

Date: 11/22/21

*Virtual Meeting  
(in lieu of meeting at the 2021 Fall National Meeting)*

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

Tuesday, November 30, 2021

1:00 – 2:00 p.m. ET / 12:00 – 1:00 p.m. CT / 11:00a.m. – 12:00 p.m. MT / 10:00 – 11:00 a.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 July 26 Minutes—*Sandra Bigglestone (VT)* Attachment One
2. Discuss Proposed Preliminary Memo—*Sandra Bigglestone (VT)* Attachment Two
3. Hear Update Regarding Proposed Accreditation Standard for the Group Capital Calculation  
  - GCC Referral to F Committee Attachment Three
  - GCC Revised Significant Elements Attachment Three-A—*Sandra Bigglestone (VT)*
4. Receive Updates on Related NAIC and/or Federal Actions  
—*Sandra Bigglestone (VT)*
5. Discuss Any Other Matters Brought Before the Task Force  
—*Sandra Bigglestone (VT)*
6. Adjournment

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Draft: 8/9/21

Risk Retention Group (E) Task Force  
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)  
July 26, 2021

The Risk Retention Group (E) Task Force met July 26, 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 represented by Russell Coy (KY); Troy Downing represented by Steve Matthews (MT); Barbara D. Richardson (NV); Marlene Caride represented by David Wolf (NJ); and Raymond G. Farmer represented by Eva Conley (SC).

1. Adopted its May 25 Minutes

The Task Force met May 25 to discuss the results of the 2021 risk retention group (RRG) survey and discuss applicability to RRGs of the 2020 revisions to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450).

Mr. O'Donnell made a motion, seconded by Mr. Matthews, to adopt the Task Force's May 25 minutes (Attachment One). The motion passed unanimously.

2. Adopted its 2022 Proposed Charges

Ms. Bigglestone discussed a memorandum that includes the Risk Retention Group (E) Task Force's 2022 proposed charges, noting the proposed charges are unchanged from the Task Force's 2021 charges.

Commissioner Richardson made a motion, seconded by Mr. O'Donnell, to adopt the Task Force's 2022 proposed charges (Attachment Two). The motion passed unanimously.

3. Discussed the RRG Task List

Ms. Bigglestone summarize the updated RRG task list (Attachment Four). She stated there is a section for items that are 2019 and prior, as well as a section for 2021 results of the RRG survey. While a lot of work has been completed on the items gathered in 2019 and prior, some items may still warrant consideration and, therefore, remain on the list. However, the focus will likely be on the new information learned from the survey to direct where the next impact should be.

Ms. Bigglestone stated that the first issue that came out of the survey is the issue of incomplete and/or inaccurate registration forms. To address this concern, some simple instructions or additional guidance to supplement the registration form may be developed and is one area that could be addressed sooner rather than later. The second concern is limited information available for new RRGs registering in other states. Concerns were raised about how little information is available to a non-domiciliary regulator when it initially starts and may begin registering in other states prior to its first financial statement filings. While it is the domestic regulator's responsibility to oversee this type of information for an RRG, transparency and communication among state insurance regulators is encouraged. To address this issue, a template with some basic information that could be provided by the domestic regulator in this situation could be drafted and included in the best practices document previously adopted by the Task Force. This is another item the Task Force could address sooner rather than later.

Ms. Bigglestone said the next two items related to training and communication are both ongoing items that will continue to be addressed as opportunities present. One recent opportunity for training was the RRG session at the NAIC Insurance Summit, and an upcoming opportunity for communication is to participate in the regulator licensing forum on Aug. 25.

Ms. Bigglestone said the final item added as a result of the survey relates to licensing best practices for domestic regulators. The survey indicated most states already have processes in place that are similar. However, more research is likely needed and, therefore, may be a good project for a future time.

Mr. O'Donnell and Ms. Richardson agreed that the first two items related to registration forms and better information for new RRGs need more immediate attention, and the Task Force should concentrate on them first. The Task Force agreed to move forward with drafts for these items, and volunteers to help with the drafting process were asked to notify NAIC staff of their interest.

#### 4. Received Updates on Related NAIC and/or Federal Act

Ms. Bigglestone reminded everyone that at the Summer National Meeting, the Financial Regulation Standards and Accreditation (F) Committee will discuss inclusion of the group capital calculation (GCC) as part of the accreditation standards under the *Insurance Holding Company Systems* standard. The exposure recommends that a GCC be required for every group with an insurer and affiliate. The model allows an exemption for certain multistate insurers, but only if the group files the GCC at least once initially. Comment letters were received related to extending the commissioner's ability to allow exemptions and, therefore, will be a topic of discussion at the meeting. The next step for the Committee is to expose the recommendation, along with any revisions to the recommendation, for a one-year exposure period beginning Jan. 1, 2022. The Task Force expects to consider the proposal and provide a comment letter regarding application to RRGs during that one-year period.

Chrys Lemon (Vermont Captive Insurance Association—VCIA) stated that there is a lot of interest in this issue as far as the exemptions possible under the GCC and that the VCIA will be submitting some information in anticipation of the comment period.

Joseph Deems (National Risk Retention Association—NRRRA) stated the NRRRA will be providing some anecdotal examples of items that should be considered as part of the Task Force's due diligence.

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

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## RRG PRELIMINARY MEMORANDUM

### **RRG Preliminary Memorandum**

An RRG Preliminary Memorandum is developed by the domestic state for a risk retention group (RRG) upon approving the initial licensing of the RRG. The information in this document will serve as a summary of key considerations in assessing and approving the license. The information will also serve as the base for developing an Insurer Profile Summary (IPS) once the RRG begins writing business and files its annual statement. The role of the RRG Preliminary Memorandum is for both internal communication within the domestic state and for external communication with other states in which the RRG is authorized to register and has submitted a registration form. In accordance with the federal Liability Risk Retention Act (LRRA) a non-domestic state must rely on the domestic state to approve which states the RRG may write in. The non-domestic state does not perform their own review of the application for licensing in the domestic state but relies on the information in the RRGs registration form and communication from the domestic regulator. The RRG Preliminary Memorandum is not required, however, its use can help improve transparency and communication between regulators and reduce potential delays in registration. Additional recommendations regarding transparency and communication can be found in the RRG best practices and frequently asked questions documents on the Risk Retention Group (E) Task Force website.

A template that can be used to develop the RRG Preliminary Memorandum is provided below; however, the actual form and content should be determined by each respective state.

**XX DEPARTMENT OF INSURANCE  
RRG PRELIMINARY MEMORANDUM  
COMPANY NAME  
Date of Review**

<p><b>State Contact</b> List here</p> <p><b>List States Where Approved to Write Business</b> List all approved states here</p> <p><b>Accounting Standard</b> GAAP, modified GAAP, SAP</p> <p><b>Captive Manager</b> List name here List key contact here List phone here List email here</p> <p><b>Contact at Insurer</b> List name here List phone here List email here</p>
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**BUSINESS SUMMARY**

Provide a brief description of the risk retention group (RRG) and a summary of the business operations of the RRG. Consider inclusion of the following.

- Purpose of the RRG and the benefits gained by creating the RRG (i.e., is it meeting a need not met in the commercial market, formed by a promoter looking for a group, etc.).
- Describe the approved coverages and comment on their compliance with the LRRRA. Include policy limits and net retention.
- Describe the ownership structure and/or key members, association, or sponsor.
- Describe the capital structure of the RRG. Include minimum capital and surplus requirements, use of letters of credit, surplus notes, ability to raise additional capital, etc.
- Comment on how the business is produced (i.e., direct writings, agent(s), managing general agent (MGA), managing general underwriter (MGU)).

**GOVERNANCE**

Discuss the makeup of the board of directors and other oversight considerations including compliance with governance requirements in the *Model Risk Retention Act* (#705).

Discuss if the RRG is MGA or producer controlled.

Discuss service providers used.

Confirm background checks were done.

**PROFORMA FINANCIAL SNAPSHOT**

Proforma financial data may be summarized in a narrative format, chart format, or a combination. Information may include key financial statement items and/or key ratios. Sample data is shown below but the format, number of years of data, line items and ratios included should be customized. Consideration should be given to what information provides the most insight for the newly formed RRG. Information related to the feasibility study, including who performed the study may also be included.

**Assets and Liabilities**

<u>Years Ended December 31</u>	<u>20XX</u>	<u>20XX</u>
Total Invested Assets	219	253
Other Assets	111	131
<b>TOTAL ASSETS</b>	<b>330</b>	<b>384</b>
<b>LIABILITIES</b>		
Insurance reserves, net	97	95
Other liabilities	169	193
<b>TOTAL LIABILITIES</b>	<b>266</b>	<b>288</b>

Capital and Surplus	64	96
<b>TOTAL LIABILITIES AND C&amp;S</b>	<b>330</b>	<b>384</b>
<b>Operations</b>	<b><u>20XX</u></b>	<b><u>20XX</u></b>
Premiums, net	218	233
Investment income (net of gains/losses)	1	8
Other income	0	0
<b>Total revenues</b>	<b>219</b>	<b>241</b>
<b>LOSSES, BENEFITS AND EXPENSES</b>		
Incurred losses, net	177	157
Expenses	77	80
<b>Total losses and expenses</b>	<b>254</b>	<b>237</b>
Other	0	2
<b>NET INCOME</b>	<b>(35)</b>	<b>2</b>

### **AREAS OF INTEREST**

Provide a brief summary of the following items when applicable or noteworthy.

- Reinsurance
- Investment policy
- Related Parties
- Restrictions or special requirements such as permitted practices
- Additional details for coverages that require special underwriting, discounting and tail coverages
- Other

### **IMPACT OF HOLDING COMPANY ON INSURER**

Summarize the evaluation of the impact of the holding company system on the domestic insurer. Or state that the RRG is not part of a holding company group. The summary should include whether a disclaimer of affiliation or any other exemption or waiver related to holding company requirements has been granted, and the rationale for the determination.

### **KEY RISKS AND SUPERVISORY PLAN**

Summarize key risks identified and/or items that require further monitoring by the analyst or specific testing by the examiner. In addition, indicate if the Company is or should be subject to any enhanced monitoring, such as monthly reporting, a targeted examination or a more frequent exam cycle. Key risks may relate to the areas of interest above or may be separate considerations. Information should be brief and include prospective considerations.

Document the date of the first expected examination and the planned examination cycle.

Analysis Follow-Up

Examination Follow-Up

## Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the federal Liability Risk Retention Act (LRRRA) and (2) the NAIC *Model Risk Retention Act* (#705).

### ***Questions/Concerns from Non-domiciliary State***

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRRA, the following steps may be undertaken:

- a. Refer to your own state RRG statute to ensure compliance of your prospective action;
- b. Provide written notice of any non-compliance directly to the RRG;
- c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRRA [15 U.S.C. S3902(a)(1)(E)];
- d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

- e. Insurer Profile Summary (IPS)
- f. Inquire about the extent of biographical affidavit review and results of background checks
- g. Most recent examination report (may be obtained from I-Site)
- h. Amendments to the RRG's business plan or feasibility study
- i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, the following documents may be used for this request with modifications as necessary: Attachment A – Inquiry Template (when specific questions or concerns not typically addressed on the above documents arise) may be used for this request with modifications as necessary. Attachment B – RRG Preliminary Memorandum (for a new RRG in which the IPS is not yet available)

### ***Registration Timeline***

The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form\* and the related attachments. The non-domiciliary state cannot reject a complete registration\* that complies with those laws of the non-domiciliary state that are not preempted under the LRRRA. In the event a non-domiciliary state has concerns with an RRG registration, such concerns should be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form to ensure all required information is entered on the form within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete registration\*, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

\*Refer to the document titled “Risk Retention Groups: Frequently Asked Questions”, 3(c) for the definition of a complete registration form.

### ***Domiciliary State Responsibilities***

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the *Troubled Insurance Company Handbook*). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

### **General Licensing Guidance**

Domiciliary states should ensure the RRG’s application for licensing, which includes the plan of operation and feasibility study, includes the following, at a minimum:

- information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;



- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.

## Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group (“RRG”) in the State of \_\_\_\_\_ to write \_\_\_\_\_ liability coverage to its members who are in the business of \_\_\_\_\_. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments and/or concerns about the management or performance of the company.
6. Results of any financial analysis and/or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].



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## MEMORANDUM

To: Financial Regulation Standards and Accreditation (F) Committee

From: Financial Condition (E) Committee

Date: March 8, 2021

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

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On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Regulatory 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.

Please find attached, memorandums and proposed changes to the Accreditation (E) Committee as adopted by the Financial Condition (E) Committee related to these most recent changes to #440 and #450. Each of the memorandum's summarize the basis for recommending that certain provisions of these model changes become part of the Accreditation program as well as suggested timing. With respect to timing, consistent with action taken by the Financial Regulation Standards and Accreditation (F) Committee to use an expedited process in 2019 with respect to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) due to the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement), we recommend a similar expedited process with respect to states who are a Group Wide Supervisor of a group with operations in the EU or UK. The attached provide further details on the specifics of such recommendations.

F Committee exposed the referral for a 1-year comment period beginning January 1, 2022 (pending approval by Plenary at the Fall National Meeting).

The exposure by F Committee differs from the original exposure in two ways:

- The proposed effective date for all states is January 1, 2026.
- The proposed significant elements for the group capital calculation were modified to allow commissioners to grant exemptions to groups meeting the qualifications set forth in Model #450 Section 21A and Section 21B without the requirement to file at least once.

Note: In conjunction with the motion, the F Committee strongly encourages all states with a group impacted by the Covered Agreement to adopt the group capital calculation revisions to Model #440 and Model #450 for those groups effective Nov. 7, 2022. The Committee also strongly encourages states with a group impacted by the liquidity stress test to adopt the relevant revisions to Model #440 as soon as possible.

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EXECUTIVE OFFICE • 444 North Capitol Street NW, Suite 700 • Washington, DC 20001-1509

p | 202 471 3990 f | 816 460 7493

CENTRAL OFFICE • 1100 Walnut Street, Suite 1500 • Kansas City, MO 64106-2197

p | 816 842 3600 f | 816 783 8175

CAPITAL MARKETS & INVESTMENT ANALYSIS OFFICE • One New York Plaza, Suite 4210 • New York, NY 10004

p | 212 398 9000 f | 212 382 4207

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## MEMORANDUM

**To:** Financial Condition (E) Committee

**From:** Group Capital Calculation (E) Working Group

**Date:** February 25, 2021

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

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### Executive Summary

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Regulatory 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. The GCC is a natural extension of work state insurance regulators had begun, in part 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. 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. The GCC, and related financial reporting, will provide comprehensive transparency to state insurance regulators, making risks more easily identifiable and quantifiable. For these reasons, the Working Group recommends adoption of #440 and #450 as accreditation standards for all states with the normal accreditation timeline, which would result in an effective date of January 1, 2026.

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. Due to this agreement, the Working Group recommends that the accreditation standard become effective Nov. 7, 2022 for those states who are the Group Wide Supervisor of a group with operations in the EU or UK.

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EXECUTIVE OFFICE • 444 North Capitol Street NW, Suite 700 • Washington, DC 20001-1509

p | 202 471 3990 f | 816 460 7493

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p | 816 842 3600 f | 816 783 8175

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p | 212 398 9000 f | 212 382 4207

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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 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.

## 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 file 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, 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, 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, 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, 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, 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, similar to Section 8G of Model #440?
- 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 similar to those allowed under Section 21A of Model #450?

*The significant elements exposed by F Committee on Aug. 14, 2021 include a modification to element n.i and n.ii. Please see separate document containing the modified significant elements.*

- ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are similar to those allowed under Section 21B of Model #450? *See above comment regarding modifications.*
- 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, 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” similar to that required under Section 21D and Section 21E of Model #450?



**The following significant elements were modified from the initial March 8, 2021 E Committee referral and exposed by the F Committee on Aug. 14, 2021 for a 1-year exposure beginning January 1, 2022 (pending approval by Plenary at the Fall National Meeting). The modifications to n(i) and n(ii) allow Commissioners to grant exemptions to the group capital calculation to groups meeting the standards set forth in Model Regulation #450 Section 21A and Section 21B without the requirement to file at least once.**

**The significant elements are separated into those that incorporate the group capital calculation and those that incorporate the liquidity stress test.**

## **6. Insurance Holding Company Systems (Group Capital Calculation)**

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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 file 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, 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, 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, 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, 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, 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, similar to Section 8G of Model #440?
- 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 similar to those allowed under Section 21A of Model #450?
    - o Although not required for accreditation, in order to grant an exemption, is the filing required at least once?
  - ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are similar to those allowed under Section 21B of Model #450?
    - o Although not required for accreditation, in order to grant an exemption, is the filing required at least once?
  - 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, 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” similar to that required under Section 21D and Section 21E of Model #450?

## **6. Insurance Holding Company Systems (Liquidity Stress Test)**

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

### *Insurance Holding Company Systems – continued*

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Changes to Existing

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

New

- c. Define “NAIC Liquidity Stress Test Framework” similar to that in Section 1K?
- d. Define “Scope Criteria” similar to that in Section 1M?
- p. Filing requirements for the liquidity stress test filing similar to those specified in Section 4L(3) of Model #440:
  - vii. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year’s Liquidity Stress Test to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the *Financial Analysis Handbook* similar to Section 4L(3)?
  - viii. Insurers meeting at least one threshold of the Scope Criteria for a specific data year are scoped into that year’s NAIC Liquidity Stress Test Framework unless the lead state, after consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year similar to Section 4L(3)(a)? Insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year?

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

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