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Group Capital Calculation (E) Working Group
Virtual Meeting
November 17, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met Nov. 17, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair (CT); Susan Bernard (CA); Philip Barlow (DC); Carrie Mears and Mike Yanacheak (IA); Roy Eft (IN); Christopher Joyce (MA); Judy Weaver (MI); Kathleen Orth (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Dave Wolf (NJ); Bob Kasinow (NY); Dale Bruggeman (OH); Andrew R. Stolfi and Greg Lathrop (OR); Melissa Greiner and Kimberly Rankin (PA); Trey Hancock (TN); Jamie Walker (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Adopted its Oct. 30, Oct. 20, Sept. 29, Sept. 18 and Sept. 2 Minutes

Commissioner Altmaier said the Working Group met Oct. 30, Oct. 20, Sept. 29, Sept. 18 and Sept. 2 to continue discussions regarding proposed changes to the *Insurance Holding Company System Regulatory Act* (#440), the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450), and the group capital calculation (GCC) template and instructions.

Mr. Eft made a motion, seconded by Ms. Orth, to adopt the Working Group's Oct. 30 (Attachment Three-A), Oct. 20 (Attachment Three-B), Sept. 29 (Attachment Three-C), Sept. 18 (Attachment Three-D) and Sept. 2 (Attachment Three-E). The motion passed unanimously.

2. Adopted Revisions to Model #440 and Model #450

Commissioner Altmaier stated that the goal for the meeting is to consider adoption of proposed revisions Model #440 and Model #450 where, barring any changes adopted today from the models as previously exposed, that is what will be voted on at the end of the meeting. To the extent members of the Working Group want to change the exposed models before considering adoption of Model #440 and Model #450 at the end of the meeting, as a result of any of the comments received and discussed (Attachment Three-F), a separate vote will be taken on any such proposed changes.

a. Subgroup Reporting

Commissioner Altmaier stated that this topic was discussed extensively in prior conference calls, and, while he was willing to give interested parties an opportunity to provide comments on their submitted comment letters, he asked each party to be relatively brief in getting to the point.

Bill Schwegler (Transamerica) summarized the comments of Transamerica and Allianz. He stated that Transamerica and Allianz support the exposed California language currently incorporated into Model #440. He noted that they support providing clear legal authority for lead states to collect aggregated capital information for the entities under their purview. He noted that the California language accomplishes this well, and they view it as likely to be acceptable under the "Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement).

Mr. Schwegler discussed how they previously pointed out that subgroup supervision does exist in certain jurisdictions for prudential reasons and that the authority created by the California language would seem sufficient to achieve a so-called level playing field. He discussed how there were some alternatives in the meeting materials that go well beyond the California language. Some had been proposed by a group of industry stakeholders, others by a few state insurance regulators. But basically, those alternatives all seek either to require or to promote the imposition of subgroup capital on a retaliatory basis. He stated that the arguments are that the Covered Agreement restricts only worldwide capital and permits subgroup capital are both true. However, those arguments fail to address the actual conflict with the Covered Agreement created by the so-called subgroup reciprocity.

Mr. Schwegler indicated that the proposals from others inherently presume subgroup supervision and capital are objectionable, but the Covered Agreement explicitly permits both parties to impose them; therefore, they are not objectionable, which is how the core conflict arises. He indicated that these proposals would interfere with a right that is explicitly granted to the European Union (EU) and the United Kingdom (UK) that allows supervisors in both jurisdictions to impose subgroup supervision and capital. He stated that to impose prudential subgroup measures without fear of retaliation, and then later turn around and decide

to retaliate on the basis of the exercise of the right that has been previously granted, a party is unilaterally modifying the essence of the agreement and that is what would be happening. More specifically, U.S. states would be imposing a retributive regulatory measure that would be motivated by the exercise of the right that had been granted to the other party. The U.S. would be impairing that right and modifying the essence of the agreement unilaterally.

Mr. Schwegler noted that while Transamerica obviously cannot speak for the Federal Insurance Office (FIO) or other authorities, he would expect that language either requiring or promoting retaliation would be deemed problematic because it would interfere with a right that is explicitly granted to the other party under the Covered Agreement. He stated that Transamerica notes that none of these more expansive alternatives has been exposed for comment, but all of them appear to create internal conflicts with other provisions in Model #440 and Model #450. He noted that, in the interest of finalizing models that are suitable for adoption, and really to protect the interest of state insurance regulators more generally, Transamerica and Allianz urge the expansive alternatives not to be pursued.

Finally, Mr. Schwegler stated that there is a proposal from Texas to reduce the risk that a state insurance regulator would use discretion in any retaliatory manner that would run afoul of the Covered Agreement. Transamerica and Allianz believe that this language does not appear to create new conflicts and they would support it.

Bonnie Guth (Munich Re America Services—Munich Re) summarized Munich Re's comments. She indicated that Munich Re supports the previously exposed California language, noting that it is a thoughtful compromise. She stated that what is interesting is that Munich Re really does want the state insurance regulators to be able to have some latitude here to use their discretion on whether to impose these sub-capital requirements in the U.S. She noted that with all the comments that have been shared, there are not any stakeholders commenting that subgroup capital requirements serve any regulatory purpose. So, she said, requiring or allowing U.S. state insurance regulators to have some discretion on whether to oppose it is important. She said Munich Re supports the California language.

Kimberly M. Welsh (Reinsurance Group of America—RGA), representing the Coalition of U.S. groups, summarized the Coalition's comments. She stated she had two different provisions to speak to, but initially she noted the Coalition also supports the decision to retain text in Section 4L(2)(e) that would expressly reserve a state commissioner's authority to apply the GCC to U.S. group operations of a non-U.S.-based group, noting that the Coalition understands that the intent of that language is to permit consideration of reciprocal treatment by a non-U.S. jurisdiction.

Ms. Welsh said, with respect to the question of whether a home supervisor of a non-U.S. group imposes subgroup capital, the Coalition believes it is important to expressly incorporate that concept into Model #440. Therefore, the Coalition strongly supports the proposal from Connecticut, Nebraska and New Jersey (the "Tri-State Proposal") to amend the current draft to retain the "recognize and accept" provision for subgroup reporting. In the coming years, she said the U.S. will be addressing the broader issue of whether the GCC will be recognized by other jurisdictions. The Coalition believes U.S. state insurance regulators should put themselves in a position to be able to advocate for mutual recognition. She stated that the Coalition believes the proposal more strongly supports the goals of mutual recognition and uniformity.

Ms. Welsh said the Coalition also believes the states should be as unified as possible on its actions regarding a foreign jurisdiction. She noted that a strong and consistent U.S. voice will better support mutual recognition and will help ensure that groups from the same jurisdiction are treated in a similar matter by all relevant states. She stated that the Coalition also believe the U.S. should support the fair treatment of U.S. firms and promote a level playing field for U.S. firms abroad, which the Tri-State Proposal would help ensure.

Ms. Welsh stated that, as explained in its letter and supplemental attachment, the Coalition believes the Tri-State Proposal, as well as the Coalition's alternative proposed text, is not in conflict with the Covered Agreement. She stated that the Covered Agreement sets out restrictions on worldwide group supervision and those restrictions are without prejudice to subgroup supervision. Article 4H of the Covered Agreement addresses capital explicitly, and she said that explicitly is limited to worldwide group capital. She noted that a question has been raised about whether and to what extent the states are limited by the "where appropriate" language in Article 4B of the Covered Agreement.

Ms. Welsh then explained that the Coalition's comment letter points out that the Covered Agreement, the U.S. Department of the Treasury, the Office of the U.S. Trade Representative (USTR) policy statement and FIO testimony before the U.S. Congress—in addition to statements made by the European Commission—make clear that the Covered Agreement does not apply to a U.S. group's operations and activities that occur in, or originate from, the EU. She noted that, in testimony, former FIO Director Michael McRaith explained that Article 4B of the Covered Agreement, which contains the "where appropriate"

language, means that U.S. insurers are subject to EU law only for purposes of operations and activities occurring in, or originating from, the EU.

Ms. Welsh noted that Mr. McRaith further stated in testimony that, with respect to group supervision, EU supervisors can apply their law and regulation to U.S. insurers only for operations and activities that occur in, and originate from, the EU. Mr. McRaith said this limitation applies to all aspects of group supervision, including capital. She noted that what a supervisor cannot do is regulate at the worldwide level. To the extent the language is intended to limit a state's authority, it is only with respect to the jurisdictional reach of supervisors outside of their own territory. In other words, it is only appropriate to exercise subgroup authority over operations that occur in, or originate from, your own jurisdiction. Whether, how and why to engage in subgroup supervision is left entirely to the discretion of the prudential regulators; and, thus, whether to provide exemptions based on reciprocal treatment is also within the supervisor's discretion.

On this point, and in response to a comment from Transamerica that the Covered Agreement explicitly grants a right to engage in subgroup supervision, Ms. Welsh stated that right already exists among the states and it is up to the states to determine when they should do so. Therefore, what the Covered Agreement does is explicitly exempt from its application subgroup supervision, including subgroup capital. From that standpoint, the Covered Agreement would not limit the text here.

In response to the idea that the regulation of subgroups due to a lack of reciprocity as being inappropriate, Ms. Welsh noted that the Coalition originally proposed text that would have required subgroup supervision for groups exempted from worldwide supervision unless there was reciprocal treatment. That text would be like the other amendments to the Model #440 in Section 4L(2)(c) and Section 4L(2)(d), which appear to have been drafted with mutual recognition in mind. Section 4L(2)(c) and Section 4L(2)(d) both provide exemptions from worldwide reporting of the GCC, and those are entirely conditioned on reciprocal treatment. She stated it is not clear by comparison, therefore, why those sections were not being considered retaliatory, and that somehow extending that kind of exemption to subgroups in the Coalition's original language or in the Tri-State Proposal would be retaliatory.

Ms. Welsh stated that the Coalition also does not believe preemption is applicable to this subgroup supervision issue. She noted that, first of all, it is not inconsistent with the Covered Agreement. Second, as a subgroup GCC requirement would simply be requesting a narrower version of the GCC from non-U.S. groups that is already required from U.S. groups, it would not result in less favorable treatment, and would only take place if the non-U.S. jurisdictions also requiring subgroup reporting. Thus, it simply ensures that U.S. state insurance regulators are able to respond to less favorable treatment.

Ms. Welsh noted that, with respect to the Coalition's alternative text, there has been a lot of debate around discretion, as well as the application of the Covered Agreement; and, while the Coalition strongly support the language in the Tri-State Proposal, they are also offering alternative text that would serve as a possible compromise between the two versions that are out now. This would include additional language to the current text as to whether to apply Section 4L(2)(c), which would include an explicit consideration of whether the jurisdiction recognizes and accepts the GCC for subgroup purposes. She stated that while the states are already permitted to do so under the current language, the provision should be explicit. Under this language, the state would still have the same broad discretion as in the current draft, but this language would avoid any future confusion as to the intent and whether state insurance regulators should or can look at subgroup supervision.

Ms. Welsh said this compromise text would also serve as notice to the world that the U.S. states care about and promote mutual respect for, and recognition of, the U.S. state-based insurance regulatory system. Importantly, the language would make clear that the NAIC process that will be developed for determining which jurisdictions recognize and accept the GCC at the worldwide level, would also extend to review of subgroup reporting requirements. This would assist that states, which should not have to engage in their own individual reviews. The process also will promote more discussion among that states and with the jurisdictions at issue, which will promote the ultimate goal of eliminating subgroup capital reporting.

Matthew T. Wulf (Swiss Re) reiterated Swiss Re's previous comments, noting that Swiss Re believes that what has been exposed already is viewed as a compromise, but noted that continuing to compromise can often makes things work. He added that Swiss Re continues to believe that the current language as exposed allows the state insurance regulators to do what they need. Specifically, he said state insurance regulators need to discourage some reporting without being retaliatory, noting that the current language puts regulators in a better spot.

Ms. Walker summarized the comments from Texas. She emphasized how Model #440 and Model #450 should correspond to the actual solvency and operations of the groups, and that should be the determining factor on whether to have subgroup reporting, not how other jurisdictions are managing operations in their jurisdictions. She noted that while she would suggest

some changes to the exposed language, the current exposed language is the best solution the Working Group has exposed so far, noting that she could support it.

Ms. Belfi summarized the comments from Connecticut, Nebraska and New Jersey, but asked each of those states to also comment. She discussed each of the sections of their proposed language. She noted the first section is identical to the California proposal, noting that they agree with this language in that it includes prudential regulatory authority. However, she discussed that as they started to think about this issue more, as far as reciprocity is concerned, they believe the language in the California proposal is too broad and it includes commissioner discretion.

Ms. Belfi discussed that the original action taken by the Working Group was to expose the language, then the concern regarding the Covered Agreement was raised and somehow that changed the conversation. She noted that in their proposed language, there is a sentence that is really the crux of the issue, as it talks about if the non-U.S. groupwide supervisor does not recognize and accept the GCC required by the insurance commissioner. She questioned what that means and, specifically, how to define "not recognized and accepted." She said she believes it means that non-U.S. group supervisors can—for valid reasons, such as solvency issues—require subgroup reporting for a specific group. She said she believes they certainly should have that ability where they think reciprocity would definitely be triggered is when there is a non-U.S. jurisdiction that makes a broad policy decision to simply not deem the GCC as acceptable.

Ms. Belfi noted, however, that to not accept the GCC could affect multiple states that may be designated as groupwide supervisors and could affect the states that lead on a subgroup level. She said the three states that drafted the Tri-State Proposal believe the potential for not recognizing, and possibly requiring additional capital to be held outside the U.S., is why they believe state insurance regulators should be standing behind the Tri-State Proposal. She said it is right for the U.S. industry to have this lever of last resort; more specifically, so they will not be put at a competitive disadvantage. She stated this is a national issue and not a state-by-state issue in which regulators must collaborate to be successful.

Ms. Belfi stated the last section is language proposed to be added to Model #440 from the Coalition that the three states really like, as they want to make sure that there is a process for this to occur. She discussed how they envision that if one or more lead states or groupwide supervisors believe that there is clear evidence of another regulator not accepting the GCC on the subgroup level, then there should be a forum they could go to. She stated that a clear vetting process should be established. She emphasized how difficult it is for a state to open up these models and how she did not want to come back to it in four years and have an issue that requires them to be opened up again. She stated that it would be helpful to hear from the U.S. industry that they would be proactive in helping promote these changes to the holding company laws/regulations as they are being passed in the respective states.

Mr. Schrader emphasized that the GCC is an important tool for the U.S. state insurance regulators to oversee holding companies, whether that be as the groupwide supervisor or, in cases of non-U.S. lead groups, to a state's responsibility as a lead state within the U.S. to make sure that we look out for our policyholders and provide a level playing field to ensure all protections and information is available as needed.

Mr. Schrader agreed with the comment by Ms. Belfi regarding the additional language to add back into Model #450 regarding process. He emphasized the need for a process that is as transparent and clear as possible and being clear about the value of the GCC. He discussed that such a process within the NAIC committee structure that represents a collection of state insurance regulators would help ensure consistency because this is a national process, and all states should be working in concert. This would come into play if another state either decides it does not directly affect them and decides not to impose reciprocity or vice versa. It could require the U.S. subgroup that they are going to unilaterally determine that the reciprocity needs to occur and potentially put other states in a tough spot.

Mr. Schrader discussed how it gets harder and harder each time to reopen the state statute on holding companies and it becomes more difficult to justify. He noted that he struggles with not adopting something as thorough and transparent as possible, and something that is able to identify or deal with a potential situation in the future. He stated that, obviously, the states hope that the situation never arises or that just by having the language in there, the expectation is clear to other jurisdictions. However, he noted a few years may come before these issues arise and who knows what everyone will remember. As such, he said it is important to make this decision clearly and transparently and to make sure to stand up for what he believes is a strong GCC that that has value, works globally and help ensures that other jurisdictions reciprocate and acknowledge these requirements. He said state insurance regulators do not want to run into a situation that results in a flight of capital outside the U.S. for various reasons.

Mr. Wolf stated that the Tri-State Proposal is not a retaliatory requirement. It is a level playing field issue, an appropriate solvency tool and it promotes policyholder protection. He noted that, as mentioned before, the Covered Agreement clearly states a European jurisdiction can require subgroup reporting of entities in their jurisdiction of a U.S. holding company. He emphasized how the Tri-State Proposal simply does the same for U.S. jurisdictions. He emphasized how it creates a level playing field if the foreign jurisdiction does not require subgroup reporting of U.S. companies that recognize and accept the GCC. He described how U.S. subgroups of foreign holding companies can be quite large and, therefore, meaningful for solvency analysis, financial stability and policyholder protection in the U.S. He discussed how the requirement should be consistent for all states and how the Tri-State Proposal simply provides the means for mutual recognition.

Commissioner Altmaier indicated comments had now been received and now was the time to consider if any of those comments had changed anyone's view on how to approach this matter. He asked if anyone would like to make a motion to replace the California language on subgroup reporting included in the exposure with either of the other proposals discussed in the comment letters and during this meeting.

Mr. Bruggeman noted that Mr. Schwegler had made a comment earlier that he previously had not considered and understood with respect to another country doing what it needs to do for its own purposes and asked if he could expand on the issue.

Commissioner Altmaier asked Mr. Schwegler to provide such, but noted it is likely that a person could get a different response if the same questions was asked of someone else.

Mr. Schwegler responded that he believes the question gets into the motivation for subgroup reporting, which is something Transamerica tried to explain in a prior comment letter. He indicated that he believes the underlying premise is that group supervision in some form, including group supervision of foreign groups, relative to that jurisdiction is important to protect policyholders.

Mr. Schwegler discussed that, previously, he explained the dynamic in Japan, where they basically say, "We're not going to try to think about whether a group supervision outside of Japan is adequate. We do not want to deal with it." So, he explained, they basically kind of wall off the Japanese border in that respect, which ultimately leads to a subgroup dynamic, but the motivation there is prudential supervision. So, it is done to protect policyholders. The same is true in the EU and UK under Solvency II, where there is a system to consider group supervision outside of the continent. Basically, they have established a system that is pretty analogous to the U.S. approach for reinsurance. They allow jurisdictions to apply and, if they meet certain conditions, they will be accepted. He explained that this dynamic has led to subgroups situations in in the EU and UK. All of this is motivated by credential reasons, and they are all interested in protecting their citizens. They have done this in different ways, but the premise is that some form of effective group supervision is needed to protect their citizens.

Ms. Belfi noted that, with the Tri-State Proposal, they are concerned about the broad, sweeping action of either the EU or a particular country. Then, maybe another country will come say, "We are not going to recognize the GCC in the U.S." It is unknown what something like that would mean for the U.S. insurance industry. She stated that she does not know if that means additional capital would have to go into these local jurisdictions and be held there. She noted that it could affect the market and every single state in this country, emphasizing that the California language is too broad and discretionary.

Ms. Belfi made a motion, seconded by Mr. Schrader, to replace the exposed language on subgroup reporting in Section 4L(2)(e) of Model #440 with the language in the Tri-State Proposal, as included in their comment letter, including corresponding changes to Section 21E(1) of Model #450, as included in their comment letter. Connecticut, Massachusetts, Nebraska and New Jersey voted for the motion. California, District of Columbia, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier asked if anyone else would like to make a motion to replace the California language on subgroup reporting included in the exposure with one of the other proposals discussed in the comment letters and during this meeting.

Mr. Yanacheak stated he does not believe the alternative language from the Coalition had been fully vetted because it had not been exposed, and he questioned the last sentence that gives the commissioner the authority to promulgate a regulation that does not have any specifications around it.

Ms. Walsh stated that the language to promulgate was simply defining the "recognize and accept" determination for subgroup reporting, noting that the regulation language that corresponds was previously mentioned by the Tri-State Proposal.

Commissioner Altmaier suggested that those uncomfortable with the amount of time spent on such an alternative to vote accordingly. So, it is really meant to link this back to something that has already been vetted and is already included in the proposed revisions.

Mr. Stolte made a motion, seconded by Mr. Rehagen, to replace such language with the alternative text proposed by the Coalition. Connecticut, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio and Virginia voted for the motion. California, District of Columbia, Indiana, Iowa, Minnesota, North Carolina, Oregon, Pennsylvania, Tennessee, Texas and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier stated that he is uncomfortable considering any other alternative texts due to the reasons he outlined previously, noting that because there are no additional alternatives that have been provided, at least in the materials, the California language on this issue will be left as-is.

Mr. Schrader asked that the minutes be clear that the California language that was adopted does give the states the authority and discretion to address subgroup reciprocity.

Commissioner Altmaier stated that he spoke to many of the Working Group members over the past few days, noting that all of those states indicated that while they may not vote in favor of the California language, they will support the model in its entirety. He expressed his appreciation for those states' support, noting that the voting record on the two votes will make clear which states voted against the California language through their support of the other proposals.

b. Previously Deleted Limited Filing for Ultimate Controlling Partis that File RBC

Commissioner Altmaier stated that the other topic that was discussed extensively during the Working Group's last meeting was the situation where the ultimate controlling parties that file risk-based capital (RBC) no longer be allowed to automatically complete the limited GCC filing.

Bob Ridgeway (America's Health Insurance Plans—AHIP), also representing the Blue Cross and Blue Shield Association (BCBSA) and the National Association of Mutual Insurance Companies (NAMIC), summarized their joint comment letter. He emphasized that this is not an automatic exemption and is strictly up to the lead state commissioner's discretion. Also, it is not a complete exemption and, even then, it is an exemption only to the extent that the group file the limited GCC instead of the full GCC. Recall also, the group must have already filed the GCC at least once. He stated the whole goal of the exemption language and the way it was conceived is to avoid companies having to prepare and file the same information twice. It is also to prevent state insurance regulators from having to look at the same information twice, with the basic theory that the GCC is going to be similar, or highly consistent, with the information that would be produced by the RBC filing.

Mr. Ridgeway stated that it is important to consider the mechanics of how this is going to work for those who are saying RBC is different from the GCC. It might not be, but the commissioner who is approached for this exemption is going to know that the group asking for this exemption has already filed at least one full GCC. The commissioner can easily go to the previous GCC and the previous RBC calculation to see if they are consistent. That is the simple test and it provides a valuable guardrail to prevent any errors or mistakes or misuse of this exemption. He indicated that the data elements necessary to do the financial analysis called for by the GCC are in the annual financial statement. He said AHIP hopes Texas, or someone else, will make a motion to adopt either the language that was previously deleted as-is or to replace that language with the Texas language.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) summarized the ACLI's views on this issue. She noted that, in response to AHIP, it is not a complete exemption, it is a limited GCC, except it does not include a GCC ratio or the detailed information in the inventory. She said it is not just the same information and that there is additional information in the GCC. She noted that, with respect to the comment that data elements necessary for financial analysis are in the annual financial statement, the ACLI disagrees, as there is entity-level capital data required, especially for regulated financial entities, that is not captured in RBC filings. She noted that the ACLI has been proud to collaborate with the Working Group on the GCC for the past five years.

Over that time, Ms. Gomez-Vock stated the ACLI and the Working Group may have disagreed on some technical issues, but the ACLI has always supported the overarching concept of the GCC. She said the ACLI believes that the GCC is a value-add to the regulatory toolbox that complements the RBC framework, regardless of whether the ultimate controlling party is a stock or a mutual company. She said the ACLI has never said the GCC is unnecessary nor asked that life insurers be exempted from its reach. Instead, she said the ACLI has "buckled down" and wrestled with tough topics, alongside Working Group members

and NAIC staff. She said the ACLI also plans to leverage its resources to help get the proposed revisions to Model #440 and Model #450 passed in the states, as that is a strategic priority for the ACLI members.

Ms. Gomez-Vock stated that the ACLI's support of the GCC is exactly why it opposes the limited filing exemption in Section 21B(1) for groups that are headed by an RBC filer. The ACLI does not oppose a limited filing exemption for small groups, but it believes that allowing large, complex groups that may include international operations or material financial entities is detrimental to the credibility of the GCC. Small groups and single-state writers are already exempt from the GCC. She noted that, as it was written, Section 21B(1) would have allowed groups with international operations and/or material financial entities, to avoid filing a GCC ratio, as long as their international business was not in the UK or the EU.

Ms. Gomez-Vock said, in other words, an internationally active insurance group (IAIG) could be exempt from the GCC. She stated that Texas has proposed limiting the exemption to non-IAIGs but noted that limiting the exemption to non-IAIGs does not cure the deficiencies in Section 21B(1), because it would still allow large and complex groups to evade the GCC, as long as they have filed at least once. To be an IAIG, a group must have $50 billion in annual written premiums and operate in at least three countries. However, as seen during the 2008 financial crisis, it only takes one non-U.S. financial products unit to bring down the entire financial system. This seems like an undesirable level of risk, from the ACLI's perspective.

Ms. Gomez-Vock noted that, in addition, while the "file once, get an exemption" approach makes sense for small groups, its utility as the primary criteria, other than corporate structure, to excuse some of the largest carriers in the nation and even globally, from filing the GCC is questionable. She stated that the ACLI believes the Working Group members got it right when they voted, 14-4, in favor of removing the exemption from Model #450. The argument the ACLI has heard the most in promoting the return of this exemption turns mostly on the similarities between RBC ratios and GCC ratios. While there are many similarities between the two frameworks at this date, they are not identical. However, the ACLI thinks this argument misses the point of the GCC. The point of the GCC is not to produce a ratio that can be compared to other groups or against a predetermined benchmark. The point of the full GCC report is to provide state insurance regulators with valuable entity-level analytical data, especially about subsidiaries and affiliates, that is not available in the parent RBC report or a limited group GCC report, as well as enhanced details about intragroup transactions. This level of insight is a unique benefit of an aggregation method, like the GCC, that should not be understated.

Therefore, Ms. Gomez-Vock said, part of the GCC's value is that it allows state insurance regulators to look at the data accompanying the ratio, and use the data in the templates as a roadmap to gain greater insights into the risks (and strengths) within the group. The GCC ratio is just the beginning; the real value of the GCC lies in the regulator's ability to easily examine the "pieces of the puzzle" that generated in the ratio.

Ms. Gomez-Vock noted that the ACLI believes it is important to consider how reinstating an exemption for large and complex groups will impact the overall credibility of the GCC. The ACLI analysis reveals that the impact of this exemption for the life industry alone is large; it could lead to 12% of the life insurance industry, calculated by premium volume, being exempt from the GCC. Some of the life insurance industry's largest players are captured in that 12%. She stated that a significant number of ACLI members, including some of its largest life insurance members, would qualify for the exemption, yet the ACLI is advocating against it. She said the ACLI is doing this because the ACLI Board of Directors directed ACLI members to stand united in their support for a strong and credible GCC. An exemption that allows large and complex groups, whether they are mutual or stock, to be exempt from filing a GCC ratio and a full GCC report hurts the credibility of the states and the GCC. It also unnecessarily calls into question the value proposition of the GCC as a whole.

Ms. Gomez-Vock closed by stating the NAIC is poised to adopt the first GCC for insurance groups in the U.S. This should be a time for Working Group members to stand proudly behind their work. The ACLI supports and honors the work the Working Group members have done over the past five years, and she said the ACLI hopes that Working Group members will similarly stand behind their own work product and avoid watering it down at the 11th hour, by potentially exempting some of the industry's largest members from filing a full GCC.

Ms. Walker stated that her struggle with not having an exemption for an RBC filer at the top of the house is that if it is determined that there is something in the GCC that is missing in that RBC number, then why not try to align the RBC with the GCC. With the information and the better method the Working Group has come up with in the GCC, she asked if the Working Group is undercutting RBC. She said the purpose of the GCC is to understand the capital needed at a groupwide basis. She indicated that, with most groups, regulators do not have the information needed for the group; however, with a holding company system with a carrier at the top of the house, regulators do have the information and can address matters through RBC. She noted that just giving discretion, if at any point the information is needed, regulators can always go back and get it. With respect to issues with recognition of the states, she noted she added language to address that carve-out.

Dan Daveline (NAIC) noted that before the Working Group votes on the Texas proposal, it would be necessary to add into the proposal language dealing with Covered Agreement jurisdictions that was in previous drafts.

Ms. Walker made a motion, seconded by Mr. Bruggeman, to reinstate the previous Section 21B(1) in Model #450 that existed prior to the Working Group's Oct. 20 conference call, with a modification to add in a restriction related to IAIGs, as included in the Texas comment letter. District of Columbia, Missouri, North Carolina, Ohio, Tennessee and Texas voted for the motion. California, Connecticut, California, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York Oregon, Pennsylvania, Virginia and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier said the Working Group would retain the exposed language related to this issue.

c. Incorporation by Reference

Commissioner Altmaier said Texas had submitted a warning with respect to the result of the use of incorporation by reference, but there was no further discussion on this comment.

d. Previous Deletion of Language for Subgroup Reporting List

Mr. Rehagen stated he would like to get a sense of whether the Working Group would be interested in adding the proposed changes to Model #450 related to the "recognize and accept" list that was previously proposed by the Tri-State Proposal. He stated that he believes this would be a good change, even without the changes to Model #440 proposed by the Tri-State Proposal.

Mr. Rehagen made a motion, seconded by Ms. Belfi, to add a sentence to the end of Model #450 as proposed in the Tri-State Proposal, as previously mentioned. The motion passed unanimously.

e. Request to Delete Language that Enables the Commissioner to Issue Regulations

Ian Adamczyk (Prudential) stated the point of this comment is the belief that this language is overly broad and would "open the door" to too many broader exemptions beyond what is included in Model #440. So, the thinking is to keep the exemptions limited to what is included in Model #440; a potential alternative could be to move that finite set of exemptions or the limited filing into Model #440 in place of this language.

Commissioner Altmaier stated that the NAIC staff recommendation was to reject the suggestion because the language is needed to enable the commissioner to issue the specific exemptions in Model #440, but not beyond those exemptions. No changes were made as a result of the comment.

f. Request Deletion of Limited Filing

Mr. Adamczyk noted that there was some confusion over the vote during the last Working Group meeting, so no changes are needed. No changes were made as a result of the comment.

Commissioner Altmaier stated that the Working Group is now ready to consider adoption of the revised Model #440 and Model #450 as a result of the decisions made on the call. Ms. Belfi stated that she still has strong reservations about the California language being in Model #440.

Ms. Bernard made a motion, seconded by Ms. Mears, to adopt the proposed revisions to Model #440 and Model #450 (*see NAIC Proceedings – Fall 2020, Financial Condition (E) Committee, Attachment One-A*). The motion passed unanimously.

3. Adopted the GCC Template and Instructions

Commissioner Altmaier asked Lou Felice (NAIC) to present the "fatal flaw" comments received on the GCC instructions and template. Mr. Felice stated that comments would be presented in two parts. First would be the NAIC staff recommendation on comments (Attachment Three-G) contained in the two comment letters received (Attachment Three-H) from the ACLI and AHIP. He added that the second part includes changes discussed during the exposure period with Ms. Belfi and the American Property Casualty Insurance Association (APCIA).

Mr. Felice began with comment topics from the letters. Commissioner Altmaier asked Mr. Felice to go through all the comments before taking comments or questions.

a. Sensitivity Analysis at 300% x Authorized Control Level (ACL) RBC

Mr. Felice stated that the ACLI questioned the need for the sensitivity analysis in the GCC template and that, in keeping it, the guidance developed for the *Financial Analysis Handbook* (Handbook) should be clear on how it would be used. He stated that, in certain cases, it may be more than a straight mathematical exercise.

NAIC staff recommend that it be retained as providing complementary data point to be used with other analytical metrics provided by the GCC. Mr. Felice agreed that the guidance to be included in the Handbook should coordinate with the data collected in the GCC.

b. Allowance for Capital Instruments as Additional Capital

Mr. Felice stated that an AHIP comment requested an increase in the proxy allowance on qualifying senior and hybrid debt from the current 30% and 15%, consistent with a previously agreed-upon increase in the overall allowance limit from 50% to 75% of total adjusted capital reported in the GCC.

Mr. Felice stated that NAIC staff recommend against any adjustments at this time because the proxy allowance does consider qualifying debt and this allowance potentially increases with the issuance of qualifying debt. He also noted that another method suggested by the APCIA was added to the calculation of an allowance, which has a stronger connection to structural subordination. That approach replaced "tracked downstream." Mr. Felice left open the possibility of further refinement of the debt allowance after further data collection.

Tom Finnell (AHIP) asked whether NAIC staff is recommending leaving this issue open for further consideration.

Mr. Felice responded that the current methodologies will be incorporated into the GCC, but if future data collection discloses unintended consequences, those could be addressed via revisions to the calculation for the allowance.

c. Treatment of Financial Entities Without a Specified Regulatory Capital Requirement

Mr. Felice stated that the ACLI commented that the operations of certain asset managers can represent low risk to the insurers in the group and that capital requirements imposed by the U.S. Securities and Exchange Commission (SEC) and/or the Financial Industry Regulatory Authority (FINRA) may be more relevant than the stratified revenue-based charges currently included in the GCC.

Mr. Felice stated that sufficient information on the robustness and associated actions of the SEC and/or FINRA requirements has not been presented, noting that the principle-based approach to material risk and the assignment of risk levels is preferable. Therefore, NAIC staff recommend moving forward with the current GCC approach.

A second ACLI comment supports continued study around reinstatement of a deleted quantitative criterion for determining material risk to help promote consistency in reporting.

Mr. Felice stated that NAIC staff's position is that the activities and financial interconnections described in the material risk principles can be applied to allow general consistency in the risk level assigned, noting that the lead state's review would include the filer's selected risk level. He added that neither the Working Group members nor the 2019 field test volunteers could reach consensus on a quantitative benchmark, so continuing down that path seems unlikely to result in a single agreed-upon threshold.

d. Future Data Collection

Mr. Felice stated that the ACLI letter supports additional data collection and NAIC staff agree that such data collection is necessary to pick up unintended consequence, particularly in the area of an allowance for debt as additional capital and for potential scalars.

Mariana Gomez-Vock (ACLI) expressed support for a broad data collection of the entire template using updated data, in addition to rerunning the field test data through the template. She added that this could be done in a way that promotes forward progress in 2021.

e. Other Comments

Mr. Felice noted that the ACLI presented revised wording for a portion of the definition of "financial entity" in the GCC that has been accepted in the GCC instructions. He added that an AHIP comment relating to reporting if intangible assets was addressed via a revision to Input 6 – "Other Information" tab in the GCC, which resulted from discussion with Ms. Belfi.

Mr. Finnell asked what that revision looks like. Mr. Felice stated that he will cover that in the second part of his presentation.

Commissioner Altmaier asked Mr. Felice to continue with the walkthrough of other wording changes in the GCC instructions.

In addition to the two revisions noted above, Mr. Felice presented the changes that were summarized in the material (Attachment Three-H). These included language revisions resulting from the written comments or from continued discussion with interested parties on prior issues that had not been settled. In particular, Mr. Felice described a change to define a "limited group capital filing," along with what parts of the GCC template would be required in such a filing. One significant element is the need for a separate Input 2 – "Inventory" tab to replace what will be required for a full GCC submission.

A second change that Mr. Felice detailed related to language added in consultation with the APCIA that would address call provisions generally, and "make whole" provisions specifically, while maintaining a degree of permanence of qualifying debt. He added that not addressing "make whole" provisions could result in much of senior debt being disqualified from the allowance for capital instruments.

Hearing no objections to the NAIC staff recommendations and other language revisions, as well as no further "fatal flaw" comments, Commissioner Altmaier called for a motion to adopt the GCC template and instructions.

Ms. Belfi made a motion, seconded by Mr. Rehagen, to adopt the GCC template and instructions (*see NAIC Proceedings – Fall 2020, Financial Condition (E) Committee, Attachment Eight*). The motion passed unanimously.

Having no other business, the Group Capital Calculation (E) Working Group adjourned.

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