

Draft Pending Adoption

Attachment Seven
Financial Condition (E) Committee
12/13/21

Draft: 12/8/21

Restructuring Mechanisms (E) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Fall National Meeting*)
December 6, 2021

The Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met Dec. 6, 2021. The following Working Group members participated: Elizabeth Kelleher Dwyer, Co-Chair (RI); Glen Mulready, Co-Chair (OK); Jared Kosky (CT); Kevin Fry and Shannon Whalen (IL); Judy Weaver (MI); Fred Andersen (MN); John Rehagen (MO); Lindsay Crawford (NE); My Chi To and Bob Kasinow (NY); Melissa Greiner and Kimberly Rankin (PA); Daniel Morris (SC); Amy Garcia (TX); David Provost (VT); Scott A. White and Thomas J. Sanford (VA); Steve Drutz (WA); and Amy Malm and Richard Wicka (WI). Also participating was: Robert Wake (ME).

1. Considered Written Comments Received on the Co-Chair Exposed Draft White Paper

Superintendent Dwyer described the development and release of the co-chair draft white paper as distributed for the meeting. She stated the purpose of the meeting is to listen to a summary of the comments received (Attachment Seven-A).

a. NWCRA

Gerald Chiddick (National Workers Compensation Reinsurance Association—NWCRA) stated his organization's comments are primarily focused on the role the association plays in the residual markets and the need for the association to be notified in advance of any proposed transactions. He said ultimately a failure to notify the association could result in unpaid obligations. Mr. Chiddick referenced his comments and noted he is prepared to answer any questions members had on the comments. The comments emphasize the need for a regulator to be certain that the review process has specifically identified what residual market obligations may be affected by the proposed restructuring, which can be done through outreach to the National Workers Compensation Reinsurance Pooling (NWCPR) mechanism. The insurer should be able to provide information on the existence of such obligations, and the regulator can ascertain with the NWCPR that the reported obligations are accurately stated. The regulator can then ascertain that they are included in the transaction and that those are transferred, both legally and administratively, to the transferee.

b. NOLHGA and NCIGF

Barbara Cox (National Conference of Insurance Guaranty Funds—NCIGF) stated their comments are neither in favor of nor opposed to the restructuring mechanisms in the white paper, but their concern is continuation of guaranty fund coverage. She stated one request they had was that change to the NAIC guaranty fund model be taken up as soon as possible, for which they had developed specific language changes. Superintendent Dwyer indicated she would check with NAIC staff and the process to determine what the next steps would be. Bill O'Sullivan (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) stated his only additional comment was the process for assuring coverage was different for life and health insurers and that the comment letter has specific discussion on that topic. Both Ms. Cox and Mr. O'Sullivan stated their appreciation for recognizing within the white paper the importance of ensuring that the guaranty fund association/fund protection a policyholder would have had prior to a restructuring transaction is preserved when the transaction is consummated. They noted that they propose specific changes to the draft white paper to help clarify differences between systems and lines of businesses.

c. Protucket

Robert A. Romano (Locke Lord), representing Protucket Insurance Company, discussed their extensive experience with United Kingdom (UK) Financial Services and Markets Act 2000 (FSMA) Part VII transactions and encouraged the Working Group to act on their recommendations as quickly as possible. The written comments provided a listing of a significant number of items for the NAIC to complete in order to pave the way for these transactions to occur. This includes, but is not limited to, financial standards to apply to such transactions, considering intra-group versus third-party transactions, supplemental tools, reformulation of risk-based capital (RBC), study of distinctions by line of business, guaranty association coverage, application of assumption reinsurance laws, and the addition of accounting for protected cells into the white paper.

d. Joint Parties

Douglas Wheeler (New York Life Insurance Company) summarized the joint comments from New York Life Insurance Company, Western & Southern Financial Group, Northwestern Mutual, and Massachusetts Mutual Life Insurance Company (MassMutual) (joint parties). Those comments highlighted that in a situation that substitutes a new insurer for the client's chosen insurer, without consent, is a significant event that needs to be approached with great respect and with the best interests of policyholders in mind. The comments also emphasized their belief that national accreditation standards must be developed that substantially incorporate at a minimum the UK Part VII robust regulatory and court review process. Also discussed was the need for the white paper to discuss the potential adverse consequences to policyholders of the long duration of products. Finally, the comments urge the white paper to specifically state that long-term care insurance (LTCI) should not be eligible for a corporate division or insurance business transfer (IBT).

e. Swiss Re

Matthew Wulf (Swiss Reinsurance Company—Swiss Re) stated Swiss Re's support for a white paper that can serve as a first step as a basis for continuing discussions about the issues and that the NAIC develop any guidance necessary to meet solvency and consumer protection objectives. He suggested the use of ad hoc groups to help bring the resources needed to complete the NAIC's work. His comments also identified a number of specific matters related to financial standards, guaranty funds, statutory minimum requirements, and licensure.

f. ACLI

Wayne Mehlman (American Council of Life Insurers—ACLI) summarized the comments of the ACLI. The comments were focused on the principles of the ACLI that they believe are an important guardrail before a corporate division transaction or IBT transaction can be approved by a state insurance regulator. The comments also included a number of suggestions and edits. Commissioner Mulready asked for clarification on the principle that expects solvency from the transferring party. Mr. Mehlman responded the ACLI believes it would otherwise lead to problems. Superintendent Dwyer questioned if what was meant was that no insolvency should be created as a result of the transaction. Mr. Mehlman responded affirmatively.

g. Commissioner White

Commissioner White stated his appreciation for the co-chairs' draft in identifying all of the important issues. He stated they had some recent experience with a transaction, which was the basis for some of their comments. Mr. Sanford summarized the comments, including that a request for the white paper to include a discussion of anti-notation statutes since they will influence different sections in the white paper. Commissioner White summarized some of the provisions on Virginia's anti-notation statutes and the effect they have on the white paper. He said more than 10 states with such laws are affected by such laws, and he discussed how laws would interact with each other. Mr. Kosky asked if the Virginia law was specific to IBTs. Mr. Sanford indicated their guidance was specific to IBTs now but how the general principles would apply to other restructuring transactions. Commissioner Mulready asked if the Virginia law was specific to reinsurance transactions only. Mr. Sanford responded that it is broader and applies to all notations.

h. Enstar

James Mills (Enstar) noted how two transactions had now been approved specific to IBTs and noted how the National Council of Insurance Legislators (NCOIL) had created a model law for both IBTs and corporate divisions, therefore emphasizing the need for guidance to be developed. The Enstar comments are focused on two key issues: 1) differentiating between active runoff management insurers, active insurers that also hold business in runoff, and companies that have transitioned from active insuring to managing their own runoff; and 2) the importance of state licensing on companies looking to aggregate runoff business into a single company. The request was made to take these issues up in the future.

i. PwC

Luann Petrellis (PricewaterhouseCoopers—PwC) summarized her comments, which emphasize how a recent transaction in Illinois provides a good illustration of how restructuring tools can be successfully implemented. She acknowledged that each transaction is unique but highlighted many of the positive steps taken by Illinois and the involved company, which provide an

example of a robust process that can be used to enable the balance of all stakeholders' needs when considering these transactions. The comment letter details those steps taken by Illinois and the company and can be used as best practices for similar transactions.

j. Mr. Wake

Mr. Wake described how he had submitted comments, some of which are in the form of specific edits to the paper, while others are in the form of specific suggestions or questions. He noted he believes the questions suggested more work was left to be done but that presumably the work could proceed and answer the questions simultaneously.

k. Mr. Rehagen

Mr. Rehagen noted some high-level comments, including some expressed concerns with the overall inability of the white paper to be as balanced as possible. He noted in particular the area of guaranty fund coverage, where he hoped the paper would be revised, and in the area of assumption reinsurance, where he is particularly concerned with the sentence that implied allowing the courts to determine the outcome, especially in the area of personal coverages, where those laws are designed to give consumers choices. He noted that generally speaking, the white paper seemed to downplay the significance of these issues, which was something he believes needs to be raised and worked through before states started approving such transactions.

l. California Health Advocates

Bonnie Burns (California Health Advocates) expressed concern with the section dealing with LTCI. She noted that section was small and should be expanded. She said she believes it would require detailed standards. Superintendent Dwyer responded that her laws do not allow an IBT of LTCI. Commissioner Mulready responded that his state is not entertaining any such transactions. Mr. Wake noted that it is something to think about, if only because it takes just one state to make it a reality. Ms. Burns noted that she was told as a regulator years ago that if the law does not prohibit it, it can be done.

Having no further business, the Restructuring Mechanisms (E) Working Group adjourned.

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