

3/01/21

*WebEx Meeting*

**RECEIVERSHIP LAW (E) WORKING GROUP**

**Thursday, March 4, 2021**

**2:00 p.m. Eastern / 11:00 p.m. Central / 12:00 p.m. Mountain / 11:00 a.m. Pacific**

**ROLL CALL**

Kevin Baldwin, Co-Chair	Illinois	Tom Travis	Louisiana
Laura Lyon Slaymaker, Co-Chair	Pennsylvania	Robert Wake	Maine
Steve Uhrynowycz	Arkansas	Christopher Joyce	Massachusetts
Joe Holloway / Jack Hom	California	James Gerber	Michigan
Rolf Kaumann	Colorado	Shelly Forrest	Missouri
Jared Kosky	Connecticut	Justin Schrader	Nebraska
Toma Wilkerson	Florida	James Kennedy	Texas
Kim Cross	Iowa	Melanie Anderson	Washington

NAIC Support Staff: Jane Koenigsman

**AGENDA**

1. Consider Adoption of its Feb. 4, 2021 Minutes Attachment A
2. Discuss Comments Received on Draft Amendments to Models #440 and #450
  - Comment Letters Attachment B
  - Model #440, Sections 5 and 11 Attachment C
  - Model #450, Section 19 Attachment D
3. Consider Adoption of Amendments to Models #440 and #450 Attachments C & D
4. Any Other Matters Brought Before the Working Group
5. Adjourn

# ATTACHMENT A

## WORKING GROUP MINUTES

Draft: 2/26/21

Receivership Law (E) Working Group  
Virtual Meeting  
February 4, 2021

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met Feb. 4, 2021. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Steve Uhrynysz (AR); Joe Holloway and Jack Hom (CA); Jared Kosky (CT); Toma Wilkerson (FL); Robert Koppin (IA); Christopher Joyce (MA); Robert Wake (ME); James Gerber (MI); Shelley Forrest (MO); Lindsay Crawford (NE); James Kennedy (TX); and Melanie Anderson (WA).

1. Adopted its Dec. 17, 2020, Minutes

The Working Group met Dec. 17, 2020, and exposed draft amendments to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) for a 42-day public comment period ending Jan. 29.

Ms. Crawford made a motion, seconded by Ms. Forrest, to adopt the Working Group's Dec. 17, 2020, minutes (Attachment x-x). The motion passed unanimously.

2. Discussed Comments Received on Amendments to Model #440 and Model #450

Ms. Slaymaker said during its Dec. 17, 2020, meeting, the Working Group exposed draft amendments to Model #440 and Model #450 for a 42-day public comment period ending Jan. 29. The amendments are intended to ensure the continuity of essential services and functions by affiliates in receivership. Comments were received from Florida; the American Council of Life Insurers (ACLI); America's Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association (BCBSA); Arbor Strategies LLC; Morgan, Lewis & Bockius LLP; and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF) (Attachment x-x).

a. Model #440, Section 5(A)(1)(g) and Section 11(D)

Ms. Slaymaker said the proposed addition of Section 5(A)(1)(g) places a bond requirement on affiliated transactions, the amount of which would be at the discretion of the commissioner. The consensus of interested party comments opposes the amendment, as it places the requirement on all insurers, most of which are not financially troubled and would not result in receivership; it may create competitive disadvantages; it implies bias; and it creates an additional cost to insurers.

Chris Petersen (Arbor Strategies LLC) said he does not understand why affiliated contracts are differentiated from contracts with other companies. He said health care groups are very integrated, and performance bonds could be very expensive; i.e., 1–3% of the cost. He suggested that there may be a better place to regulate this issue.

Joseph E. Zolecki (BCBSA) said the number of receiverships has declined over the years, and it represents a very small percentage of companies, which highlights that the solvency monitoring regime is working. He said solvency initiatives over the years have built up tools for financial solvency regulation and the identification of troubled companies. Risk-based capital (RBC) allows for early intervention and the authority to take corrective measures, thereby minimizing the adverse impact on solvency. Mr. Zolecki said he has questions about affiliate versus non-affiliate. He said if the cost of a performance bond is offset by the value to receivers, then he believes the bond requirement should be applicable only to those insurers that pose an imminent risk of insolvency. He said strong carriers should be exempt from bond requirements, and they should not be penalized because there might be a misunderstanding that all organizations with vertical integration pose a greater risk. He said consumers should be shielded from additional costs. He said the BCBSA might propose that the Working Group consider a separate company action level RBC threshold for performance bonds with direction from the Capital Adequacy (E) Task Force. He said a lot of qualitative and quantitative triggers have been added besides RBC for state insurance regulators' use with more information on groups and insurers as part of the risk-focused analysis and examination processes. He recommends a separate trigger for bond requirements that is supported by the solvency monitoring process, which is tailored to the insurers with the highest level of insolvency, and does not unduly penalize ongoing strong carriers because of their level of vertical integration. He asked why this issue is not being addressed in the *Insurer Receivership Model Act* (#555).

Mr. Gerber said the bond should be at the commissioner's discretion based on the solvency items, just as the BCBSA mentioned. He agreed that it should not be placed on all insurers. He said some states currently require third-party administrators (TPAs) to have performance bonds be licensed. He explained his experience as a receiver performing work in a receivership that a TPA would perform, where he had to get licensed as a TPA. Some states required him to put up a performance bond to be licensed as a TPA. Mr. Petersen asked if the bond requirement was a one-time bond or a bond for each contract. Mr. Gerber said it was on a state-by-state basis; the bond was not on each contract, and it was renewable annually when the license was renewed. He said if the commissioner has discretion, based on analysis or RBC as mentioned, he does not believe it would result in financially stable companies having to put up a bond for their affiliated contracts. Mr. Petersen said the proposed amendments require a bond for each contract. He said some of the suggestions seem reasonable, and he suggested clarification for the difference between a bond to get a license versus a bond on every new contract. Mr. Gerber said one size does not fit all, so if the commissioner has discretion, then the bond requirement could be limited to one contract or one affiliate and the commissioner could determine the type of bond. Mr. Petersen said that would be an improvement over the current proposed language.

Mr. Kennedy suggested expanding the drafting note for this paragraph to explain the circumstances in which a commissioner may decide to require a bond to address these concerns.

Mr. Baldwin said he agrees with Mr. Kennedy that we can address the comments with some redrafting.

Mr. Wake agreed, and he said the language should not create too much disparity between intra-group transactions and outside contractors, such that it would push companies to use outside contractors. He said it might be worth considering in some cases if we need to tighten up the standards for outside contractors.

Ms. Wilkerson said the paragraph was not intended to punish entities that use affiliates; but if it is a third-party agreement, there is due diligence performed to determine the financial status of that third party. She said it is not typical that the insurer is an outside party's only revenue stream. She said where the insurer is the affiliate's only revenue stream, once the insurer is in liquidation and the revenue stream is gone, which is usually a percentage of premium, there is no way to run-off that business. She said at the point that there is a solvency issue, the commissioner may be discouraged from adding the burden of obtaining the bond, which is why it was drafted to have the bond up front. She said the trigger for the bond could be if the affiliate is a single revenue stream.

Ms. Slaymaker suggested that NAIC staff draft some revisions to tighten up the provision.

b. Model #440, Section 11(D)

Ms. Slaymaker said one comment was received from the ACLI on the related bond provision in Section 11(D). She said the ACLI believes that the remedy is unlikely to be used because an insurer would simply seek regulatory approval of the transaction after the fact. Lauren Sarper (Prudential) said she does not oppose the provision in Section 11(D), but to have a bond for an agreement that is not properly approved might be punitive. She said insurers pursue regulatory approval on these items after the fact. Andrew Hughes (Prudential) said a commissioner has the authority to disapprove an agreement if it is not within the interest of policyholders and the bond requirement is therefore not necessary. Ms. Slaymaker suggested that NAIC staff draft some revisions to tighten up the provision like Section 5(A)(1)(g).

c. Model #440, Section 5(A)(1)(h)

Ms. Slaymaker said the proposed addition of Section 5(A)(1)(h) states that records and data held by the affiliate is the property of the insurer. She said comments were received from the ACLI questioning the last two sentences of the provision. A comment from Florida suggests that additional wording relates to separating records and data "at no cost to the insurer." She said Morgan, Lewis & Bockius LLP suggests alternative language.

Harold S. Horwich (Morgan, Lewis & Bockius LLP) said just saying the data is property of the insurer and that the data will be made available is not enough. The paragraph needs to say the state insurance regulator should be able to get a complete set of data and that at the point when the affiliate is no longer performing services, the affiliate should be unable to use that data for its own purposes. He said the draft is not wrong, but it does not reflect how the data is maintained in an affiliate's system.

Ms. Slaymaker said Florida suggested adding "at no cost to the insurer" to the proposed paragraph. Ms. Wilkerson explained an example where the affiliate did business with multiple insurers. At the point of liquidation, it was important that the receiver

have access to see the claims, coverage and policyholder records of the insurer even while the data was being extracted. If the data was not segregated, the receiver could see other insurers' data, which was not the intent, but it was an issue.

Patrick Cantilo (Cantilo & Bennett LLP) said once it is qualified, all the records and data are the property of the insurer; other tools will accomplish the purpose being discussed. The typical receivership order will grant the receiver complete access to all the company's records and property. The order typically authorizes the commissioner to exercise exclusive or shared control, if appropriate. Characterizing the records as property of the insurer triggers other available tools, so additional language may not be required.

Ms. Sarper said it is unlikely that the insurer would be able to access the affiliate's systems. There may be conflicting legal rights. It is reasonable as Mr. Horwich suggested, that the receiver can get a complete set of data. She said regarding the "at no cost" language suggested by Florida, those costs would be passed on to the insurer directly or indirectly.

Ms. Slaymaker requested that NAIC staff draft some revisions to this section based on the discussion.

d. Model #440, Section 5(A)(1)(i)

Mr. Baldwin said the proposed addition of Section 5(A)(1)(i) addresses premiums or other funds belonging to the insurer, and it specifies that the affiliate shall not commingle the insurer's premium and funds with other accounts. He said comments from interested parties on this section oppose the commingling provision. He said the ACLI's comment indicates that it is unlikely and impractical. He said AHIP and the BCBSA opposed the commingling language, and they suggested instead that there should be an ability to identify the various funds' ownership rights, which may already be covered in the previous section. He said Arbor Strategies LLC opposes the language, and he asked for clarity on what is included in "other funds." He said the comments from Morgan, Lewis & Bockius LLP encompass several concepts, including that the amendments related to comingling are not clear as to whether the rights being established eliminate the contractual offset rights. He said one commentator said the term "other funds" may be vague.

Mr. Horwich said if what is meant in this paragraph is that when a group gets into financial trouble, the state insurance regulator can step in and take the premium regardless of rights of the affiliate, the provision should state that. However, he said he is not advocating for that. He said for example, bank accounts and homes may be the exclusive property of a person, but the bank has the right to offset and a valid interest in the mortgage. Mr. Baldwin asked if regarding what Mr. Horwich is referring to, this provision is a general requirement and the precision is in the state's receivership act. Also, the provisions within the receivership order address the precision. He said language in the receivership act would not eliminate another party's lien or offset rights. He suggested more clarity in this language.

Mr. Cantilo said characterizing the premiums and funds as exclusive property does not address either way the applicability of offsets. Calling it exclusive property gives the receiver some right to the premium and other funds. The counterparty may also have contractual rights, and whether those rights are eligible for offset is then governed by the provisions of the liquidation act, which promulgates several requirements before credits and debits may be offset.

Mr. Baldwin said we will consider some revisions to this section.

e. Model #440, Section 5(A)(6)

Mr. Baldwin said Section 5(A)(6) is the new language that addresses that the affiliated agreement specifies that the affiliates consent to the receivership court. He said the ACLI had a comment on this section. Ms. Sarper said she supports the goals of the section and especially to consolidate court proceedings in a single jurisdiction, but she asked how this section might handle certain situations where affiliates may not recognize the jurisdiction even though they sign the agreements and how this might work with certain assets management affiliates and any regulatory conflicts with the asset manager's state insurance regulators (e.g., Financial Industry Regulatory Authority (FINRA) or the U.S. Securities and Exchange Commission [SEC]). The state insurance regulators might want to give some additional consideration to that point. The goal is to reduce potential delays and concentrate everything in a single court jurisdiction, so we want to avoid potential conflicts that could make the process more complicated.

Bill O'Sullivan (NOLHGA) said the NOLHGA has been thinking about these issues, and he offered his assistance to address these issues.

f. Model #450, Section 19(B), Paragraphs 6, 7, 11(b) and 13

Mr. Baldwin said Section 19 addresses the provisions that should be included in an affiliated transaction agreement. He said the comments on several paragraphs in this section relate to providing the records and data “at no cost to the insurer.” The commentators ask if this is an unreasonable or impractical expectation. Ms. Wilkerson said the receiver should not be charged a fee to separate comingled records that should be segregated or identifiable. The receiver needs to have immediate access to the data. Mr. Baldwin agrees that a receiver does not want to be told by an affiliate that before the receiver can have access, there must be an expansive and expensive process to separate the comingled records. Ms. Slaymaker said fair and reasonable costs associated with the work of transferring the data are acceptable. Mr. Kennedy agreed that receivers should not have to pay to separate comingled data and records.

Mr. Cantilo said in a conventional way, the insurer’s data and records would be separated automatically and be immediately available to the receiver at no cost. The decision by the company to consolidate records with an affiliate may be economically advantageous to the company. He said he believes that the company derives the benefit from that comingling during the operating period, and it should not serve as justification for imposing on the receiver a cost that the receiver would not face if the data had not been comingled. He said he has had experiences where gaining access to comingled records was extremely expensive and time consuming and required legal proceedings.

Mr. Baldwin said we will consider some revisions to this section to address Florida’s concern and make sure it is more precise and reasonable.

g. Model #450, Section 19(B)(15)

Mr. Baldwin said the proposed amendments to this paragraph were added to address cooperation prior to triggering a guaranty association. The NOLHGA and the NCIGF offered technical edits in their comment, primarily to replace “covered” with “eligible for coverage.” Mr. Baldwin said he agrees that the technical edits are reasonable. Ms. Slaymaker and Ms. Wilkerson agreed.

3. Exposed Amendments to Model #440 and Model #450

Mr. Baldwin said NAIC staff and members of the Working Group will draft revisions to the amendments based on the discussion on this call. The revisions will be exposed for a 14-day public comment period beginning on the date that staff distributes the updated amendments to members, interested state insurance regulators, and interested parties.

Having no further business, the Receivership Law (E) Working Group adjourned.

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ATTACHMENT B

COMMENT LETTERS

February 26, 2021

Kevin Baldwin, Co-Chair  
Laura Lyon Slaymaker, Co-Chair  
Receivership Law (E) Working Group  
National Association of Insurance Commissioners  
1100 Walnut Street  
Suite 1500  
Kansas City, MO 64106-2197

Dear Co-Chairs Baldwin and Slaymaker:

The American Property Casualty Insurance Association (APCIA) takes this opportunity to offer comments on the proposed amendments to Model #440 relating to the continuity of essential services and functions through affiliated intercompany agreements during an insurer receivership.

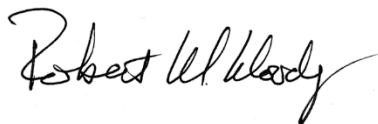
Section 5A(g) gives the commissioner the discretion to direct an insurer to require a bond of an affiliated service provider but places no limits whatsoever on the commissioner's discretion. The Working Group has proposed some new language in the drafting note setting forth the types of things the commissioner should consider in deciding whether and how to exercise the discretion to require a bond. APCIA believes the proposed drafting note language is helpful and we support its inclusion. However, APCIA believes that an additional amendment is needed to the text of Section 5A(g) itself to clarify that the amount of the bond required may not exceed the value of the contract(s) or agreement(s) in any one year. We therefore propose that that the language be amended as follows:

(g) *The insurer shall require the affiliated person(s) to obtain and maintain a bond for the protection of the insurer for the duration of the contract(s) or agreement(s) if required at the discretion of the commissioner at any time. The bond amount should be no less than the amount specified by the commissioner, which amount shall not exceed the value of the contract(s) or agreement(s) in any one year.*

APCIA believes this should provide adequate protection to the insurer or receiver while ensuring that the bond requirement will not be excessive and unreasonably burdensome.

APCIA appreciates the Working Group's consideration of this proposed addition and we would be pleased to respond to any questions or concerns Working Group members may have.

Sincerely,



Robert W. Woody



# Arbor Strategies, LLC

**Chris Petersen**

804-916-1728

[cpetersen@arborstrategies.com](mailto:cpetersen@arborstrategies.com)

February 26, 2021

VIA EMAIL

Mr. Kevin Baldwin  
Illinois Department of Insurance  
State of Illinois  
320 W. Washington St., 4th Floor  
Springfield, Illinois 62767-000 1

Ms. Laura Lyon Slaymaker  
Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, Pennsylvania 17120

Via email to Jane Koenigsman, NAIC

Re: Amendments to Model 440

Dear Mr. Baldwin and Ms Slaymaker:

I write on behalf of a coalition of health insurance companies, including Anthem, Cigna, CVS Health and UnitedHealth Group, who thank you for the opportunity to provide comments regarding the revised amendments to the Insurance Holding Company System Regulatory Act (“Model 440”) that the Receivership Law Working Group (“Working Group”) recently exposed. As noted in our earlier comment letters, the coalition members agree that it is important to protect consumers in the event of a rehabilitation or receivership. We recognize the challenges receivers face in these instances and support amendments that would bolster a receiver’s ability to protect the public. It is important, however, that these amendments do not, at the same time, harm consumers who are members of financially stable, ongoing concerns. Unfortunately, the revised language regarding bonding requirements do exactly that.

As we noted in greater detail in our letter dated January 29, 2021 (attached) imposing bonding requirements on stable, solvent health insurance groups places unnecessary financial burdens on the insurers and their members through increased premiums to finance these

unnecessary bonding requirements. The provisions of the latest draft, which grant the state the unfettered discretion to impose any bond requirement at any time, in any amount, for any reason or for no reason, are unwise for a number of reasons. First, they do not recognize that the environment in the health insurance arena has long been toward health and wellness integration. Allowing the state to impose a bond requirement on internally integrated health care systems creates a perverse incentive for carriers to unwind their integration and avoid the potentially extreme bond cost requirements. This is, in effect, a regulatory tax on integration in the health care system.

Second, the bond requirement is unknown and unknowable, and bears no relation to the importance of the services to the operation, the riskiness of the business or the insurer, and ultimately, for the vast majority of insurers subject to these provisions, provides no benefits to policyholders or consumers. It will, however, create layers of costs that will ultimately be borne by those policyholders. As the U.S. regulatory system attempts to move toward a more risk-based solvency oversight system, it makes no sense to create a potentially massive financial requirement that has no rational basis in the risk posed by an enterprise. In addition, leaving the requirement completely to the discretion of insurance commissioners will necessarily result in uneven application and politicize the bonding requirements. Finally, the proposed amendment does not address the central issue of how to ensure that there are proper tools in place for receivers to address concerns with financially distress companies.

To the extent that bonding requirements remain in Model 440, we believe that the discretion to impose these requirements should be based on solvency triggers. The use of a solvency trigger ensures that the bonding requirements are only imposed on those insurers where additional protections are needed. Additionally, the use of solvency triggers also ensures that the bonding requirements are imposed at the point in time when additional protections are warranted. We recommend the following language as a better alternative as to when bonding requirements should be implemented:

(g) If an insurer subject to this Act is deemed to be in a hazardous financial condition as defined by [*insert citation for Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition*] or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the Commissioner may require the insurer or the affiliated person(s) to obtain and maintain a bond for the protection of the insurer for the duration of the contract(s) or agreement(s). The bond amount should be no less than the amount specified by the commissioner;

We also recommend that the NAIC amend the proposed draft noting at page 440-17 regarding the bonding requirements as follows:

**Drafting Note:** ~~The bond requirement is at the discretion of the commissioner.~~ The intent of the bond is to ensure the affiliated services provided under the contract(s) are fulfilled, which may be referred to as a “performance bond”. In determining appropriate circumstances when a commissioner may require a bond and in specifying an amount, the



**Arbor Strategies, LLC**

February 26, 2021

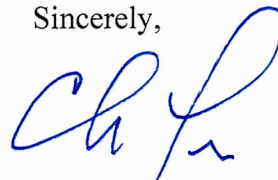
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commissioner should evaluate and consider whether an insurer subject to this act is in a hazardous financial condition or a condition that would be grounds for substantial regulatory action including supervision, conservation, or a delinquency proceeding. If it is, the bond requirement would be available as an additional regulatory remedy at the discretion of the commissioner. ~~their review of the contract and the affiliated person, analysis of the holding company system, and examination or investigation of the insurer to determine whether concerns exist currently or prospectively that warrant such a bond. For example, the commissioner may consider whether concerns exists with respect to the affiliated person's ability to fulfil the contract or agreement if the insurer is placed into liquidation.~~

The commissioner also has discretion to determine if a bond ~~is necessary and if so,~~ if it should be required for a single contract, multiple contracts, or contracts with a specific affiliated person rather than requiring bonds for each contract or agreement. Note that bonds under Section 5A(g) may not be needed in states that already require bonds for licensure of third-party administrators.

We thank you for the opportunity to provide our comments and look forward to continued discussions with the Working Group.

Sincerely,



Chris Petersen  
Arbor Strategies, LLC

cc: Jane Koenigsman

# Arbor Strategies, LLC

Chris Petersen  
804-916-1728  
[cpetersen@arborstrategies.com](mailto:cpetersen@arborstrategies.com)

January 29, 2021

Mr. Kevin Baldwin  
Illinois Department of Insurance  
State of Illinois  
320 W. Washington St., 4th Floor  
Springfield, Illinois 62767-0001

Ms. Laura Lyon Slaymaker  
Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, Pennsylvania 17120

Via email to Jane Koenigsman, NAIC

Re: Amendments to Models ##440/450

Dear Mr. Baldwin and Ms. Slaymaker:

I write on behalf of a coalition of health insurance companies, including Anthem, Cigna, CVS Health and UnitedHealth Group, who thank you for the opportunity to provide additional comments regarding the continuation of essential services through affiliated intercompany agreements for insurers in receivership. As we noted in our earlier comment letter of September 24, 2020, the coalition members agree that it is important to protect consumers in the event of a rehabilitation or receivership. We recognize the challenges that face receivers in these instances and support amendments that would bolster a receiver's ability to protect the public. It is important, however, that these amendments do not, at the same time, harm consumers who are members of financially stable, ongoing concerns.

The proposed amendments to Model #440, the *Insurance Holding Company System Regulatory Act*, will make far-reaching changes to the operations of holding companies, far beyond the receivership or rehabilitation arena. Every holding company, whether it is deemed to be at risk or not, will be required to post a bond for *all* affiliate contracts or agreements of an unknown, and unknowable, amount (Sec. 5.A.(a)(g)), they will be required to maintain separate accounts under



**Arbor Strategies, LLC**

January 29, 2021

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certain circumstances (Sec. 5.A.(a)(i)), and are required to subject themselves to a potentially unknown and unknowable state court jurisdiction.

We suggest that these provisions, in particular the bonding requirement, are unwise for a number of reasons. First, in the health insurance arena, the environmental trend has long been toward health and wellness integration. Health insurers of any size that are part of a holding company system have and will continue to move toward a more integrated business model that provides not only better health and wellness but also synergies and centralized functions. Centralized functions not only provide policyholders, clients and owners a benefit of scale but streamline insurer operations. Suggesting that every affiliate contract, regardless whether it is material, whether it is critical to the continued operations of the legal entity, or whether it is more or less likely to be necessary to the operations of a receiver, be subject to a bond is a blunt instrument that creates barriers for health carriers to provide services to their members and policyholders, and raises costs and complexity. Health carriers by their very nature have multiple subsidiaries and affiliates. There is a very real chilling effect that the financial burden of a potentially unlimited bonding requirement will have on health insurance operations. Simply the cost of monitoring and maintaining appropriate bonding requirements is a significant cost to companies for very little return and will provide no health or wellness benefits to our consumers to justify such a significant operational cost.

Second, the bonding requirement is unknown and unknowable, and bears no relation to the importance of the services to the operation, the riskiness of the business or the insurer, and ultimately, provides no benefits to policyholders or consumers. There is no reason to place this potentially unlimited and burdensome requirement on a solvent, ongoing operation and the consumers that it serves. Receivers have access to many tools during the course of an insolvency. This one is overly draconian and unnecessary. If a bond is necessary, then it should be necessary for *all* contracts, not just those with affiliates. We suggest that non-affiliate, third-party contracts are significantly more risky than those within an insurance holding company system.

Third, the requirement that every affiliate contract be subject to a bond is, in effect, an economic tax on integration. A regulatory scheme that favors non-integrated, free-standing licenses that outsource all relevant operations to external contracts is misguided. Those non-integrated services provided by non-integrated contracts are more, not less risky to the operations of an enterprise, yet this provision penalizes insurers for developing the more rational, safe business model. If a health insurer uses an affiliate to provide payment integrity services, there is less, not more risk to the insurer and its consumers than if those services were provided by an outside contractor with no affiliation to the holding company system. The purpose of creating integrated groups is precisely to have better control, and better economics for the enterprise. There is no reason the regulatory community should attempt to disincentivize these operations that provide significant savings and benefits to members and policyholders.

In addition to objections to the bonding requirements, we question the language in Sec. 5.A.(1)(i) that “premiums or other funds belonging to the insurer” in the hands of an affiliate may not be commingled. It is unclear what “other funds belonging to the insurer” may include. While we agree that premiums collected by a third party, whether affiliated or not, should be clearly

**Arbor Strategies, LLC**

January 29, 2021

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identified as belonging to the insurer on whose behalf they are collected, we request clarification about what other “funds” are included in this provision. We also suggest that Section 5 already requires that “the books, accounts and records of each party...shall be so maintained as to clearly and accurately disclose the nature and details of the transactions...” We question whether this new language in paragraph (i) is necessary.

We thank you for the opportunity to provide our comments on these amendments and look forward to continued discussions with the Working Group.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Chris Petersen". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Petersen".

Chris Petersen  
Arbor Strategies, LLC

Cc: Jane Koenigsman



February 26, 2021

Kevin Baldwin, Co-Chair  
Laura Lyon Slaymaker, Co-Chair  
Receivership Law (E) Working Group  
National Association of Insurance Commissioners

Via e-mail to Jane Koenigsman: [jkoenigsman@naic.org](mailto:jkoenigsman@naic.org)

**Re: “Essential Services” and Models #440 and #450**

Dear Mr. Baldwin and Ms. Slaymaker;

America’s Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association (BCBSA) welcome the opportunity to comment on the Receivership Law (E) Working Group’s revised and proposed revisions to the *Insurance Holding Company System Regulatory Act, Model #440*, re-exposed for comments on Feb. 4.

We appreciate the Working Group’s continued efforts and deliberative process to find feasible solutions that are satisfactory to all interested stakeholders. Our comments are focused on the proposed revisions in Section 5.A(1)(g), that would “*require the affiliated person(s) to obtain and maintain a bond for the protection of the insurer for the duration of the contract(s) or agreement(s) if required at the discretion of the commissioner at any time.*”

As noted in our Jan. 29 comment letter, we recommend that a better approach would be to limit the bonding requirement to a more targeted application, specifically for insurers in which there is some objective basis for receivership concern and a triggering event or circumstance. Following is suggested language that we propose for the working group’s consideration.

If an insurer subject to this Act is deemed to be in a hazardous financial condition as defined by [insert citation for Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition] then the Commissioner may require the insurer or the affiliated person(s) to obtain and maintain a bond for the protection of the insurer for the duration of the contract(s) or agreement(s).

The Commissioner’s review should consider, for example, whether concerns exist with respect to the affiliated person’s ability to fulfill the contract or agreement if the insurer were to be put into

liquidation. Once the insurer is deemed to be in a hazardous financial condition and a bond is necessary, the Commissioner has discretion to determine the bond amount and whether a bond should be required for a single contract, multiple contracts, or contracts only with a specific person(s).

Again, AHIP and BCBSA appreciate this opportunity to offer comments on this issue, and we look forward to working with you to find the most productive way forward.

Sincerely,

Bob Ridgeway  
Senior Government Relations Counsel  
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501-333-2621

Joe Zolecki  
Director, Financial Regulatory Services  
[Joseph.Zolecki@BCBSA.com](mailto:Joseph.Zolecki@BCBSA.com)  
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**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.

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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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# ATTACHMENT C

MODEL #440

## INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

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### Section 1. Definitions note

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

- A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

- C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- D. "Group-wide supervisor." The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

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- E. "Group Capital Calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.
- G. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

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

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

- H. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).
- I. "Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].
- J. "NAIC" means the National Association of Insurance Commissioners.
- K. "NAIC Liquidity Stress Test Framework." The "NAIC Liquidity Stress Test Framework" is a separate NAIC publication which includes a history of the NAIC's development of regulatory liquidity stress testing, the Scope Criteria applicable for a specific data year, and the Liquidity Stress Test instructions and reporting templates for a specific data year, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- L. "Person." A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.
- M. "Scope Criteria." The "Scope Criteria," as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.
- N. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.
- O. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

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

**Section 2. Subsidiaries of Insurers**

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

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

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

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer’s assets or fifty percent (50%) of the insurer’s surplus as regards policyholders, provided that after such investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:
- (a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
- (b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

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

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

- (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:     ].

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

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

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

- A. Filing Requirements.
- (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.
  - (2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.
  - (3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).

- (4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:
- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the “acquiring party”), and
    - (a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
    - (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;
  - (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer’s stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender’s ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;
  - (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
  - (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
  - (5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;
  - (6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
  - (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;



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- (8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
- (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;
- (11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

**Drafting Note:** An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L(1), for so long as control exists;
- (13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- (14) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

- (1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:
  - (a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
  - (b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:
    - (i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;
    - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and
    - (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
  - (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
  - (d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
  - (e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
  - (f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.
- (2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A

commissioner may attend such hearing, in person or by telecommunication.

- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.
- (5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

- (1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

**Drafting Note:** Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

- (2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

F. Violations. The following shall be violations of this section:

- (1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or
- (2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

### Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

A. Definitions. The following definitions shall apply for the purposes of this section only:

- (1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.
- (2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

B. Scope

- (1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

- (2) This section shall not apply to the following:
- (a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
  - (b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);
  - (c) The acquisition of already affiliated persons;
  - (d) An acquisition if, as an immediate result of the acquisition,
    - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
    - (ii) There would be no increase in any market share, or
    - (iii) In no market would
      - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
      - (II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;
  - (e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
  - (f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.
- C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 8 of this Act.
- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this

section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

- (2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

- (1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.

- (2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

- (a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

- (i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

- (ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

- (b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:
    - (i) There is a significant trend toward increased concentration in the market;
    - (ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
    - (iii) Another involved insurer's market is two percent (2%) or more.
  - (c) For the purposes of Section 3.1D(2):
    - (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
    - (ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;
    - (iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.
  - (d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (3) An order may not be entered under Section 3.1E(1) if:
- (a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
  - (b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

- (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

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- (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
  - (ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (b) Such an order shall not be entered unless:
- (i) There is a hearing;
  - (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
  - (iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

- (c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.
- (2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:
- (a) A monetary penalty of not more than \$10,000 for every day of violation; or
  - (b) Suspension or revocation of the person's license.
- (3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections 10B, 10C, and 12 do not apply to acquisitions covered under Section 3.1B.

**Section 4. Registration of Insurers**

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

- (1) Section 4;
- (2) Section 5A(1), 5B, 5D; and
- (3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system,

and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. **Information and Form Required.** Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:

- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) The identity and relationship of every member of the insurance holding company system;
- (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:
  - (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
  - (b) Purchases, sales or exchange of assets;
  - (c) Transactions not in the ordinary course of business;
  - (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
  - (e) All management agreements, service contracts and all cost-sharing arrangements;
  - (f) Reinsurance agreements;
  - (g) Dividends and other distributions to shareholders; and
  - (h) Consolidated tax allocation agreements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
- (5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;
- (6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

**Drafting Note:** Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and



Alternative Section 4B(7):

- (7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and
  - (8) Any other information required by the commissioner by rule or regulation.
- C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation or the Liquidity Stress Test Framework.
- E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.
- I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.
- J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
- K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

- (1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;
- (2) Group Capital Calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:
  - (a) An insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state, and assumes no business from any other insurer;
  - (b) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;
  - (c) An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital;

**Drafting Note:** On September 22, 2017, the United States and the European Union (EU) entered into the "*Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance*." A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements are considered to be a "covered agreement" entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that addresses the U.S. state regulatory approach to group supervision and group capital, and provides that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group. Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to the EU and UK Covered Agreements treated as Reciprocal Jurisdictions, but any other Qualified Jurisdiction can also qualify as Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.

- (d) An insurance holding company system:
  - (i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and
  - (ii) Whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

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**Drafting Note:** The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not apply its own version of a group capital filing to U.S. insurance groups.

- (e) Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.
  - (f) Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.
  - (g) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.
- (3) Liquidity Stress Test. 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. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners:
- (a) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific data year. These Scope Criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the Scope Criteria are considered scoped into 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 not be scoped into the Framework for that data year. Similarly, 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.
    - (i) Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis. The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.
  - (b) The performance of, and filing of the results from, a specific year’s Liquidity Stress Test shall comply with the NAIC Liquidity Stress Test Framework’s instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the Financial Stability Task Force or its successor, provided within the Framework.

**Drafting Note:** The delay included in the change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured being effective on January 1 of the year following the calendar year when such changes are adopted is present to: 1) allow sufficient time for states needing to adopt by rule the NAIC Liquidity Stress Test Framework for a given data year and 2) to ensure scoped in insurers have adequate time to comply with the requirements for a given data year .

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

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

### A. Transactions Within an Insurance Holding Company System

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

- (a) The terms shall be fair and reasonable;
- (b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;
- (c) Charges or fees for services performed shall be reasonable;
- (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; ~~and~~
- (f) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs;:-

- ~~(g) If an insurer subject to this Act is deemed by the commissioner to be in a hazardous financial condition as defined by [insert citation for Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition] or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain from the affiliated person(s) a deposit, held by the commissioner, for the protection of the insurer for the duration of the contract(s) or agreement(s).~~

~~In determining whether a deposit is required, the commissioner should consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, and a deposit is necessary, the Commissioner has discretion to determine the deposit amount, not to exceed the value of the contract(s) or agreement(s) in any one year, and whether a deposit should be required for a single contract, multiple contracts, or a contract only with a specific person(s).~~

~~**Drafting Note:** The intent of the deposit is to ensure the affiliated services provided under the contract(s) are fulfilled. In determining appropriate circumstances when a commissioner may require a deposit and in specifying an amount, the commissioner should evaluate and consider whether an insurer subject to this act is in a hazardous financial condition or a condition that would be grounds for substantial regulatory action including supervision, conservation, or a delinquency proceeding. If it is, the deposit requirement would be available as an additional regulatory remedy at the discretion of the commissioner. Note, the commissioner should consider whether the affiliated person is already required to post a bond under applicable laws regulating third-party administrators.~~

- ~~(h) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files.~~

**Commented [KJM1]:** 5A(1)(g) and the drafting note replace the prior proposed bond requirement. The new text is a combination of that which was proposed by the AHIP & BCBSA, the Coalition, and APCIA with additional drafting group edits highlighted in blue. Essentially, the "bond" is replaced with "deposit".

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policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer's business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to giving the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement; and,

**Drafting Note:** The "at no additional cost to the insurer" language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the insurer. Since records and data of the insurer are the property of the insurer, the insurer should not pay a cost to segregate commingled records and data from other data of the affiliate.

(i) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. ~~An affiliate shall not commingle any premiums or other funds belonging to the insurer with any other accounts. Any right of offset in the event an insurer is placed into receivership shall be subject to [the receivership act of the state].~~

Commented [KJM2]: Proposed sentence is deleted.

- (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.
- (a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
- (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
- (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
- (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (c) Reinsurance agreements or modifications thereto, including:

- (i) All reinsurance pooling agreements;
  - (ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
  - (e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;
  - (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

**Drafting Note:** When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

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

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

- (3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.
- (4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
- (5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

~~(6) Supervision, seizure, conservatorship, or receivership proceedings.~~

- ~~(a) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to Subsection A(2)(d); shall be subject to the jurisdiction of any supervision.~~

**Commented [KJM3]:** NOLHGA & NCIGF proposed edits highlighted in gray. Drafting group edit highlighted in blue.

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~~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 is 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.

B. Dividends and other Distributions

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

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

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

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

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

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

C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.
- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
- (5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.
- (6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

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

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among several lines of insurance;
- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification and liquidity of the insurer's investment portfolio;



- (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) The surplus as regards policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves; and
- (10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

**Section 6. Examination**

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under Section 4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.
- B. Access to Books and Records.
  - (1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.
  - (2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$[insert amount] for each day's delay, or may suspend or revoke the insurer's license.
- C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.
- D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].
- E. Compelling Production. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

**Section 7. Supervisory Colleges**

- A. **Power of Commissioner.** With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:
- (1) Initiating the establishment of a supervisory college;
  - (2) Clarifying the membership and participation of other supervisors in the supervisory college;
  - (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
  - (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
  - (5) Establishing a crisis management plan.
- B. **Expenses.** Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.
- C. **Supervisory College.** In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

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

- A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:
- (1) Does not have substantial insurance operations in the United States;
  - (2) Has substantial insurance operations in the United States, but not in this state; or
  - (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

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

- B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active

insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

- (1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;
- (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
- (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
- (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:
  - (a) Substantially similar to the system of regulation provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
- (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

- C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:
  - (1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or
  - (2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.
- D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.
- E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

- (1) Assess the enterprise risks within the internationally active insurance group to ensure that:
    - (a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and
    - (b) Reasonable and effective mitigation measures are in place;
  - (2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:
    - (a) Governance, risk assessment and management,
    - (b) Capital adequacy, and
    - (c) Material intercompany transactions;
  - (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;
  - (4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;
  - (5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and
  - (6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.
- F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:
- (1) The commissioner's cooperation is in compliance with the laws of this state; and
  - (2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.
- G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

- H. The commissioner may promulgate regulations necessary for the administration of this section.
- I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

**Section 8. Confidential Treatment**

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 are recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.
  - (1) For purposes of the information reported and provided to the Department of Insurance pursuant to Section 4L(2), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group wide supervisor.
  - (2) For purposes of the information reported and provided to the [Department of Insurance] pursuant to Section 4L(3), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors.

**Drafting note:** This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. Similarly, the liquidity stress test may include confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information.

- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
  - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC, and with any third-party consultants designated by the commissioner, with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.
  - (2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L(1) with

commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

- (3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, including propriety and trade-secret information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
  - (4) Shall enter into written agreements with the NAIC and any third-party consultant designated by the commissioner governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:
    - (a) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain such confidentiality;
    - (b) Specify that ownership of information shared with the NAIC or a third party consultant pursuant to this Act remains with the commissioner and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;
    - (c) Excluding documents, material or information reported pursuant to Section 4L(3), prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;
    - (d) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production; and
    - (e) Require the NAIC or a third-party consultant designated by the commissioner to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant designated by the commissioner may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner pursuant to this Act.
    - (f) For documents, material or information reporting pursuant to Section 4L(3), in the case of an agreement involving a third-party consultant, provide for notification of the identity of the consultant to the applicable insurers.
- D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.
- F. Documents, materials or other information in the possession or control of the NAIC or a third-party consultant designated by the commissioner pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase],

shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

- G. The group capital calculation and resulting group capital ratio required under Section 4L(2) and the liquidity stress test along with its results and supporting disclosures required under Section 4L(3) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

**Drafting Note:** In Section 8C(4) above, the exclusions in sub-items (ii), (iii) and (vi) are the result of the Liquidity Stress Test primary purpose, which is to be used as a tool for assessing macroprudential risks by the NAIC Financial Stability Task Force assisted by NAIC staff, including trend analysis over time. Provisions against the NAIC owning the information, databasing the results and disclosures, and obtaining written consent from the insurer when a consultant is involved were deemed inappropriate.

#### **Section 9. Rules and Regulations**

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

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

- A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.
- B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the

commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

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

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

## Section 11. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
- C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

~~D. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract or agreement which is subject to Section 5 of this Act and which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate Section 5(A) of this Act, the commissioner has the power to order the insurer to require the affiliated person(s) to the transaction to obtain and maintain a bond for the protection of the insurer for the duration of the contract or agreement, if as required by the commissioner at any time. The bond amount should be no less than the amount specified by the commissioner.~~

~~**Drafting Note:** The bond requirement is at the discretion of the commissioner. The intent of the bond is to ensure the affiliated services provided under the contract(s) are fulfilled, which may be referred to as a "performance bond". In determining appropriate circumstances when a commissioner may require a bond and specifying an amount, the commissioner should consider their review of the contract and the affiliated person, analysis of the holding company system, and examination or investigation of the insurer to determine whether concerns exist currently or prospectively that warrant such a bond. For example, the commissioner may consider whether a concern exists with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer is placed into liquidation. The commissioner has discretion to determine if a bond is necessary and if so, whether it should be required for a single contract, multiple contracts or contracts with a specific affiliated person rather than requiring bonds for each contract or agreement. Note that bonds under Section 5A(g) may not be needed in states that already require bonds for licensure of third-party administrators.~~

- D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to

**Commented [KJM4]:** Drafting group recommends deleting this proposed language



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

- E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined \$[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.
- F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision.

**Section 12. Receivership**

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

**Section 13. Recovery**

- A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.
- B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

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

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

**Section 15. Judicial Review, Mandamus**

- A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.
- B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.
- C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

**Section 16. Conflict with Other Laws**

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

**Section 17. Separability of Provisions**

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

**Section 18. Effective Date**

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

**APPENDIX  
ALTERNATE PROVISIONS**

**Alternative Section 1. Findings**

- A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
- (1) Engage in activities which would enable them to make better use of management skills and facilities;
  - (2) Diversify into new lines of business through acquisition or organization of subsidiaries;
  - (3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;
  - (4) Implement sound tax planning conclusions; and
  - (5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;
  - (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
  - (3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or
  - (4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.
- C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:
- (1) Facilitating the achievement of the objectives enumerated in Subsection A;
  - (2) Requiring disclosure of pertinent information relating to changes in control of an insurer;
  - (3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and
  - (4) Providing standards governing material transactions between the insurer and its affiliates.
- D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

**Alternative Section 2. Subsidiaries of Insurers**

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
  - (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
  - (3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
  - (4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
  - (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
  - (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
  - (7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
  - (8) Ownership and management of assets which the parent corporation could itself own or manage;

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

- (9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

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

1969 Proc. II 736, 737, 738-751, 756 (adopted).  
1972 Proc. I 14, 16, 443, 449 (corrected).  
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).  
1983 Proc. I 6, 37, 96, 99 (amended).  
1985 Proc. I 19, 37, 178, 183-200 (amended and reprinted).  
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).  
1986 Proc. I 10, 25, 72 (amended).  
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).  
1993 Proc. 4<sup>th</sup> Quarter 16, 31, 57, 61-62 (amended).  
1995 Proc. 4<sup>th</sup> Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).  
1996 Proc. 1<sup>st</sup> Quarter 124, 270, 272-275 (amendments adopted later printed here).  
1997 Proc. 4<sup>th</sup> Quarter 11 (amendments adopted).  
1999 Proc. 4<sup>th</sup> Quarter 15, 364, 369, 379-380 (amended).  
2001 Proc. 2<sup>nd</sup> Quarter 11, 14, 319, 339, 342-348 (amended).  
2011 Proc. 1<sup>st</sup> Quarter 13-11 (amended).  
2014 Proc. 3<sup>rd</sup> Quarter, Vol. I 122, 136, 140, 183, 243-266 (amended).  
Fall 2020 (amended).

# ATTACHMENT D

MODEL #450

## **INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING FORMS AND INSTRUCTIONS**

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Form C	Summary of Changes to Registration Statement
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Form E	Pre-Acquisition Notification Form
Form F	Enterprise Risk Report

### **Section 1. Authority**

These regulations are promulgated pursuant to the authority granted by Sections [insert applicable sections] and [insert applicable section] of the Insurance Law.

**Note:** Optional for those states in which similar provisions are normally used.

### **Section 2. Purpose**

The purpose of these regulations is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the NAIC Insurance Holding Company System Regulatory Act [insert applicable sections] of the Insurance Code hereinafter referred to as “the Act.” The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.

**Editor’s Note:** Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

**Drafting Note:** Optional for those states in which similar provisions are normally used.

### **Section 3. Severability Clause**

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

**Drafting Note:** Optional for those states in which similar provisions are normally used.

### **Section 4. Forms - General Requirements**

- A. Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by Sections 3, 3.1, 4, and 5 of the Act. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.
- B. [Insert number] complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of [insert state and address], Attention: [insert name - title]. At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.
- C. If an applicant requests a hearing on a consolidated basis under Section 3D(3) of the Act, in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.
- D. Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

**Drafting Note:** Section 4 may be omitted if it is included as instructions on Forms A, B, C, D, E and F.

### **Section 5. Forms - Incorporation by Reference, Summaries and Omissions**

- A. Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

- B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

**Drafting Note:** Section 5 may be omitted if it is included as instructions on Forms A, B, D, E and F.

#### **Section 6. Forms-Information Unknown or Unavailable and Extension of Time to Furnish**

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Commissioner a separate document:

- A. Identifying the information, document or report in question;
- B. Stating why the filing thereof at the time required is impractical; and
- C. Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within [XX] days after receipt thereof enters an order denying the request.

**Drafting Note:** Section 6 may be omitted if it is included as instruction on Forms A, B, C, D, E and F.

#### **Section 7. Forms - Additional Information and Exhibits**

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: “Change No. [insert number] to” and shall indicate the date of the change and not the date of the original filing.

**Drafting Note:** Section 7 may be omitted if it included as instructions on Forms A, B, C, D, E and F.

#### **Section 8. Definitions**

- A. “Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.
- B. “Ultimate controlling person” means that person which is not controlled by any other person.
- C. Unless the context otherwise requires, other terms found in these regulations and in Section 1 of the Act are used as defined in the Act. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.

**Drafting Note:** If regulation Section 2 is not adopted by the state, the following definition should be added to this section:

“The Act” means the Insurance Holding Company System Regulatory Act [insert applicable sections of the Insurance Code].



**Section 9. Subsidiaries of Domestic Insurers**

The authority to invest in subsidiaries under Section 2B of the Act is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

**Section 10. Acquisition of Control - Statement Filing**

A person required to file a statement pursuant to Section 3 of the Act shall furnish the required information on Form A, hereby made a part of this regulation. Such person shall also furnish the required information on Form E, hereby made a part of this regulation and described in Section 13 of this regulation.

**Section 11. Amendments to Form A**

The applicant shall promptly advise the Commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.

**Section 12. Acquisition of Section 3A(4) Insurers**

- A. If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 3A(4) of the Act, the name of the domestic insurer on the cover page should be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company."

- B. Where a Section 3A(4) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

**Section 13. Pre-Acquisition Notification**

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Section 3A(1) of the Act, that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to Section 3.1C(1) of the Act.

Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 3.1 of the Act, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 3.1 as set forth in Section 3.1B(2).

In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

**Section 14. Annual Registration of Insurers - Statement Filing**

An insurer required to file an annual registration statement pursuant to Section 4 of the Act shall furnish the required information on Form B, hereby made a part of these regulations.

**Section 15. Summary of Registration - Statement Filing**

An insurer required to file an annual registration statement pursuant to Section 4 of the Act is also required to furnish information required on Form C, hereby made a part of these regulations.

**Section 16. Amendments to Form B**

- A. An amendment to Form B shall be filed within fifteen (15) days after the end of any month in which there is a material change to the information provided in the annual registration statement.
- B. Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page “Amendment No. [insert number] to Form B for [insert year]” and shall indicate the date of the change and not the date of the original filings.

**Drafting Note:** Section 16 may be omitted if Section 5A(2) of the Model Act has been adopted and amendments to the registration statement are therefore not required by the Act.

**Section 17. Alternative and Consolidated Registrations**

- A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 4 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:
  - (1) The statement or report contains substantially similar information required to be furnished on Form B; and
  - (2) The filing insurer is the principal insurance company in the insurance holding company system.
- B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer’s claim that it, in fact, is the principal insurer in the insurance holding company system.
- C. With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Subsection A above.
- D. Any insurer may take advantage of the provisions of Section 4H or 4I of the Act without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

**Section 18. Disclaimers and Termination of Registration**

- A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the “subject”) shall contain the following information:
  - (1) The number of authorized, issued and outstanding voting securities of the subject;
  - (2) With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject’s voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
  - (3) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
  - (4) A statement explaining why the person should not be considered to control the subject.

- B. A request for termination of registration shall be deemed to have been granted unless the Commissioner, within thirty (30) days after receipt of the request, notifies the registrant otherwise.

**Section 19. Transactions Subject to Prior Notice - Notice Filing**

- A. An insurer required to give notice of a proposed transaction pursuant to Section 5 of the Act shall furnish the required information on Form D, hereby made a part of these regulations.

- B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

- (1) Identify the person providing services and the nature of such services;
- (2) Set forth the methods to allocate costs;
- (3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
- (4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
- (5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
- (6) Define ~~books and records~~ and data of the insurer to include all ~~books and records~~ and data developed or maintained under or related to the agreement, that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;
- (7) Specify that all ~~books and records~~ and data of the insurer are and remain the property of the insurer, and:
  - (a) are subject to control of the insurer;
  - (b) are identifiable, and
  - (c) are segregated from all other persons' records and data, or are readily capable of segregation at no additional cost to the insurer;

**Drafting Note:** The "at no additional cost to the insurer" language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the insurer. Since records and data of the insurer are the property of the insurer, the insurer should not pay a cost to segregate commingled records and data from other data of the affiliate.

- (8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;
- (9) Include standards for termination of the agreement with and without cause;
- (10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services, and for any actions by the affiliate which violate provisions of the agreement required in Subsections 19B(11), 19B(12), 19B(13), 19B(14) and 19B(15) of this regulation;
- (11) Specify that, if the insurer is placed in supervision, seizure, conservatorship, or receivership pursuant to [supervision and receivership acts] ~~receivership or seized by the commissioner under the State Receivership Act:~~
  - (a) all of the rights of the insurer under the agreement extend to the receiver or commissioner

to the extent permitted by [law of the state]; and,

- (b) all records and data of the insurer shall be identifiable, and segregated from all other persons' records and data or readily capable of segregation at no additional cost to the receiver or the commissioner;

**Drafting Note:** The “at no additional cost to the receiver or the commissioner” language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the receiver or the commissioner. Since records and data of the insurer are the property of the insurer, the receiver or commissioner should not pay a cost to segregate commingled records and data from other data of the affiliate.

- (c) a complete set of ~~all books and~~ records and data of the insurer will immediately be made available to the receiver or the commissioner, shall be made available in a usable format, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request; , and the cost to transfer data to the receiver or the commissioner shall be fair and reasonable; and,

**Drafting Note:** The fair and reasonable cost to transfer data to the receiver or commissioner refers to the cost associated with physically or electronically transferring records and data files to the receiver or commissioner. This cost does not include costs to separate comingled data and records that should have been segregated or readily capable of segregation.

- (d) The affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or commissioner;

- (12) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to [supervision and receivership acts]~~the State Receivership Act; and~~
- (13) Specify that the affiliate will provide the essential services for a minimum period of time [specified in the agreement] after termination of the agreement, if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to [supervision and receivership acts], as ordered or directed by the receiver or commissioner. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court;
- (134) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding supervision, seizure, conservatorship, or receivership pursuant to [supervision and receivership acts]~~a seizure by the commissioner under the State Receivership Act, and will make them available to the receiver or commissioner as ordered or directed by the receiver or commissioner;~~ for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court; and,-
- (15) Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to [supervision and receivership acts], and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under Subsections 19B(11), 19B(12), 19B(13) and 19B(14) of this regulation will extend to such guaranty association(s).

## Section 20. Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 4L(1) of the Act shall furnish the required information on Form F, hereby made a part of these regulations.

## Section 21. Group Capital Calculation

- A. Where an insurance holding company system has previously filed the annual group capital calculation at

least once, the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

- (1) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;
- (2) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (3) Has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (4) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
- (5) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

- (1) The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:
  - (a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
  - (b) Does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and
  - (c) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant Section 21A or 21B of this regulation, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

- (1) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or
- (2) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition]; or
- (3) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances

including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

- D. A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it satisfies the following criteria:
- (1) With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]
    - (a) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
    - (b) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1)(a).
  - (2) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.
- E. A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process:
- (1) A list of jurisdictions that “recognize and accept” the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)], is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to Sections 4L(2)(d)]. To assist with a determination under 4L(2)(e), the list will also identify whether a jurisdiction that is exempted under either [insert cross-reference to Sections 4L(2)(c) and 4L(2)(d)] requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.
  - (2) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Section 21D(1)(b) will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.
  - (3) If the lead state commissioner makes a determination pursuant to Section 4L(2)(d) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.
  - (4) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accepts” the group capital calculation.

**Section 22. Extraordinary Dividends and Other Distributions**

- A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:
- (1) The amount of the proposed dividend;
  - (2) The date established for payment of the dividend;
  - (3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
  - (4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
    - (a) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
    - (b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;
    - (c) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
    - (d) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and
    - (e) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years;
  - (5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
  - (6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- B. Subject to Section 5B of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsection A(4).

**Section 23. Adequacy of Surplus**

The factors set forth in Section 5D of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

**FORM A**  
**STATEMENT REGARDING THE**  
**ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Domestic Insurer

BY

\_\_\_\_\_  
Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

\_\_\_\_\_  
(State of domicile of insurer being acquired)

Dated: \_\_\_\_\_, 20\_\_\_\_

Name, Title, address and telephone number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ITEM 1. METHOD OF ACQUISITION**

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

**ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT**

- (a) State the name and address of the applicant seeking to acquire control over the insurer.
- (b) If the applicant is not an individual, state the nature of its business operations for the past 5 years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.
- (c) Furnish a chart or listing clearly presenting the identities of the interrelationships among the applicant and all affiliates of the applicant. Indicate in such chart or listing the percentage of voting securities of each such person which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g. corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.



**ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT**

On the biographical affidavit, include a third party background check, and state the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

- (a) Name and business address.
- (b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which such employment is carried on.
- (c) Material occupations, positions, offices or employment during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith.
- (d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last 10 years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

**ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION**

- (a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.
- (b) Explain the criteria used in determining the nature and amount of such consideration.
- (c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

**ITEM 5. FUTURE PLANS OF INSURER**

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

**ITEM 6. VOTING SECURITIES TO BE ACQUIRED**

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

**ITEM 7. OWNERSHIP OF VOTING SECURITIES**

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

**ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER**

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.

**ITEM 9. RECENT PURCHASES OF VOTING SECURITIES**

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any shares so purchased are hypothecated.

**ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE**

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.

**ITEM 11. AGREEMENTS WITH BROKER-DEALERS**

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

**ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS**

- (a) Financial statements, exhibits, and three-year financial projections of the insurer(s) shall be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) The financial statements shall include the annual financial statements of the persons identified in Item 2(c) for the preceding 5 fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if the information is available. The statements may be prepared on either an individual basis, or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

- (c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or regulation Sections 4 and 6.

**ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT**

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen (15) days after the end of the month in which the acquisition of control occurs.

**ITEM 14. SIGNATURE AND CERTIFICATION**

Signature and certification required as follows:

**SIGNATURE**

Pursuant to the requirements of Section 3 of the Act \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

BY \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_ (Name of Applicant); that (s)he is the \_\_\_\_\_ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM B**

**INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of \_\_\_\_\_

By

\_\_\_\_\_  
Name of Registrant

On Behalf of Following Insurance Companies

Name            Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1.            IDENTITY AND CONTROL OF REGISTRANT**

Furnish the exact name of each insurer registering or being registered (hereinafter called “the Registrant”), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

**ITEM 2.            ORGANIZATIONAL CHART**

Furnish a chart or listing clearly presenting the identities of and interrelationships among all affiliated persons within the insurance holding company system. The chart or listing should show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

**ITEM 3. THE ULTIMATE CONTROLLING PERSON**

As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name;
- (b) Home office address;
- (c) Principal executive office address;
- (d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;
- (e) The principal business of the person;
- (f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and
- (g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

**ITEM 4. BIOGRAPHICAL INFORMATION**

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.

**ITEM 5. TRANSACTIONS AND AGREEMENTS**

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and

- (i) Any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 4 of the Act.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

**Drafting Note:** Commissioner may by rule, regulation or order provide otherwise.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

#### **ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS**

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

- (a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
- (b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

#### **ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS**

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

#### **ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS**

- (a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.
- (b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the *Personal Financial Statements Guide* by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant's Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

- (c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or regulation Sections 4 and 6.

**ITEM 9. FORM C REQUIRED**

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

**ITEM 10. SIGNATURE AND CERTIFICATION**

Signature and certification required as follows:

**SIGNATURE**

Pursuant to the requirements of Section 4 of the Act, Registrant has caused this annual registration statement to be duly signed on its behalf of the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

BY \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_(Name of Applicant); that (s)he is the \_\_\_\_\_(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_



**FORM C**

**SUMMARY OF CHANGES TO REGISTRATION STATEMENT**

Filed with the Insurance Department of the State of \_\_\_\_\_

By

\_\_\_\_\_  
Name of Registrant

On Behalf of Following Insurance Companies

Name

Address

Name	Address

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:


Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10% or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

Pursuant to the requirements of Section 4 of the Act, Registrant has caused this annual registration statement to be duly signed on its behalf of the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

BY \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_ (Name of Applicant); that (s)he is the \_\_\_\_\_ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM D**

**PRIOR NOTICE OF A TRANSACTION**

Filed with the Insurance Department of the State of \_\_\_\_\_

By

\_\_\_\_\_  
Name of Registrant

On Behalf of Following Insurance Companies

Name            Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1.            IDENTITY OF PARTIES TO TRANSACTION**

Furnish the following information for each of the parties to the transaction:

- (a)     Name;
- (b)     Home office address;
- (c)     Principal executive office address;
- (d)     The organizational structure, i.e. corporation, partnership, individual, trust, etc.;
- (e)     A description of the nature of the parties' business operations;
- (f)     Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;
- (g)     Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

**ITEM 2. DESCRIPTION OF THE TRANSACTION**

Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under Section 5A(2)(a), (b), (c), (d), or (e) of the Act;
- (b) A statement of the nature of the transaction;
- (c) A statement of how the transaction meets the 'fair and reasonable' standard of Section 5A(1)(a) of the Act; and
- (d) The proposed effective date of the transaction.

**ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS**

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than (a) in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, or (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

**ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE**

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate. Describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

**ITEM 5. REINSURANCE**

If the transaction is a reinsurance agreement or modification thereto, as described by Section 5A(2)(c)(ii) of the Act, or a reinsurance pooling agreement or modification thereto as described by Section 5A(2)(c)(i) of the Act, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding. Notice shall be given for all reinsurance pooling agreements including modifications thereto.

**ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS AND COST-SHARING ARRANGEMENTS.**

For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed;
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement;
- (b) A description of the period of time during which the agreement is to be in effect;
- (c) A brief description of each party's expenses or costs covered by the agreement;
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
- (f) A statement regarding the cost allocation methods that specifies whether proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
- (g) A statement regarding compliance with the *NAIC Accounting Practices and Procedure Manual* regarding expense allocation.

**ITEM 7. SIGNATURE AND CERTIFICATION**

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 5 of the Act, \_\_\_\_\_ has caused this application to be duly signed on its behalf in the City of \_\_\_\_\_ and State of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL) \_\_\_\_\_  
Name of Applicant

BY \_\_\_\_\_  
(Name) (Title)

Attest:

\_\_\_\_\_  
(Signature of Officer)

\_\_\_\_\_  
(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated \_\_\_\_\_, 20\_\_\_\_, for and on behalf of \_\_\_\_\_(Name of Applicant); that (s)he is the \_\_\_\_\_(Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) \_\_\_\_\_

(Type or print name beneath) \_\_\_\_\_

**FORM E**

**PRE-ACQUISITION NOTIFICATION FORM  
REGARDING THE POTENTIAL COMPETITIVE IMPACT  
OF A PROPOSED MERGER OR ACQUISITION BY A  
NON-DOMICILIARY INSURER DOING BUSINESS IN THIS  
STATE OR BY A DOMESTIC INSURER**

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Name of Other Person  
Involved in Merger or  
Acquisition

Filed with the Insurance Department of

\_\_\_\_\_

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

Name, title, address and telephone number of person completing this statement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1. NAME AND ADDRESS**

State the names and addresses of the persons who hereby provide notice of their involvement in a pending acquisition or change in corporate control.

**ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES**

State the names and addresses of the persons affiliated with those listed in Item 1. Describe their affiliations.

**ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION**

State the nature and purpose of the proposed merger or acquisition.

**ITEM 4. NATURE OF BUSINESS**

State the nature of the business performed by each of the persons identified in response to Item 1 and Item 2.

**ITEM 5. MARKET AND MARKET SHARE**

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of such data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of the state as stated in Section 3.1D of the Act. If the proposed acquisition or merger would violate competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in the state.

For purposes of this question, market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state.

**Drafting Note:** State Insurance Departments may additionally choose to make these calculations using their own data or data provided by the National Association of Insurance Commissioners.



**FORM F**

**ENTERPRISE RISK REPORT**

Filed with the Insurance Department of the State of \_\_\_\_\_

By

\_\_\_\_\_  
Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name                      Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ITEM 1.            ENTERPRISE RISK**

The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in [insert cross reference to definition of Enterprise Risk in Section 1F of the Act], provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- Acquisition or disposal of insurance entities and reallocating of existing financial or insurance entities within the insurance holding company system;
- Any changes of shareholders of the insurance holding company system exceeding ten percent (10%) or more of voting securities;
- Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;
- Business plan of the insurance holding company system and summarized strategies for the next 12 months;
- Identification of material concerns of the insurance holding company system raised by supervisory college, if any, in the last year;

- Identification of insurance holding company system capital resources and material distribution patterns;
- Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);
- Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon; and
- Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The Registrant/Applicant may attach the appropriate form most recently filed with the U.S. Securities and Exchange Commission, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the Registrant/Applicant is not domiciled in the U.S., it may attach its most recent public audited financial statement filed in its country of domicile, provided the Registrant/Applicant includes specific references to those areas listed in Item 1 for which the financial statement provides responsive information.

## **ITEM 2: OBLIGATION TO REPORT.**

If the Registrant/Applicant has not disclosed any information pursuant to Item 1, the Registrant/Applicant shall include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure pursuant to Item 1.

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

*1970 Proc. IIB 1055-1066 (printed).*

*1971 Proc. I 54, 58, 134, 149 (adopted).*

*1986 Proc. II 12, 19-20, 93-94, 109-123 (amended).*

*1993 Proc. 1st Quarter 3, 33, 362, 364-370 (amended).*

*2011 Proc. 1st Quarter I 3-11 (amended).*

*2013 3<sup>rd</sup> Quarter (editorial revision).*

*Fall 2020 (amended).*