

Date: 2/22/21

*Conference Call*

**RISK RETENTION GROUP (E) TASK FORCE**

**Wednesday, February 24, 2021**

**3:00 – 4:00 p.m. ET / 2:00 – 3:00 p.m. CT / 1:00 – 2:00 p.m. MT / 12:00 – 1:00 p.m. PT**

**ROLL CALL**

Michael S. Pieciak, Chair	Vermont	Barbara D. Richardson	Nevada
Karima M. Woods, Vice Chair	District of Columbia	Marlene Caride	New Jersey
Andrew Mais	Connecticut	Russell Toal	New Mexico
Sharon P. Clark	Kentucky	Raymond G. Farmer	South Carolina
Troy Downing	Montana		

NAIC Support Staff: Becky Meyer/Sara Franson

**AGENDA**

1. Consider Adoption of its Fall National Meeting and Feb. 5 E-vote Minutes—*Sandra Bigglestone (VT)* Attachment One
2. Discuss Applicability of the 2020 Revisions to the *Insurance Holding Company Systems Regulatory Act* (#440) and the *Insurance Holding Company Systems Model Regulation* (#450) Related to the Group Capital Calculation as an Update to the Accreditation Standards for Risk Retention Groups—*Sandra Bigglestone (VT)*
  - Group Capital Calculation Summary Attachment Two-A
  - Draft Referral from the Group Capital Calculation (E) Working Group Attachment Two-B
  - Redlined Model #440 and Model #450 Attachment Two-C
3. Receive Updates on Related NAIC Actions—*Sandra Bigglestone (VT)* Attachment Three
  - Financial Analysis – Non-Troubled Company Procedures
4. Discuss its Next Steps—*Sandra Bigglestone (VT)* Attachment Four
  - Survey Outstanding
5. Discuss Any Other Matters Brought Before the Task Force—*Sandra Bigglestone (VT)*
6. Adjournment

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## Draft Pending Adoption

Draft: 11/30/20

Risk Retention Group (E) Task Force  
Virtual Meeting (*in lieu of meeting at the 2020 Fall National Meeting*)  
November 18, 2020

The Risk Retention Group (E) Task Force met Nov. 18, 2020. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone and Christine Brown (VT); Karima M. Woods, Vice Chair, represented by Sean O'Donnell (DC); Sharon P. Clark represented by Jeff Gaither (KY); James J. Donelon represented by Stewart Guerin (LA); Chlora Lindley-Myers represented by John Talley (MO); Matthew Rosendale represented by Steve Matthews (MT); Barbara D. Richardson (NV); and Raymond G. Farmer represented by Daniel Morris (SC).

### 1. Adopted its Sept. 23 Minutes

Mr. O'Donnell made a motion, seconded by Mr. Guerin, to adopt the Task Force's Sept. 23 minutes (Attachment One). The motion passed unanimously.

### 2. Discussed a Potential Survey to Receive Feedback on the Best Practices, FAQ, and RRG Registration Form

Ms. Bigglestone stated that one of the items raised during the Sept. 23 meeting was the possibility of a survey to all states to better understand if and how the best practices, frequently asked questions (FAQs), and risk retention group (RRG) registration form are being used. The survey would also be used to identify any additional work the Task Force needs to do in these areas. Next, Ms. Bigglestone introduced a draft of potential survey questions (Attachment Two).

Mr. O'Donnell stated that one of the Task Force charges is to monitor the impacts of recent tools and resources made available to state insurance regulators pertaining to RRGs and consider whether additional action is necessary, including educational opportunities, updating resources, and further clarifications, which a survey would support. He also stated that while Washington, DC has only licensed one RRG this year, he has not had any feedback, positive or negative.

Robert Myers (National Risk Retention Association—NRRRA) commented that he believes the survey is a good place to start. He stated that educating state insurance regulators, interested parties, and industry alike for domiciliary and non-domiciliary states is important. Ms. Bigglestone stated that there is an NAIC education course on regulating RRGs that is available to state insurance regulators that could be expanded or additional webinars produced to target issues raised and addressed by the Task Force and then made available to both state insurance regulators and industry.

Ms. Brown stated that she believes question #1 should be directed to all states, regardless of whether they had any RRGs domiciled in their state. Ms. Bigglestone agreed.

Ms. Bigglestone stated that the NAIC would revise the draft survey and distribute the revisions to the Task Force for comments to be received by Dec. 16. The goal is to conduct the survey and have the results ready for discussion at the 2021 Spring National Meeting.

### 3. Discussed Next Steps

Ms. Bigglestone referred to a copy of the Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States (Attachment Three), which includes concerns from industry and non-domestic regulators that was used as a basis for the development of the best practices, FAQ, and revisions to the registration form. Many of the items have been addressed in some manner through those documents. However, there are a few items where the Task Force can consider additional action or at least warrant some additional discussion. Ms. Bigglestone highlighted a few, including item #2. The concern is about delayed processing times in non-domestic registrations. The Task Force previously addressed this largely from the perspective of the non-domiciliary states through the updates to the registration form and best practices related to communication with the domiciliary regulator. However, another option if there are remaining concerns in this area, is to start looking at this from the perspective of the domiciliary regulator and the potential development of some best practices around the licensing process for domestic RRGs. If this is something the Task Force is interested in, a question may also be added to the survey to get a better understanding of practices currently in place. Knowing the procedures that the domestic regulators use when licensing a company may also provide additional benefit to the non-domiciliary states in understanding steps taken by the domiciliary regulator. Ms. Bigglestone also highlighted item #9. The issue is partially addressed by the best practices, but there is still some concern that non-domiciliary regulators may not be notified when a serious violation

## Draft Pending Adoption

occurs or an RRG is no longer approved by the domiciliary state to operate in the non-domiciliary state. Finally, Ms. Bigglestone highlighted item #11, which was added near the end of the discussion in 2019 and arose out of questions on the registration form, which states that the RRG will notify the commissioner (of the state in which they are registering) if there are subsequent changes in any of the items included in the form. Industry indicated that it could be helpful to have some best practices on how best to provide this communication.

Mr. O'Donnell stated that if a non-domiciliary state is unfamiliar with a state's process to license an RRG, it might be useful for other states to understand the domiciliary state's process. While Washington, DC does not use the Uniform Certificate of Authority Application (UCAA), it uses a similar process that includes detailed background checks on officers and directors. Ms. Bigglestone stated that Vermont does not utilize the UCAA either, but it does follow the standards specific to the federal Liability Risk Retention Act (LRRRA) and similar to the NAIC *Company Licensing Best Practices Handbook*. She then asked Mr. O'Donnell if he could foresee any problems answering questions about the application process on the survey. Mr. O'Donnell stated that the licensing application is on the department's website, and providing more details on a survey should not be an issue. Ms. Bigglestone commented that standard licensing procedures could also be discussed in a webinar as a tool to better disseminate the information to state insurance regulators.

Mr. O'Donnell stated regarding item #9 that according to the accreditation guidelines, if an RRG is troubled, the domiciliary state must notify other states where the RRG is conducting business. Mr. Talley stated that he would hope domiciliary states would notify the non-domiciliary state if an RRG is troubled, but there have been prior issues in receiving this information. Ms. Bigglestone stated that the FAQ and best practices are living documents that reference the NAIC *Troubled Company Handbook* and can be enhanced as needed.

#### 4. Heard Updates on NAIC Actions

Ms. Bigglestone reminded the Task Force that a referral was sent to the Financial Regulation Standards and Accreditation (F) Committee regarding updates to the RRG-specific analysis guideline to help clarify that this guideline is applicable to all RRGs regardless of whether they are licensed as traditional insurers or captive insurers and whether they file on a U.S. generally accepted accounting principle (GAAP) or statutory accounting principle (SAP) basis. The referral was exposed by the Committee through Sept. 11, and no comments were received. The Committee will consider adoption at the Fall National Meeting. This discussion prompted the Financial Analysis Solvency Tools (E) Working Group to take a closer look at the procedures in the NAIC *Financial Analysis Handbook* (Handbook) related to RRGs. As a result, the Working Group adopted revisions to the Handbook to better align with the accreditation guideline. The most notable revision was an update to the risk assessment worksheet in Section II—Current Period Analysis. The current question related to business plans and projections is optional, but it was revised to include language that this review is required for RRGs. The new language aligns with the accreditation guideline and applies to all RRGs regardless of accounting treatment (GAAP/SAP) or organizational structure (captive/traditional). There were also revisions made to the Captives and/or Insurers Filing on a U.S. GAAP Basis Worksheet in the Handbook, which should be completed for RRGs that file GAAP, as certain elements are required by the accreditation standard.

Having no further business, the Risk Retention Group (E) Task Force adjourned.

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Draft: 2/22/21

Risk Retention Group (E) Task Force  
E-Vote  
February 5, 2021

The Risk Retention Group (E) Task Force conducted an e-vote that concluded Feb. 5, 2021. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Karima M. Woods, Vice Chair, represented by Sean O'Donnell (DC); Andrew N. Mais represented by Fenhua Liu (CT); Sharon P. Clark (KY); Troy Downing represented by Steve Matthews (MT); and Russell Toal (NM).

1. Approved the Distribution of a Survey for Non-Domiciliary and Domiciliary RRG Regulators

The Task Force conducted an e-vote to approve the distribution of a survey to state insurance regulators with the purpose to provide the Task Force with insight into future improvements and priorities in the areas of risk retention group (RRG) regulation, registration and training. Mr. O'Donnell made a motion, seconded by Commissioner Clark, to distribute the survey (Attachment One). The motion passed unanimously.

Having no further business, the Risk Retention Group (E) Task Force adjourned.

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# **National Association of Insurance Commissioners (NAIC)**

## **Group Capital Calculation (GCC)**

**12/10/2020**



## **Introduction**

The National Association of Insurance Commissioners (NAIC) began development of the Group Capital Calculation (GCC) in late 2015 following extensive deliberation on potential valuation models and methodologies. The GCC is a natural extension of work state insurance regulators had begun, in part driven by lessons learned from the most recent financial crisis, to better understand an insurance group's financial risk profile for the purpose of enhancing policyholder protections. State insurance regulators already exercise their legal powers to obtain any information regarding the capital positions of affiliated business entities. However, there has not been a consistent or coherent analytical framework for evaluating such information and monitoring trends. As such, the GCC is designed to meet this need, delivering financial solvency regulators a panoramic, transparent view of the interconnectedness, business activities, and underlying capital support for an insurance group.

The GCC uses a bottom-up aggregation approach, accounting for all available capital/financial resources, and the required regulatory capital based on the valuation of assets and liabilities of the various corporate entities, including insurers, financial and non-financial businesses. The GCC, and related financial reporting, will provide comprehensive accounting and transparency to state insurance regulators, making risks more easily identifiable and quantifiable. Importantly, the GCC will complement existing group supervisory tools already available to state insurance regulators, such as the *Form F Enterprise Risk Report*<sup>1</sup>, the *Own Risk and Solvency Assessment Summary Report*<sup>2</sup> and the *Form B Holding Company Filings*<sup>3</sup>. Altogether, the GCC will deliver an important set of information and capital ratio to facilitate earlier engagement with company management regarding potential business operations of concern and communication with other insurance regulators.

The GCC was adopted by the NAIC members in December 2020 after field testing in 2019 with more than 30 U.S. based firms, including property & casualty, life, and health insurers. Post field testing revisions were incorporated during 2020 based on multiple comment periods. In December 2020, revisions to the *Insurance Holding Company System Model Act* (#440) and supporting *Insurance Holding Company System Model Regulation* (#450) were adopted by the NAIC members. The revisions provide regulatory authority for a confidential filing process and include provisions addressing what

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<sup>1</sup> *Insurance Holding Company System Model Act* (#440) and supporting *Insurance Holding Company System Model Regulation* (#450) require the annual filing of an Enterprise Risk Report (Form F) which requires the disclosure on material risks within the insurance holding company system that could pose enterprise risk to the insurer

<sup>2</sup> Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act (#505) require the annual filing of an ORSA Summary report that includes 1) Description of the Insurer's Risk Management Framework; 2) Insurer's Assessment of Risk Exposure; and 3) Group Assessment of Risk Capital and Prospective Solvency Assessment

<sup>3</sup> *Insurance Holding Company System Model Act* (#440) and supporting *Insurance Holding Company System Model Regulation* (#450) require the annual filing of an Registration Statement (Form B) which includes, among other items, the annual financial statements of the ultimate controlling person in the insurance holding company system and all of its affiliates and subsidiaries

groups must file the GCC. The goal is to have the revisions enacted or promulgated in all states by November 2022.

### **The GCC Aggregation Methodology**

As described above, the GCC is an aggregation or grouping of the available financial resources and calculated required capital of all material legal entities in an insurance group.

- 1) **U.S. Insurers** – The available capital/financial resources of U.S. domiciled insurers is determined by statutory accounting principles (SAP) as defined by state law and the NAIC *Accounting Practices and Procedures Manual*, which defines assets, liabilities, and in-turn net available capital/financial resources, sometimes referred to as policyholder surplus. The calculated capital for these insurers is established in state law that requires these insurers to maintain minimum capital based on the applicable NAIC *Risk-Based Capital formula* and is calibrated at 200% x ACL level
- 2) **Non-U.S. insurers** – Similar to the available capital/financial resources and calculated required capital of U.S. insurers, the available and calculated capital of non-U.S. insurers is determined by reference to the home jurisdiction's capital requirements. While most non-U.S. jurisdictions do not possess the same level of industry specific technical guidance, as included in the NAIC *Accounting Practices and Procedures Manual*, all jurisdictions have established accounting standards that insurers are required to follow to determine available capital/financial resources. In some cases, this represents local Generally Accepted Accounting Principles (GAAP), which may or may not be consistent with International Financial Reporting Standards (IFRS). In most cases the GCC utilizes the available capital/financial resources and home jurisdictions' capital requirement. The NAIC has adopted the concept of scalars for non-U.S. insurers, which adjusts both available and calculated capital to produce comparable measures for risk which can be aggregated into the group-wide measure. However, for now, a placeholder methodology for scalars is being applied in sensitivity analysis. Additional methodologies for scaling are being explored for eventual inclusion of a selected methodology in the calculation. In certain cases where risk sensitive capital requirements are not in place, an equity-based charge is applied.
- 3) **U.S. Captive Insurers**<sup>4</sup> – The available capital/financial resources of U.S. captive insurers is defined by the state law or regulation. With respect to calculated capital, the GCC utilizes the applicable Risk Based Capital (RBC) formula for captives.
- 4) **U.S. Insurers Not Subject to RBC**-Some types of U.S. insurers are not subject to an RBC formula (e.g. Financial Guaranty Insurers, Title Insurers). For these entities, the available

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<sup>4</sup> US Captive Insurers that are used to self-insure the group are not treated as insurers but rather as non-regulated business entities.

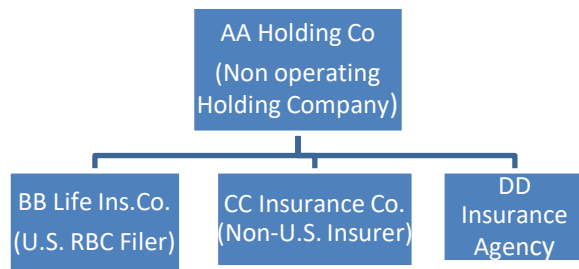
capital/financial resources is determined by reference to state law and the NAIC *Accounting Practices and Procedures Manual*. However, since an RBC formula does not exist, calculated capital is determined by reference to the state minimum capital requirements set out in state law or regulation.

- 5) **Non-Insurer Financial Entities Subject to Regulatory Capital Requirements**-Non-insurers such as banks are subject to their own valuation methods (typically GAAP) and their own regulatory capital requirements (e.g. OCC, Federal Reserve, FDIC, or other requirements for banks).
  
- 6) **Non-Insurer Financial Entities- Not Subject to Regulatory Capital Requirements** -The GCC requires available capital/financial resources and calculated capital to be gathered for all non-regulated business entities that could pose a material risk to insurers. Financial entities tend to carry more risk, this specifically includes entities such as asset managers or investment advisors that provide services outside the group. The GCC will utilize the valuation used by such legal entities (typically U.S. GAAP) and a calculated capital based upon applying a risk factor, adjusted for the level of risk, to average gross revenue over the most recent three-year period. The level of risk is determined by the filer using material risk principles described in the instructions for the GCC and that determination is reviewed by the lead-State.
  
- 7) **Non-Insurer / Non-Financial Entities (Including Non-Operating Holding Companies)**-Non-insurance Non-financial entities in the group may be excluded from the GCC upon request by the filer and acceptance by the lead-State if they do not pose material risk. Material risk is determined by the filer using risk principles described in the instructions for the GCC and that determination is reviewed by the lead-State. The GCC will utilize the valuation used by such legal entities (typically U.S. GAAP) and a calculated capital based upon applying an average post-covariance risk factor calculated from aggregate RBC data for each insurer type. The industry factor will be based on the predominant underwritten business within the group (i.e. life and annuities – 10.5%, property and casualty – 9.5%, or health – 3.5%)

The GCC uses an aggregation and elimination approach, where each of the above legal entities' available capital/financial resources and calculated capital are combined, then eliminations are utilized to prevent any double counting of available capital/financial resources or calculated capital. The following example illustrates the use of eliminations for both available capital/financial resources and calculated capital, however in practice the GCC only requires the insurers owned by an insurance company to be “de-stacked” and the capital required for DD Insurance Agency would already be included in the RBC of AA Insurance Company. However, its shown herein as part of the eliminations for simplicity purposes.



### EE Insurance Group (EEIG)



### EEIG Financial Information

Entity	Total Available Capital	Minimum Regulatory Capital
AA Holding Company	50.0 Million	0 <sup>2</sup>
BB Life Insurance Company	30.0 Million	3.0 Million <sup>3</sup>
CC Insurance Company	6.0 Million <sup>1</sup>	1.6 Million <sup>3</sup>
DD Insurance Agency	2.0 Million <sup>1</sup>	0 <sup>2</sup>

<sup>1</sup> For Non-RBC filers this is regulatory available capital or stockholder equity

<sup>2</sup> There is no regulatory capital for these entities when owned by a non-regulated entity. Calculated Capital is added @ 10.5% x stand-alone ARC

<sup>3</sup> Authorized Control Level (ACL) RBC or Prescribed Capital Requirement for non-U.S. insurers

### Calculation of ARC

Entity	TAC	Less: Subs' TAC	Adjusted TAC
AA Holding Co.	50.0M	(38.0M) <sup>1</sup>	12.0M
BB Life Insurance Co.	30.0M	0	30.0M
CC Insurance Co.	6.0M	0	6.0M
DD Ins. Agency	2.0M	0	2.0M
<b>ARC (EEIG Group Total)</b>			<b>50.0M</b>

<sup>1</sup> Amount of TAC for Subs as follows: (30.0M + 6.0M + 2.0M)

### Calculation of MRC

Entity	ACL or Calculated Capital <sup>1</sup>	Less: Subs' Calculated Capital	Adjusted Calculated Capital	Multiply by 2.0 <sup>3</sup>	MRC
AA Holding Co.	6.07M	(4.81M) <sup>2</sup>	1.26M	NA	1.26M
BB Life Ins. Co.	3.0M	0	3.0M	6.0M	6.0M
CC Insurance Co.	1.6M	0	1.60M	NA	1.6M
DD Ins. Agency	0.21M	0	.21M	NA	0.21M
<b>MRC Total</b>					<b>9.07M</b>

<sup>1</sup> Estimated post covariance factor of 10.5% @ CAL x ARC per GCC added for AA Holding Co. and DD Ins. Agency

<sup>2</sup> Amount of Calculated Capital for Subs as follows: (3.0M + 1.6M + .21M)

<sup>3</sup> Applies to U.S. insurer only to increase level to Company Action Level (CAL) RBC

In the above example, available capital/financial resources are referred to as available regulatory capital (ARC) and total authorized capital (TAC<sup>5</sup>) and minimum calculated capital is referred to as minimal regulatory capital (MRC) and authorized control level (ACL<sup>6</sup>). The GCC will allow non-insurance / non-financial entities owned by RBC filers in the group to remain within the available capital and regulatory capital so no eliminations are required for these entities. As shown, since AA Holding Company owns each of the other business entities in the organizational chart, \$38 million (which is the amount of available capital/financial resources in the subsidiaries of AA) is eliminated from the TAC column since accounting methods include those as an asset on AA Insurance Company's balance sheet. Also, the GCC includes capital calculations for AA Holding Company and DD Insurance Agency as part of the MRC in addition to the regulatory capital already included for the insurance subsidiaries. The MRC of the subsidiaries is eliminated from the parent's (AA Holding Company) calculated capital. Therefore, in this example \$4.81 million of calculated capital is eliminated from the MRC. Finally, the MRC of U.S. insurance subsidiary is multiplied by 2 in order to reflect Company Action Level (CAL) RBC as required in the GCC.

<sup>5</sup> Terminology used in RBC for available capital/financial resources

<sup>6</sup> Terminology used in RBC for calculated regulatory capital

## **Deriving the Group Capital Ratio & Related Items**

The GCC methodology includes a limited adjustment for capital instruments after the aggregation and eliminations have been performed. This “on-top” adjustment for senior debt and hybrid<sup>7</sup> financial instruments represents an allowance for longer-term debt (maturity period of greater than five years) that is not already recognized as available capital/financial resources under all known accounting principles (SAP, U.S. GAAP or IFRS) but may have some value to the group under the U.S. insurance regulatory requirements where dividends must be reviewed or approved<sup>8</sup> by the state. The GCC gives some credit (addition to reported available capital/financial resources) to this debt.

While not included in the group capital ratio, certain other elements will also be captured in a Sensitivity Analysis tab in order to provide lead-state<sup>9</sup> regulators with an additional view of the impact of certain “what if” scenarios related to either adherence to or variances from the U.S. insurance regulatory framework that are part of the group capital ratio. These include:

- **GCC overall sensitivity analysis** –The overall GCC ratio will be presented at 300% x ACL level to reflect a trend-test level view.
- **Prescribed & Permitted Practices**-These represent differences between the company’s required available capital/financial resources due to valuation differences between state law/state practices and the NAIC *Accounting Practices and Procedures Manual*
- **Foreign Insurer Capital Requirements Scaled** – This information shows the amount of foreign insurer capital calculations scaled by applying scalars using the Excess Relative Ratio as described in the GCC instructions for all non-U.S. jurisdictions where scalar data is available.
- **Debt Classified as “Other”** – This will show an additional capital allowance for certain debt other than senior debt and hybrid capital instruments.
- **Adjustment for captives other than XXX/AXXX** - An adjustment is made for the assets included in a captive or an entity not required to follow the statutory accounting guidance in the *Accounting Practices and Procedures Manual*.

## **Use of the Group Capital Ratio**

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<sup>7</sup> Debt issuances that receive an amount of equity credit from rating agencies.

<sup>8</sup> Supervisory approval of ordinary dividends is met if the supervisor has in place direct or indirect supervisory controls over distributions, including the ability for the supervisor to limit, defer and/or disallow the payment of any distributions should it find that the insurer is presently, or may potentially become, financially distressed.

<sup>9</sup> The operations of an insurance group often are not limited to one domestic state. The lead state is generally considered to be the state that “takes the lead” with respect to conducting group-wide supervision within the U.S. solvency system. The concept of lead state is not intended to relinquish the authority of any state, nor to increase any state's statutory authority. It is intended to facilitate efficiencies when one state coordinates the regulatory processes of all states involved

The resulting group capital ratio will be utilized by regulators to evaluate the capital position of the group. However, the benefits of the GCC far exceed the single figure that the ratio represents. The GCC (and other aggregation approaches) provide relevant information on available and calculated capital of the material entities in the group, which will assist in understanding how capital is distributed across an entire group. Most importantly, although certain non-insurance / non-financial entities may be excluded from the group capital ratio itself, the GCC includes a full inventory of companies and corresponding selected financial information (net income, premiums, dividends, liabilities, debt, etc.) that can be used to review trends by state regulators. This will assist with identifying negative trends and which suggest risk is increasing, thereby providing an early warning signal to regulators. By comparison, consolidated reporting utilizes a top-down approach that typically does not provide the same level of detail as to the location of capital within. Also, it can rely on valuation approaches that differ from those utilized by regulators to evaluate the solvency of their regulated institutions, thereby making it less aligned with the objective of policyholder protection.

### **Future Work**

It is anticipated that there will be additional data collection during 2021 and further input will be received, particularly with regard to scalars for non-U.S. insurers and the allowance for capital instruments. Going forward, the GCC template and instructions will be maintained in a similar manner as the Risk-based Capital formulas, whereby enhancements and adjustments will be developed, released for comment, and ultimately adopted by the NAIC members. The first formal filings of a GCC are expected to occur in 2022.



**RRGTF NOTE:** *This referral will be considered by the Group Capital Calculation (E) Working Group on its Feb. 25 call. If adopted, it will be sent to E Committee and then F Committee to consider as an accreditation standard.*

## MEMORANDUM

To: Financial Condition (E) Committee

From: Group Capital Calculation (E) Working Group

Date: ~~February 25~~January 19, 2021

Re: 2020 Revisions to *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450)

### Executive Summary

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

The GCC was developed as a result of discussions which began in 2015. State insurance regulators believed that such a capital tool would represent a natural extension of work that had already begun on group supervision as a result of the lessons learned from the 2008 financial crisis. While state insurance regulators currently have the authority to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist state insurance regulators in identifying risks that may emanate from a holding company system. More specifically, the GCC and related reporting provides more transparency to state insurance regulators regarding insurance groups and make risks more identifiable and more easily quantified.

In addition, the GCC is intended to comply with the requirements under the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. On Dec. 18, 2018, a similar Covered Agreement was signed with the United Kingdom (UK). The GCC is intended to meet the requirement that the states have a “worldwide group capital calculation” in place by Nov. 7, 2022 in order to avoid the EU from imposing a group capital assessment or requirement at the level of the worldwide parent undertaking. Failure of any state to do so for any U.S. group operating in such jurisdiction raises the potential for any supervisor in the EU or UK to impose its own group capital calculation (e.g. Solvency II capital requirements) on that group and therefore all of the U.S. insurers within that group.

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

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

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

The Group Capital Calculation (E) Working Group believes that all states that are the lead state for a group subject to the GCC should be required to adopt the model revisions. The GCC is a tool intended to help protect the policyholders in all states from the risk that can emanate from outside the domestic insurer and will be an input into the Group Profile Summary (GPS). After an initial filing by all insurance groups, the GCC is required for all U.S. insurance groups with greater than \$1 billion in premium. The groups subject to the GCC are expected to have domestic insurers in most U.S. states. Therefore, it is recommended that the new significant elements apply to all states.

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

We are not currently aware of any states that have adopted the 2020 revisions to Model #440 and Model #450, although we have been advised that many states have begun their legislative processes for adoption of these revisions.

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

The current accreditation standard for Model #440 and Model #450 requires state adoption on a substantially similar basis. Therefore, the Group Capital Calculation (E) Working Group supports the attached proposed significant elements (Attachment A) be adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Group Capital Calculation (E) Working Group recommends that the accreditation standard become effective Nov. 7, 2022, the end of the 60-month period contemplated under the Covered Agreement, with enforcement of the standard to commence Jan. 1, 2023. **However, the Working Group is also supportive of the effective date being bifurcated to allow those states that are not the Group Wide Supervisor of a group with operations in the EU or UK to be subject to a later effective date in line with the normal accreditation timeline, which would result in an effective date of January 1, 2026.**

There were also revisions made to Section 8 of Model #440 regarding Confidential Treatment. The Group Capital Calculation (E) Working Group strongly supports the use of language similar to that contained in Section 8G of

Model #440. This language was considered very critical to the GCC as its very important that members of the insurance industry (or regulators) not be allowed to make the results of the GCC public in any way as they are designed as regulatory-only tools. Unlike RBC that has regulatory trigger points, the GCC does not and the regulators of these groups believed it would be detrimental if these tools were used by insurers as a means to advertise their relative solvency strength.

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

The NAIC has not performed a cost/benefit analysis with respect to the 2020 revisions to Model #440 and Model #450, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, the possible exemptions allowed under Model #450 are specifically designed to consider the cost to complete the GCC by the insurance company and the benefits of the GCC to the lead-state commissioner. More specifically, all insurers are required to submit the GCC at least once, after which time the expectation is that the lead state commissioner will evaluate the added insight brought to the state from GCC; then, provided the group has premium less than \$1 billion, no international business, no risky non-regulated entities and no banks or similar capital regulated entities in the group, the lead state commissioner can exempt the group from filing in the future.

In addition, the construction of the GCC also considers cost of completion and specifically provides a principle-based approach where the insurance company can exclude non-risky affiliates from the calculation and also provides the insurance company to group the information of multiple non-insurance/non-regulated affiliates as a means to further reduce the burden of completion. In short, the GCC is only as complex as the insurance group has structured itself, and therefore the GCC already inherently considers the cost to comply.

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## 6. Insurance Holding Company Systems

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State law should contain the NAIC *Insurance Holding Company System Regulatory Act* (#440), or an act substantially similar, and the department should have adopted the NAIC *Insurance Holding Company System Model Regulation* (#450).

### *Insurance Holding Company Systems – continued*

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#### Changes to Existing

- k. Filing requirements for the enterprise risk filing similar to those specified in Section 4L(1) of the Model #440?

#### New

- l. Filing requirements for the group capital calculation filing similar to those specified in Section 4L(2) of Model #440?

i. The ultimate controlling person of every insurer subject to registration shall annually concurrently file with the registration and annual a group capital calculation completed in accordance with the NAIC Group Capital Calculation Instructions as directed by the lead state commissioner similar to section 4L(2)?

ii. Provision for exempting 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, substantially similar to 4L(2)(a)?

iii. Provision for exempting an insurance holding company system that is required to perform a group capital calculation specified by the U.S. Federal Reserve? If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the GCC, substantially similar to 4L(2)(b)?

iv. Provision for exempting an insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital, substantially similar to 4L(2)(c)?

v. Provision for exempting an insurance holding company system that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program and whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts the GCC as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, substantially similar to 4L(2)(d)?

vi. Provision that gives the lead state the authority to require the GCC 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, substantially similar to 4L(2)(e)?

#### Changes to Existing

- cc. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.

#### New

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



New

- n. Filing requirements for the group capital calculation filing similar to those specified in Section 21 of Model #450?
  - i. Provision that gives the lead state the authority to exempt the filing of the group capital calculation provided the criteria are substantially similar to those allowed under Section 21A of Model #450?
  - ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are substantially similar to those allowed under Section 21B of Model #450?
  - iii. Provision that gives the lead state the authority to require the group capital calculation of any group that previously met an exemption or submitted a limited filing if any insurer in the holding company system either triggers an RBC action level event, is deemed in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer, substantially similar to those allowed under Section 21C of Model #450?
  - iv. Provision that sets forth the criteria for a jurisdiction to be included on the NAIC listing that “recognize and accept the group capital calculation” substantially similar to that required under Section 21D and Section 21E of Model #450?

## 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.

- 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.
- GF. "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.

- HG. "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).
- IH. "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.
- LI. "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 Ceriteria," 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.
- MI-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.
- NK-O. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

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

~~~~~*DETAIL ELIMINATED TO CONSERVE SPACE*~~~~~

#### **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.

**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.

- (~~a~~)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 .

~~L.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.

~~~~~*DETAIL ELIMINATED TO CONSERVE SPACE*~~~~~

## **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 its affiliates and subsidiaries~~, 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 ~~and its affiliates and subsidiaries~~ 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 and its affiliates and subsidiaries~~ 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)~~ (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 and its affiliates and subsidiaries 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 and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner and its affiliates and subsidiaries 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 designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurer the insurer's written consent.
- 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 8-C(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.

~~~~~*DETAIL ELIMINATED TO CONSERVE SPACE*~~~~~

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

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### 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 212. 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 223. 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.

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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 3rd Quarter (editorial revision).*

### III.A.3. Risk Assessment (All Statement Types) – Quarterly Quantitative Assessment of Non-Troubled Insurers

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## Quantitative Risk Assessment

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- A. Non-troubled insurers will receive the following automated review each quarter. Troubled insurers will receive a full risk assessment analysis each quarter.

Each quarter, non-troubled insurers should be assessed based on the results of the following automated system. Based on the results of the automated system, you may need to proceed with a full risk assessment analysis. **Also consider any other information that may not be reflected in the quarterly statement but may be known or noted in the analysis file or Insurer Profile Summary (IPS), which could impact the company on a prospective basis prior to relying solely on an automated review.**

- B. If any of the following criteria is met, the insurer may be assigned a full quarterly risk assessment analysis:
1. The insurer is a troubled insurer
  2. Prior year risk-based capital (RBC) is less than 250% (*excluding title insurers and risk retention groups [RRGs]*) (ST)
  3. Prior year triggered the RBC Trend Test (*excluding title insurers and RRGs*) (ST)
  4. Scoring System result greater than or equal to (excluding title insurers):
    - 450 for property/casualty (P/C) insurers
    - 350 for life or fraternal insurers
    - 300 for accidental and health (A&H) insurers
    - 325 for health entities
- C. Based on the results of the automated system calculations, a full quarterly risk assessment analysis may be completed if the insurer has the following number of “yes” responses from the automated calculations:
1. Four or more for P/C insurers, title insurers and health entities or
  2. Three or more for life/A&H/fraternal insurers

Special Notes: Any automated results in D where the denominator is 0 return a “yes” response.

A default “no” response will be returned for insurers with no net retention for automated results #8 and #9.

For companies that have not filed a prior year-end or quarterly statement (e.g., either a new start-up insurer or exempt from filing), all responses in section D will default to a “yes.” In this scenario, it is recommended the analyst perform a full quarterly risk assessment analysis.

- D. Automated system calculations:
1. Are unassigned funds negative? (ST)
  2. Has surplus/capital and surplus (based on business type) increased  $\geq 12.5\%$  (for first quarter), 25% (for second quarter), or 37.5% (for third quarter)? (ST)
  3. Has surplus/capital and surplus (based on business type) decreased  $\geq 5\%$  (for first quarter), 10% (for second quarter), or 15% (for third quarter)? (ST)
  4. Has any individual asset category that is greater than 5% of surplus/capital and surplus (based on business type) changed by more than +/- 10% from the prior year-end? (CR, MK, LQ)
  5. Has any individual liability category that is greater than 5% of surplus/capital and surplus (based on business type) changed by more than +/-10% from the prior year-end? (RV, OP, ST)
  6. Are affiliated investments greater than or equal to 75% of surplus/capital and surplus (based on

### III.A.3. Risk Assessment (All Statement Types) – Quarterly Quantitative Assessment of Non-Troubled Insurers

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business type), OR unrealized capital loss more than -15% of prior year-end surplus/capital and surplus (based on business type)? (CR, LQ)

7. Does the net loss exceed 20% of surplus/capital and surplus (based on business type)? (OP)
8. For property/casualty insurers, title insurers and health entities, is the combined ratio greater than or equal to 100%? (PR/UW, OP)
9. Has net premiums written changed by more than +/- 5% (for first quarter), +/- 10% (for second quarter), or +/- 15% (for third quarter) from the prior year-to-date? (PR/UW)

### Follow-up Analysis

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If any of the following supplemental filings, information or analyses are received during the quarter, review and assess any risks, and document material risks in the IPS.

- Management Discussion & Analysis (MD&A)
- Audited Financial Statement Report
- Impact of the group on the domestic insurer from the analysis of the Holding Company Analysis (as completed by or received from the lead state)
- Risks related to the insurer from the analysis of the ORSA Summary Report Analysis (as completed by or received from the lead state)
- Business Plan and Projections
- Communications from the insurer, other departments or other regulators

### Recommendation for Further Analysis

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Does the automated system indicate a full quarterly risk assessment analysis should be performed?

- If “yes,” complete a full risk assessment analysis, or if a full risk assessment analysis was not completed, justify and document the reason(s) on the Quarterly Procedures for Non-Troubled Insurers.
- If “no,” no further actions are required.



**NAIC Risk Retention (E) Task Force**  
**Proposed Survey Questions**  
**Updated February 1, 2021**

**Purpose:** Identify what is working well and what areas the Task Force can improve related to both non-domiciliary and domiciliary regulation of risk retention groups.

**Instructions:**

Domiciliary states – Please complete **both** the domiciliary regulator questions **and** non-domiciliary regulator questions. If different people are responsible for each function, please coordinate internally and two separate submissions may be made. All states should also complete questions not specifically designated as domiciliary or non-domiciliary.

Non-domiciliary states – Please complete questions designated for non-domiciliary states. All states should also complete questions not specifically designated as domiciliary or non-domiciliary.

*Note: Individual responses will be kept confidential by NAIC staff. Aggregate information regarding the survey will be compiled, with state specific information and identifying details eliminated for sharing with regulators and/or industry.*

- 1) Name
- 2) State
- 3) Email
  
- 4) Does your state license domestic risk retention groups?
  - a. Yes, as captive insurers
  - b. Yes, as traditional insurers
  - c. Yes, as both captive and traditional insurers
  - d. NoComment box: Please provide additional comments.
  
- 5) Has your state implemented and provided access to the Best Practices and FAQs for Risk Retention Groups to: 1) - employees in your state responsible for registering or licensing RRGs; 2) - RRGs licensed or registered in your state; 3) - the general public? (*referenced documents can be found on the RRGTF webpage under Related Documents* [https://content.naic.org/cmte\\_e\\_risk\\_retention\\_group\\_tf.htm](https://content.naic.org/cmte_e_risk_retention_group_tf.htm) )
  - a. No
  - b. No, we believe further revisions are required
  - c. Yes, via the state website
  - d. Yes, via reference to the NAIC website
  - e. Yes, via other means
  - f. Yes, internally only
  - g. UnsureComment box: Please provide additional comments.
  
- 6) (Non-Domiciliary Regulators) Has your state implemented the NAIC's revised Uniform Risk Retention Group Registration Form adopted in 2020 by the C Committee?

- a. No, I was not aware of the revised form
- b. No, but we intend to implement the revised form
- c. No, we believe the form requires further revision
- d. No, we don't intend to implement the revised form
- e. Yes, and we have received a registration notification
- f. Yes, but we have not yet received a registration notification
- g. NA

Comment box: Please provide additional comments.

7) (Non-Domiciliary Regulators) Describe your state's requirements and procedures/processes for the registration of a non-domiciliary RRG in your state.

- a. Comment box

8) (Non-Domiciliary Regulators) As a result of the NAIC's revised Uniform Risk Retention Group Registration Form, and the Best Practices and FAQ documents, has your state implemented new or additional means of communicating/making inquiries with RRG domiciliary regulators as part of the registration process or annual review process?

- a. Yes
- b. No
- c. NA

Comment box: Please provide additional comments on new or additional means of communication.

9) (Non-Domiciliary Regulators) Do you believe RRGs applying for registration in your state are properly completing the registration form and providing all required information?

- a. Yes
- b. No
- c. NA

Comment box: If no, please provide additional comments.

10) (Non-Domiciliary Regulators) When communicating with a domiciliary regulator, did you receive timely responses and were the responses satisfactory?

- a. No, responses were not timely or satisfactory
- b. Responses were timely, but not satisfactory
- c. Responses were satisfactory, but not timely
- d. Yes, responses were both timely and satisfactory
- e. NA

Comment box: Please comment on what could be improved, if anything?

11) (Domiciliary Regulators) Have you seen an increase in communication received from non-domiciliary states regarding RRGs?

- a. No, unchanged
- b. Yes, minimal increase
- c. Yes, moderate increase
- d. Yes, significant change
- e. NA

Comment box: Please provide additional comments.

12) (Domiciliary Regulators) If an RRG becomes troubled or potentially troubled do you notify the states it is registered in?

- a. Yes
- b. No
- c. Unsure
- d. NA

Comment box: Please provide additional comments.

13) (Domiciliary Regulators) If an RRG is no longer eligible to write in other states (voluntary or involuntary liquidation, regulatory action, etc.) do you notify the states it is registered in?

- a. Yes
- b. No
- c. Unsure
- d. NA

Comment box: If yes, please describe the notification/communication process with other states.

14) What areas of the updated tools (NAIC's revised Uniform Risk Retention Group Registration Form, and the Best Practices and FAQ documents) do you find most beneficial in your regulatory role (what is working well)?

15) What parts of the registration process for non-domestic RRGs do you feel need further clarification, improvement, expanded guidance (what is not working well)?

16) Do you have suggestions for the NAIC RRG Task Force to consider focusing on to keep moving forward with improvements or additional tools and resources (for example – communication considerations, common problem areas, information gaps with other states or the industry, etc.)?

17) What other topics should the NAIC RRG Task Force focus on to further improve and bring more uniformity to the licensing and registration processes, improve the ongoing regulation of RRGs, and/or further improve the understanding of RRGs?

18) Would individuals from your state participate if a webinar or other training is offered covering RRG registration, licensing or other RRG hot topics?

- a. No
- b. Yes, from a non-domiciliary regulator perspective
- c. Yes, from a domiciliary regulator perspective
- d. Yes, from both a non-domiciliary and domiciliary regulator perspective

Comment box: Please comment on what topics would be helpful.

19) What suggestions do you have to best disseminate information on RRG regulation to state regulators (both domiciliary and non-domiciliary)?

20) Do you utilize the NAIC Risk Retention and Purchasing Group Handbook?

- a. Yes
- b. No

21) Do you have suggestions for updating and improving the NAIC Risk Retention and Purchasing Group Handbook?

- a. Yes
- b. No

Comment box: If yes, please provide suggestions.

22) (Domiciliary Regulators) Do you utilize the UCAA for licensing new Risk Retention Groups?

- a. Yes
- b. No
- c. NA

23) (Domiciliary Regulators) If you use a process other than UCAA for licensing new Risk Retention Groups, please check all the following elements that are part of the process to charter/license a new RRG.

- a. Background checks and use of biographical affidavit forms
- b. Use of a consulting actuary to review the plan of operation, feasibility analysis and financial projections
- c. Review and evaluation of management personnel
- d. Review of related parties, MGUs and service providers
- e. Review of corporate documents
- f. Review of corporate governance procedures and guidelines
- g. Review of plan of operation, including risks to be insured, limits and maximum retained risk
- h. Review of feasibility study, including financial projections
- i. Require the RRG to list the states the RRG proposes to register in
- j. Require the RRG to include a description of any permitted practice requests
- k. Review of the reinsurance program and creditworthiness of proposed reinsurers
- l. Review of the investment policy and custodial arrangement/agreement
- m. Review of the capital structure, and if applicable, form of surplus note or letter of credit
- n. Review of ownership (including financial information of owners/members) and form of shareholder/subscriber agreements
- o. Review of rates, policy forms and underwriting guidelines, and if applicable, comparison of rates in states proposed to operate in
- p. Review of risk mitigation and loss prevention measures
- q. Review of prospective risks
- r. Review for compliance with the Federal Liability Risk Retention Act
- s. Review for compliance with holding company regulations
- t. Review of marketing materials
- u. NA

Comment box: Please provide a discussion of other key elements or relevant timelines of the licensing process not identified above.