

**JOINT SUBMISSION TO RECEIVERSHIP LAW (E) WORKING GROUP
DRAFT AMENDMENTS TO MODELS #440 & #450**

February 25, 2021

NOLHGA and NCIGF previously provided comments in response to the exposure of draft amendments to Models #440 and #450. During the Working Group's call on February 4, 2021, an interested party raised concerns about Section 5A(6) of Model #440, a section on which NOLHGA and NCIGF previously commented. As a proposed response to those concerns, NOLHGA and NCIGF offer the following edits to the text of Section 5A(6) and propose an accompanying drafting note.

Model #440 Section 5A(6)

- (6) Supervision, seizure, conservatorship, or receivership proceedings.
- (a) Any affiliate that is party to an agreement or contract with a domestic insurer pursuant to Subsection A(2)(d), shall be subject to the jurisdiction of any supervision, seizure, conservatorship, or receivership proceedings against the insurer, and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to [supervision and receivership acts] for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that agreements, relationship, and dealings with the insurer, if the services provided by the affiliate to the insurer:
- (i) are an integral part of the insurer's operations, including but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or
- (ii) are essential to the insurer's ability to fulfil its obligations under insurance policies.
- (b) The Commissioner may require that an Any agreement or contract pursuant to Subsection A(2)(d) for the provision of services described in (i) and (ii) above ~~must~~ specify that the affiliate consents to the jurisdiction as set forth in this Section 5A(6).

DRAFTING NOTE: Section 5A(6) is not intended to subject affiliates, in particular those that may be subject to regulation in other jurisdictions, to the general jurisdiction of pending supervision, seizure, conservation or receivership court proceedings in this state, or the general authority of a supervisor, conservator or receiver for a domestic

insurer. Rather, the jurisdiction and authority conferred by this provision is limited to ensuring that a domestic insurer continues to receive essential services from an affiliate that it has contracted with to provide such services, in accordance with the terms of the contract and applicable law, during the aforementioned proceedings. Section 5A(6)(b) gives the Commissioner discretion to require documentation of an affiliate's consent to this jurisdiction in the agreement or contract. In determining appropriate circumstances when a Commissioner may require such provision, the Commissioner should consider the scope and materiality to the domestic insurer of the contract, the nature of the holding company system, and whether examination or investigation of the domestic insurer warrant requirement of such a provision.

We appreciate your consideration of these proposed changes, and we look forward to contributing to the Working Group's continued discussions.

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