. However, the Handbook cannot and does not require filings to be made at that level, so it will be up to the group-wide supervisor to determine the best way to obtain the necessary information. Mr. Schrader also stated that this topic will likely be addressed in more detail as drafting work moves forward on the ORSA Guidance Manual, which will be discussed later in the agenda. Regarding the third comment, Mr. Schrader stated that the Drafting Group's intent was to provide flexibility in approaches to group governance and processes, but that additional language can be considered to make expectations clearer in this regard.

Joe Zolecki (Blue Cross and Blue Shield Association—BCBSA) stated his support for the comments made in the other letters and focused his comments on the scope issue. Mr. Zolecki stated that his members would encourage the deletion of language stating that the new procedures added to the Handbook could be performed in non-IAIG group analysis. However, if the Drafting Group's intent is to prepare companies that are approaching the IAIG threshold for that additional level of regulation, then the BCBSA comment letter has some specific language recommendations to address this issue. Mr. Schrader stated that the Drafting Group would review and consider this language in developing an updated draft.

Ms. Cross stated that Iowa had no additional comments to make on their letter. Mr. Schrader thanked the Iowa Department of Insurance (DOI) for its comments and stated that the Drafting Group will consider them in developing an updated draft.

2. Received an Update on Other Drafting Efforts

Mr. Schrader stated that two other drafting groups have begun meeting to develop proposed revisions to the NAIC's *Financial Condition Examiners Handbook* and ORSA Guidance Manual to incorporate ComFrame elements as deemed appropriate for the U.S. system of insurance regulation. Mr. Schrader stated that the intent of the Working Group will be to adopt the proposed ComFrame revisions to all three NAIC publications together as a package later this year once they have all been fully developed and vetted.

3. Discussed IAIS Consultation

Mr. Schrader stated the IAIS has released a revised *Application Paper on Supervisory Colleges* for public consultation. Feedback on this Application Paper is due to the IAIS by Aug. 24. This paper has been updated to reflect subsequent developments of IAIS supervisory materials, in particular revisions to ICP 3 (Information Sharing and Confidentiality Requirements) and ICP 25 (Supervisory Cooperation and Coordination), and the adoption of ComFrame.

Mr. Schrader encouraged Working Group members to review the revised Application Paper and provide comments to the International Insurance Relations (G) Committee for submission to the IAIS. Interested parties were also encouraged to review the revised Application Paper and submit their own comments to the IAIS.

Having no further business, the Group Solvency Issues (E) Working Group adjourned.

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