Draft: 10/16/20

Financial Stability (EX) Task Force
Conference Call (*in lieu of meeting at the 2020 Fall National Meeting*)
October 13, 2020

The Financial Stability (EX) Task Force met via conference call Oct. 13, 2020. The following Task Force members participated: Marlene Caride, Chair (NJ); Eric A. Cioppa, Vice Chair (ME); Alan McClain (AR); Ricardo Lara represented by Kim Hudson (CA); Andrew N. Mais represented by Kathy Belfi (CT); David Altmaier (FL); Doug Ommen represented by Carrie Mears (IA); Robert H. Muriel represented by Vincent Tsang (IL); Gary Anderson (MA); Chlora Lindley-Myers represented by John Rehagen (MO); Bruce R. Ramge represented by Justin Schrader (NE); Linda A. Lacewell represented by Martha Lees (NY); Jessica K. Altman represented by Melissa Greiner (PA); and Kent Sullivan represented by Jamie Walker (TX).

1. Adopted its Summer National Meeting Minutes

The minutes indicate the Task Force met Aug. 5 and took the following actions: 1) adopted its Feb. 26 and 2019 Fall National Meeting minutes; 2) heard an update on Financial Stability Oversight Council (FSOC) developments; 3) received an update from the Liquidity Assessment (EX) Subgroup on progress achieving its deliverables related to Liquidity Stress Testing (LST); 4) received an update from the Receivership and Insolvency (E) Task Force on its work to address the Financial Stability (EX) Task Force's referral letter to undertake analysis relevant to the Macroprudential Initiative (MPI); 5) heard an update on collateralized loan obligation (CLO) stress tests; 6) heard an update on the International Association of Insurance Supervisors (IAIS); 7) heard an update on the London Interbank Offered Rate (LIBOR); and 8) discussed exposure comments for the draft revisions to the *Insurance Holding Company System Regulatory Act* (#440).

Commissioner Altmaier made a motion, seconded by Mr. Schrader, to adopt the Task Force's Aug. 5 minutes (*see NAIC Proceedings – Summer 2020, Financial Stability (EX) Task Force*). The motion passed unanimously.

2. Considered Adoption of its 2021 Proposed Charges

Commissioner Caride said that the 2021 proposed charges for the Task Force are the same as the current 2020 charges, but the proposed charges for the Liquidity Assessment (EX) Subgroup have been modified. She added that charges related to liquidity risk data and the development of the LST Framework are essentially the same as the 2020 charges except for eliminating reference to work already completed, such as the scope criteria. She noted that the new charge that was added this year pivoted from the LST Framework to instead address data needs specific to the pandemic and the related economic impact. Commissioner Caride concluded that the charge related to the pandemic will continue since the end to the pandemic and its related economic impact are unknown.

Ms. Belfi made a motion, seconded by Commissioner Altmaier, to adopt the 2021 proposed charges for the Task Force and the Liquidity Assessment (EX) Subgroup (*see NAIC Proceedings – Summer 2020, Financial Stability (EX) Task Force*). The motion passed unanimously.

3. Considered Adoption of Revisions to Model #440

Commissioner Caride noted that the 30-day comment period for proposed revisions to Model #440 ended Oct. 5 with one written comment from the American Council of Life Insurers (ACLI). She said the ACLI comments included some minor editorial changes that did not change the intent of the regulatory provisions and thus were incorporated into the new draft. She clarified that the edits from the Group Capital Calculation (E) Working Group included in Model #440 are not up for discussion and consideration by the Task Force. She said once all changes have been finalized, the Task Force will send them to the Financial Condition (E) Committee for incorporation with the Group Capital Calculation Working Group changes once those are finalized.

The Task Force received several comments on the conference call, which are summarized below:

- David Leifer (ACLI) requested that the LST data be limited to macroprudential uses and inclusion of a specific time limit on the retention of the LST data. Commissioner Caride asked Mr. Schrader to address these concerns. He said the Subgroup has consistently and repeatedly responded to this concept of limiting the LST to macroprudential uses.

While the primary purpose of the LST data is for macroprudential uses, there will also be some value for micro-prudential uses by domiciliary and lead state regulators analyzing legal entity insurers and their groups. He explained the need for many years of LST data since the macroprudential uses will include time series analyses but was unable to specify a certain amount of years needed since the Task Force has yet to work with any LST data. He suggested there should be no limit for now, while acknowledging this concept could be revisited in the future when the Task Force has more experience with analyzing the LST data. Several other Task Force members joined Commissioner Caride in expressing support for both of Mr. Schrader's positions, and none expressed any concerns or opposition.

- Ms. Belfi questioned the ACLI's request to change the phrase "assets and liabilities" to "exposure bases" in the definition of Scope Criteria. Mr. Leifer explained it was to provide a more flexible term. Mr. Schrader indicated support for this change as there may be some items used in the Scope Criteria that are not technically the asset or liabilities balance, and Joe Engelhard (Metlife) gave a detailed example of potential future exposure for derivatives. After discussion, no Task Force members objected to considering this change as the first amendment to the previously exposed revisions to Model #440.
- Ms. Walker expressed the need to specify the owner of the LST data in the proposed revisions to Model #440. She agreed with naming the lead state as the owner of the LST data. After discussion, no Task force members objected to considering this change as the second amendment to the previously exposed revisions to Model #440.
- Mr. Tsang raised concerns with the phrase "in conjunction with the lead state and the Task Force" in Section 4.L.(3) since this did not clarify the entity with the final authority if disagreement existed. Mr. Rehagen suggested "in conjunction" should be changed to "in consultation" to address this concern and indicated this language would be consistent with similar situations in other model laws. After discussion, no Task Force members objected to this change as the third amendment to the previously exposed revisions to Model #440.

Commissioner Caride requested that the Task Force vote on each amendment separately:

Ms. Belfi made a motion, seconded by Ms. Mears, to adopt the first amendment to the proposed revisions to Model #440. The motion passed unanimously.

Mr. Schrader made a motion, seconded by Ms. Walker, to adopt the second amendment to the proposed revisions to Model #440. The motion passed unanimously.

Mr. Rehagen made a motion, seconded by Mr. Tsang, to adopt the third amendment to the proposed revisions to Model #440. The motion passed unanimously.

Mr. Schrader made a motion, seconded by Mr. Tsang, to adopt the previously exposed revisions to Model #440 highlighted in green and yellow, as modified by the three adopted amendments. The motion passed unanimously.

4. Received an Update from the Liquidity Assessment (EX) Subgroup on Progress in Achieving its Deliverables Related to Liquidity Stress Testing

Mr. Schrader reported that the Subgroup and Study Group have received data from Phase I and Phase II of the data collection plan. He summarized that Phase I was a request for qualitative data based on first quarterly financials, and Phase II was a request for qualitative and quantitative data based on second quarterly financials. He said the Study Group and lead state insurance regulators of the affected groups have been briefed on aggregate summaries of the results, and detailed results have been provided as well. He said overall, insurers reported the ability to withstand liquidity demands during the pandemic using available liquidity sources on hand. He added that in the second quarter, most insurers continued to report that their existing liquidity stress testing is more punitive than the current stresses caused by COVID-19, and current stresses were well within risk appetite ranges.

Having no further business, the Financial Stability (EX) Task Force adjourned.

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2021 Adopted Charges

LIQUIDITY ASSESSMENT (E) SUBGROUP

Ongoing Support of NAIC Program, Products or Services

The **Liquidity Assessment (EX) Subgroup** will:

A. Continue to consider regulatory needs for data related to liquidity risk, and develop recommendations as needed.
B. Refine and implement a liquidity stress testing framework proposal for consideration by the Financial Condition (E) Committee.
C. Continue to develop and administer data collection tools, leveraging existing data where feasible, to provide the Financial Stability (EX) Task Force with meaningful macroprudential information regarding how the insurance sector is navigating market conditions affected by the COVID-19 pandemic.

MEMBERSHIP
Liquidity Assessment (E) Subgroup *of*
the Financial Stability (E) Task Force

Justin Schrader, Chair	Nebraska
Kathy Belfi/John Loughran	Connecticut
Philip Barlow	District of Columbia
Ray Spudeck	Florida
Shannon Whalen	Illinois
Carrie Mears	Iowa
Fred Andersen	Minnesota
John Rehagen	Missouri
Mike Boerner/Jamie Walker	Texas

NAIC Support Staff: Todd Sells/Tim Nauheimer

NAIC National Association of Insurance Commissioners & The Center for Insurance Policy and Research

To: Financial Stability (EX) Task Force

From: Receivership and Insolvency (E) Task Force

Re: Report on Macroprudential Initiative (MPI) Referral

Date: November 19, 2020

The following report summarizes the conclusions of the Receivership and Insolvency (E) Task Force (RITF) in response to the Macroprudential Initiative (MPI) referral on recovery and resolution. While the RITF has completed its recommendations, the RITF will conduct further work on the issues as described below.

1. Evaluate recovery and resolution laws, guidance, and tools, and determine whether they incorporate best practices with respect to financial stability

The Receiver's powers under laws based on the *Insurer Receivership Model Act* Model #555 (IRMA) and its predecessor, the *Insurer Rehabilitation and Liquidation Model Act* (IRLMA), in conjunction with the authority granted to the Receiver by court orders, generally provide the powers described in:

- International Association of Insurance Supervisors (IAIS) Insurance Core Principle (ICP) 12, *Exit from the Market and Resolution*;
- Common Framework for the supervision of Internationally Active Insurance Groups (ComFrame) material integrated into ICP 12; and
- Financial Stability Board (FSB) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (KAs).

While powers under state laws comport with the ICPs, ComFrame, and the KAs, in some cases the powers are implicit rather than explicit. The RITF reviewed current laws with respect the following issues:

a. Bridge Institutions

State receivership laws do not expressly provide for the establishment of a bridge institution (Bridge), but the Receiver may establish a Bridge under those laws. While a Bridge is typically not needed in a receivership, it could have the benefit of addressing an early termination on qualified financial contracts (QFCs). However, implementing a Bridge for this purpose would require a temporary stay on termination rights. As noted in Item 3 below, the current misalignments with Federal rules on the termination of master netting agreements for QFCs effectively precludes temporary stays on termination of QFCs in a receivership, thereby preventing the use of a Bridge for this purpose.

> *Conclusion: The Receivership Law (E) Working Group reviewed guidance in the* Receiver's Handbook for Insurance Company Insolvencies *(Receivers Handbook) and developed revisions to guidance regarding the use of bridge institutions and administration of QFCs in receivership and pre-receivership planning.*

b. Providing Continuity of Essential Services and Functions

KA 3.2 states that a resolution authority should have the power to ensure the continuity of essential services and functions by requiring companies in the group to continue providing services. Under ComFrame (CF) 12.7a, a resolution authority may take steps to provide continuity of essential services by requiring other entities within the IAIG (including non-regulated entities) to continue services. The following authority and tools were identified:

- The *Insurance Holding Company System Model Act* (#440) requires approval of affiliated transactions, allowing a regulator to identify agreements that could create obstacles in a receivership. The *Insurance Holding Company System Model Regulation* (#450), Section 19, provides that cost sharing and management agreements specify if the insurer is placed in receivership that an affiliate has no automatic right to terminate the agreement.
- The Receiver can take action against a provider that refuses to continue services under a contract, or seek an order requiring it to turn over records. In some circumstances, such as a situation where an affiliate providing services is inextricably intertwined with the insurer, action can be taken to place the affiliate into receivership.

It was noted that some of these remedies might not address the immediate need to continue services in some cases. Therefore, the Task Force delegated further work on this topic to the Receivership Law (E) Working Group.

> *Conclusion: The Receivership Law (E) Working Group is developing, among other solutions, revisions to Models 440 and 450 to address remedies to ensure continuity of essential services and functions to an insurer in receivership by other affiliated entities in a holding company group, including non-regulated entities. The Model Law Request to develop revisions to Models 440 and 450 was adopted by Executive (EX) Committee in August 2020. The Working Group expects to finalize its work in this area in 2021.*

c. <u>Variances in States' Receivership Laws</u>

The RITF recognized that few states have adopted IRMA, and most have laws based on IRLMA or prior models. In 2017, the Financial Condition (E) Committee issued a memorandum to states to consider adoption of certain provisions of IRMA.[1] The RITF further identified eight key areas within receivership and guaranty fund law that it encourages states to adopt. The key areas include: conflicts of law; continuation of coverage; priority of distribution; stays and injunctions; ancillary conservation of foreign insurers; domiciliary receivers in other states; treatment of large deductible workers compensation policies; and the 2017 revisions to the *Life and Health Insurance Guaranty Association Model Act* (#520). The RITF also determined that some states may require an alternative solution to revise their laws for stays, injunctions and "full faith and credit" provisions. Therefore, the RITF recommends redefining "reciprocal state" in states' receivership law as an optional solution. The RITF concluded the following:

> *Conclusion:*
> - *The RITF developed a Model Guideline defining "reciprocal state" that was released for exposure at the Nov. 19, 2020, virtual meeting, and which will be considered for adoption in 2021.*
> - *The RITF will work towards educating states on key areas of receivership and guaranty fund laws that enhance efficiencies and effectiveness of the receivership process, as identified through this workstream, including related new Model Guidelines adopted by the NAIC, outreach to states' legal staff and other educational opportunities.*
> - *The RITF formed an ad hoc group to discuss Financial Regulation Standards and Accreditation Program Part A standards for receivership and guaranty fund laws and will take any recommendations from the ad hoc group under consideration in the future.*

2. Evaluate recovery and resolution planning tools for systemically important cross-border U.S. groups

The RITF determined that many recovery and resolution planning topics in the KAs and ComFrame are generally covered in the guidance for pre-receivership planning in the Receiver's Handbook. Additionally, some topics were identified that may be captured elsewhere within the US solvency monitoring frameworks (e.g., ORSA, Supervisory Colleges, Crisis Management Groups, Examinations, etc.). The RITF found that:
- The Dodd Frank Act's provisions for resolution planning address the requirements of the KAs and ComFrame for an insurer designated as a Systemically Important Financial Institution (SIFI). Other jurisdictions may have similar planning requirements for international groups.
- The requirements in state laws for corrective action plans under risk-based capital (RBC) laws and hazardous financial condition laws may satisfy this requirement for insurers that fall short of the applicable RBC solvency benchmarks, or otherwise trigger a corrective action requirement.

[1] https://naic-cms.org/sites/default/files/inline-files/cmte_e_receivership_related_170717_committee_recommendation.pdf

- Regarding crisis management groups and crisis management planning, the NAIC *Insurance Holding Company System Model Act* (#440) Section 7 provides the commissioner with the authority to develop crisis management plans as part of supervisory colleges. Further, Model 440 Section 7.1, provides for authority for the commissioner to act as the group-wide supervisor of internationally active insurance groups (IAIG) and engage in group-wide supervision activities as outlined in the model, though not explicit to recovery and resolution plans. Additionally, the NAIC *Financial Analysis Handbook* contains guidance and a template for a crisis management plan. This authority and guidance provide states with the flexibility to discuss the necessity for crisis management plans within supervisory colleges and/or crisis management groups and to make the determination to develop such plans on a case-by-case basis.

    Conclusion:
    - *The RITF agreed that consideration of imposing recovery plan reporting requirements on insurers that are not in financial distress is outside the scope of the RITF and may require consideration by U.S. group-wide supervisors of IAIGs.*
    - *The Group Solvency Issues (E) Working Group is undertaking a project to update insurance regulatory guidance as it pertains to supervision of IAIGs under ComFrame, including guidance on crisis management groups. The RITF will provide input at the appropriate time to this work stream. The Working Group's project is expected to be completed in 2021.*
    - *The RITF will continue to review and provide input to the IAIS on recovery and resolution topics including the upcoming Application Paper on Resolution Powers and Planning.*

3. Evaluate whether there are misalignments between federal and state laws that could be an obstacle to effective and orderly recovery and resolutions for U.S. insurance groups

a. Temporarily Stay Early Termination Rights

The Task Force evaluated the impact of the federal rule recognizing temporary stays on terminating master netting agreements for qualified financial contracts (QFCs), which does not recognize stays in a state receivership proceeding. The regulators held discussions with federal banking authorities regarding the handling of QFCs and bridge institutions in banking resolutions. This information will be used to assess the utility of a stay on QFC terminations in an insurance receivership.

Conclusion:
- *In 2019, the NAIC adopted amendments to the Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts (#1556) to highlight the conflict with the federal rule to state insurance regulators who may be considering adoption of Guideline #1556.*
- *The Task Force adopted revisions to existing guidance for receiverships involving qualified financial contracts at the Nov. 19, 2020 virtual meeting.*

b. Taxes in Receivership and Federal Releases

The Task Force identified topics where guidance for taxes in receivership and federal releases should be drafted in the Receiver's Handbook.

Conclusion: The RITF adopted revisions to the Receiver's Handbook for guidance on taxes in receivership and federal releases at the 2020 Summer National Meeting.

National Association of Insurance Commissioners
& The Center for Insurance Policy and Research

MEMORANDUM

To: Financial Condition (E) Committee

From: Financial Stability (E) Task Force

Date: February __, 2021

Re: 2020 Revisions to *Insurance Holding Company System Model Act* (#440)

Executive Summary

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

Post-financial crisis, regulators from all financial sectors across the globe recognized the need for macroprudential surveillance and tools to address macroprudential risks. While the solvency framework established and managed by the Financial Condition (E) Committee thoroughly addresses legal entity insurers and insurance groups, there was no group with a macroprudential scope. This Task Force was created to fill this gap, and in 2017 was charged to "analyze existing post-financial crisis regulatory reforms for their application in identifying macroprudential trends, including identifying possible areas of improvement or gaps, and propose . . . enhancements and/or additions to further improve the ability of state insurance regulators and industry to address macroprudential impacts." The Task Force created the NAIC Macroprudential Initiative (MPI) to focus its efforts in four key areas: liquidity risk, recovery and resolution, capital stress testing, and exposure concentrations. Liquidity risk was consistently recognized as a key macroprudential risk by federal and international regulatory agencies, and there were several attempts to assess potential market impacts emanating from a liquidity stress in the insurance sector. Many of these analyses relied heavily on anecdotal assumptions and observations from behaviors of other financial sectors.

In order to provide more evidence-based analyses, the Task Force decided to develop a LST for large life insurers that would aim to capture the impact on the broader financial markets of aggregate asset sales under a liquidity stress event. Unlike capital adequacy, which has risk-based capital as a standardized legal entity capital assessment tool and the newly created Group Capital Calculation to provide a capital analysis tool at the group level, there is no regulatory liquidity assessment or stress tool. The Task Force focused on large life insurers due to the long-term cash buildup involved in many life insurance contracts and the potential for large scale liquidation of assets, not because liquidity risk does not exist in other insurance segments. Thus, the primary goal of the LST is to provide quantitative as well as qualitative insights for macroprudential surveillance, such as identifying the amount of asset sales that could occur during a specific stress scenario; but it will also aid micro prudential regulation as well. Because this stress testing is complex and resource-intensive, a set of scope criteria were developed to identify life insurers with large balances of activities assumed to be highly correlated with liquidity risk; thus, many life insurers will not be subject to the LST.

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

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

Macroprudential risks can directly impact regulated legal entity insurers and groups, and/or can emanate from or be amplified by these insurers and transmitted externally. The NAIC solvency surveillance framework must address macroprudential risks to ensure that the companies states regulate remain financially strong for the protection of policyholders, while serving as a stabilizing force to contribute to financial stability, including in stressed financial markets. The LST is the first new tool developed for the macroprudential program within the financial solvency framework.

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

The Financial Stability Task Force believes that all states that are the lead state for a group subject to the LST should be required to adopt the model revisions. The LST is a tool intended to help assess the impacts the life insurance industry can have on the broader financial markets in a time of stress. Ideally, the tool would have been required of all life insurance groups, but this was not possible due to the complexity and resources required to accomplish such liquidity stress testing. Thus, the LST uses a set of scope criteria to identify those life insurers with significant amounts in activities assumed to have high liquidity risk, thus representing the larger portion of the life insurance industry in terms of liquidity risk rather than representing the entire life insurance industry. If a scoped-in life insurance group was not subject to the LST because a state did not adopt the model revisions, this would significantly reduce the ability of the NAIC to represent the results as truly macroprudential and reflective of the majority of risks of the life insurance sector. Additionally, the LST results will be helpful to the lead states in their group supervision efforts as well.

Though not every state will be the lead state of a scoped-in group, the Task Force still believes the model revisions for the LST should be adopted in every state. It is fairly common for legal entity insurers to move from one group to another, impacting the group dynamics including the lead state determination, and each state should have the LST in their statutes to ensure they will be prepared for any future appointment as lead state. Also, even without legal entities changing groups, business acquisition and operational changes within existing groups might subject a previously excluded group to the LST. Therefore, it is recommended that that the new significant elements apply to all states.

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

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

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

The current accreditation standard for Model #440 and Model #450 requires state adoption on a substantially similar basis. Therefore, the Financial Stability (EX) Task Force supports the attached proposed significant elements (Attachment A) be adopted by NAIC-accredited jurisdictions in a "substantially similar" manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Financial Stability (EX) Task Force recommends that the accreditation standard become effective Nov. 7, 2022, concurrent with the Group Capital Calculation revisions to the model, with enforcement of the standard to commence Jan. 1, 2023.

There were also revisions made to Section 8 of Model #440 regarding Confidential Treatment. The Financial Stability (EX) Task Force strongly supports the use of language similar to that contained in Section 8G of Model #440. This language was considered very critical to the LST as its very important that members of the insurance industry (or regulators) not be allowed to make the results of the LST public in any way as they are designed as regulatory-only tools using complex assumptions for potential future stress events and the results could easily be misinterpreted and misrepresented by other users, causing true financial harm to the insurers.

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

The NAIC has not performed a cost/benefit analysis with respect to the 2020 revisions to Model #440, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, the LST scope criteria selects the larger, more complex life insurers, and all of these already perform some form of internal liquidity stress tests. While there are regulatory requirements for inputs and outputs, truly significant costs are avoided by using their existing internal stress testing systems instead of specifying a regulatory model.

6. Insurance Holding Company Systems

State law should contain the NAIC *Insurance Holding Company System Regulatory Act* (#440), or an act substantially similar.

Insurance Holding Company Systems – continued

Changes to Existing

k. Additions to the filing requirements for the enterprise risk filing specified in Section 4L(1) of the Model #440 (see next item).

New

c. Define "NAIC Liquidity Stress Test Framework" similar to that in Section 1K?

d. Define "Scope Criteria" similar to that in Section 1M?

l. Filing requirements for the liquidity stress test filing similar to those specified in Section 4L(3) of Model #440:

i. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's Liquidity Stress Test to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the *Financial Analysis Handbook* similar to Section 4L(3)?

ii. Insurers meeting at least one threshold of the Scope Criteria for a specific data year are scoped into that year's NAIC Liquidity Stress Test Framework unless the lead state, after consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year similar to Section 4L(3)(a)? Insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year?

iii. Provision requiring compliance with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for the specific data year and any lead state insurance commissioner determinations in consultation with the Financial Stability Task Force or its successor, provided within the Framework similar to Section 4L(3)(b)?

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

Financial Security for Life

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February 12, 2021

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Re: NAIC Financial Stability Task Force's February 2021 Memo regarding revisions to the Insurance Holding Company System Model Act (#440)

Dear Commissioner Caride,

The ACLI appreciates the opportunity to respond to the NAIC Financial Stability Task Force's February 2021 Memo regarding revisions to the Insurance Holding Company System Model Act (#440). The memo addresses revisions for the purpose of implementing a Liquidity Stress Test (LST) applicable to certain large life insurance groups for purposes of macroprudential surveillance. We strongly support the incorporation of the LST as part of the accreditation standards.

ACLI supports the adoption of "substantially similar" confidentiality provisions.

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

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

- provisions for maintaining the confidentiality of LST (or Group Capital Calculation) materials submitted to the Department (section 8(A)(1) and (2));
- deem section 8(A)(2) a "significant element", as section 8(A)(2) protects the confidentiality of liquidity stress test results and data;
- provisions for information sharing agreements that maintain the confidential and privileged status of the documents (section 8(C)(4)(a));
- provisions exclude materials or information collected through the liquidity stress test from being stored in a permanent database once the initial analysis is completed (8(C)(4)(c)); and
- provisions requiring notification and identification of third-party consultants who will receive LST materials (8(C)(4)(f))

Similar confidentiality protections, such as the from the Own Risk Solvency Act (#550) are already afforded status as "significant elements" of the "substantially similar" accreditation status.[1] Given that most states have already enacted similar confidentiality provisions for ORSA materials – it is reasonable to expect the same levels of confidentiality for the LST and GCC related materials.

Conclusion

Thank you for the opportunity to share our comments on the exposed Financial Stability Task Force memo. ACLI always appreciates the chance to engage with the NAIC on this important issue. If you have any questions or concerns about our comments, please feel free to contact us. We look forward to continuing to work together in the future.

Sincerely,

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

Cc: Todd Sells, Financial Regulatory Policy and Data
Tim Nauheimer, Senior Financial Markets Advisor – Macroprudential Surveillance