

**Statutory Accounting Principles (E) Working Group
Hearing Agenda
May 24, 2022
10:00 a.m. – Noon (Central)**

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Kevin Clark/Carrie Mears, Co-Vice Chairs	Iowa	Doug Bartlett	New Hampshire
Sheila Travis	Alabama	Bob Kasinow	New York
Kim Hudson	California	Melissa Greiner/Matt Milford	Pennsylvania
William Arfanis/Michael Estabrook	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm/Elena Vetrina	Wisconsin
Stewart Guerin/Melissa Gibson	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jim Pinegar, Jake Stultz, Jason Farr

Note: This meeting will be recorded for subsequent use.

The Statutory Accounting Principles (E) Working Group met in regulator-to-regulator session on May 17, 2022. This regulator session was pursuant to the NAIC Open Meetings Policy paragraph 3 (discussion of specific companies, entities or individuals) and paragraph 6 (consultations with NAIC staff related to NAIC technical guidance of the *Accounting Practices and Procedures Manual*). No actions were taken as the discussion previewed the May 24th agenda and discussed other items with NAIC staff pursuant to the NAIC open meeting policy.

REVIEW of COMMENTS on EXPOSED ITEMS

The following items received comments during the exposure period that are open for discussion.

1. Ref #2022-03: Premium Adjustments Allocated to Jurisdictions
2. Ref #2022-08: INT 22-01T: Freddie Mac When-Issued K-Deal (WI Trust) Certificates
3. Ref #2021-21: Related Party Reporting

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-03 Blanks (Robin)	Premium Adjustments Allocated to Jurisdictions	1 – Agenda Item	No Comments	IP-2

Summary:

On April 4 the Working Group exposed this agenda to propose revisions, to modify the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE) clarifying the guidance for premium adjustments. The proposed revisions clarify that all premium adjustments, including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in each respective jurisdiction. This agenda item did not propose statutory revisions, however it expressed support for the sponsored Blanks (E) Working Group proposal 2022-10BWG, which has a 2022 year-end effective date.

Interested Parties' Comments:

Interested parties have no comment on this item.

Recommended Action:

NAIC staff recommends that the Working Group adopt this agenda item, noting that there are no actual statutory revisions. Rather, adoption will express support for the corresponding Blanks (E) Working Group exposure (2022-10BWG), which modifies the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE) clarifying the guidance for premium adjustments.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-08 INT 22-01T SSAP No. 43R (Julie)	INT 22-01T: Freddie Mac When-Issued K-Deal (WI Trust) Certificates	2 – Agenda Item 3 – Draft Interpretation	In Support	IP-2

Summary:

On April 4, the Working Group exposed a tentative interpretation, *INT 22-01: Freddie Mac When-Issued K-Deal (WI Trust) Certificates*, to clarify that investments in the Freddie Mac “When Issued K-Deal” (WI) Program are in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from the date of initial acquisition.

As a summary, Freddie Mac “When Issued K-Deal” certificates (“WI”) are backed by an asset pool held in trust, but those assets do not initially include any mortgages or mortgage-backed assets. Rather these assets include cash from the sale of the WI certificates and a commitment by Freddie Mac to deliver one or more structured pass-through certificates (SPCs) in exchange for the WI trust’s cash within approximately 90 days of settlement. The date on which this delivery occurs is referred to as the “Subsequent Transfer Date.”

Prior to the Subsequent Transfer Date, the WI trusts pay fixed coupons to certificate holders which are funded from a Freddie Mac guarantee on the WI certificates. After the Subsequent Transfer Date, the WI trust will hold the promised SPCs which are backed by mortgages and guaranteed by Freddie Mac. Additionally, after this date the WI trust becomes a pass-through of the underlying trust. The WI certificates have an optional exchange right where they can be exchanged for the underlying SPCs, but if not exchanged, the WI certificates after the Subsequent Transfer Date will still be backed by the SPCs, however in any case, the investment is guaranteed by Freddie Mac.

Interested Parties' Comments:

Interested parties support the conclusions reached on this interpretation.

Recommended Action:

NAIC staff recommends adoption of the exposed INT to clarify that investments in the Freddie Mac “When Issued K-Deal” (WI) Program are in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from the date of initial acquisition.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2021-21 SSAP Nos. 25 & 43R (Julie/Jake)	Related Party Reporting	4 – Agenda Item	Comments Received	IP-2

Summary:

On April 4, the Working Group exposed SAP clarification revisions to *SSAP No. 25—Affiliates and Other Related Parties* and *SSAP No. 43R—Loan-Backed and Structured Securities* to clarify related party / affiliate guidance as well as new reporting disclosures for investments acquired from a related party, regardless of whether the investment is captured on an “affiliate” reporting line, incorporating proposed revisions after considering comments from interested parties.

The agenda item proposed that the identification of such items would occur through a reporting code in the year-end investment schedules and would apply in a variety of circumstances, which include:

1. Direct loan or direct investment (excluding securitizations) in a related party, for which the related party represents a direct credit exposure.
2. Securitization or similar investment involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which 50% or more of the underlying collateral represents investments in or direct credit exposure to related parties.
3. Securitization or similar investment involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which less than 50% (including 0%) of the underlying collateral represents investments in or direct credit exposure to related parties.
4. Securitization or similar investment in which the structure reflects an in-substance related party transaction but does not involve a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role.
5. The investment is identified as related party, but the role of the related party represents a different arrangement than the options provided in choices 1-4.

Interested Parties' Comments:

As stated in our original comment letter on this item, we understand that one of the goals of the proposal is to identify investments that are originated, managed, sponsored, or serviced by an affiliate or related party of the insurer (referred to as managed by affiliates for the remainder of this letter). Interested parties agree that this information can be useful for the regulators, but we continue to stress that it is critical to differentiate investments where there is direct credit exposure to an affiliate from those investments that are only managed by affiliates with no underlying credit exposure to the affiliate of the insurer.

In addition to the above, we have the following additional comments on the re-exposure:

1. *SSAP No. 25* - The Related Party Exposure is proposing to add the paragraph below, which would require a look through of affiliated investment structures to identify entities over which the insurer may have indirect control. To address Interested Parties' comments, the Working Group has added the footnote in italics and red below to clarify that the look-through requirement is not required for SEC-registered mutual funds and ETFs.

“For entities not controlled by voting interests, such as limited partnerships, trusts and other special purpose entities, control may be held by a general partner, servicer, or by other arrangements. The ability of the reporting entity or its affiliates to direct the management and policies of an entity through such arrangements shall constitute control as defined in paragraph 6. Additionally, a reporting entity or its affiliates may have indirect control of other entities through such arrangements. For example, if a limited partnership were to be controlled by an affiliated general partner, and that limited partnership held greater than 10% of the voting interests of another company (FN10), indirect control shall be presumed to exist. If direct or indirect control exists, whether through voting securities, contracts, common management or otherwise, the arrangement is considered affiliated under paragraph 5. Consistent with paragraph 8, a disclaimer of affiliation does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.”

FN10 Consistent with SSAP No. 97, footnote 1, investments in an exchange traded fund (ETF) or a mutual fund (as defined by the SEC) does not reflect ownership in an underlying entity, regardless of the ownership percentage the reporting entity (or the holding company group) has of the ETF or mutual fund unless ownership of the ETF actually results in “control” with the power to direct or cause the direction of management of an underlying company. ETFs and mutual funds are comprised of portfolios of securities subject to the regulatory requirements of the federal securities laws.

Interested parties’ comments on the amendments are as follows:

- We agree that the look-through requirement should not extend to SEC registered mutual funds and ETFs as those investments are subject to many regulatory requirements. However, the exemption should also extend to foreign open-end investment funds governed and authorized in accordance with regulations established by the applicable foreign jurisdiction, which are within the scope of SSAP No. 30 - *Unaffiliated Common Stock* and which are very similar to open-end mutual funds in the United States.
 - As stated on our previous comment letter, doing a look-through of the underlying investments of investment funds managed by affiliates to determine if there is indirect control will be a significant operational change as information will need to be requested from affiliated funds regarding their underlying investments along with percentage ownership. Once the information is obtained, insurers will need to go through each investment where the affiliated fund owns more than 10% of the equity of another company to document whether the presumption of control is overcome or not. We kindly request again for a 2023 implementation date to be considered.
 - Interested parties would like to confirm our understanding of the look through proposal. We believe an insurer would be required to look through to the underlying investments only in the situation where the entity (managed by an affiliate) in which the insurer owns equity instruments (e.g., private equity funds and CFOs). For example, if the insurer owns debt tranches of a CFO managed by an affiliate, we assume the look through analysis would be applied since the underlying investments of the CFO are equities. However, if the insurer owns an interest (debt or equity) in a CLO investment where the underlying assets are loans, we would not expect the look through to be applied since the CLO loans do not usually give an investor any control. As the look through paragraph is being inserted into SSAP 25 (which applies to all types of instruments), we believe clarification may be needed.
 - We also suggest adding the new footnote that was added to the new proposed paragraph 9 of SSAP No. 25 to the new codes being proposed to the investment schedules so that there is consistency regarding the types of assets for which the insurer would have to do a look-through of underlying investments of an affiliated fund.
2. ***Proposed changes to SSAP No. 43R to clarify that investments managed by affiliates are viewed as affiliated even if the underlying assets in the structure do not have any credit exposure to an affiliate –***

As stated above and in our previous comment letter, many insurers own asset management subsidiaries which manage securitization transactions. There is no question that the asset manager itself is a Subsidiary, Controlled and Affiliate (SCA) of the insurer and such asset managers are reported on Schedule Y as affiliates of the insurer and in the related party disclosures. However, when any debt tranches purchased from those securitization vehicles do not have any credit exposure to SCAs of the insurer, the debt tranches are not reported in the affiliated section of Schedule D and not filed as affiliated debt investments with the Securities Valuation Office (SVO) since they do not have affiliated credit risk exposure, even if the securitization vehicle is managed by a related party.

It is very important to interested parties that this distinction is understood for Schedule D bond investments. Schedule D bond investments should not be reported in the affiliated section of Schedule D if they do not have affiliated credit exposure. We believe that the new codes that are being proposed should provide the regulators with information regarding investments that have credit risk exposure to affiliates versus those investments that are only managed by affiliates or other related parties. If the intent is to change how investments are actually reported between affiliated and non-affiliated lines in the schedules, additional changes would need to be made to the current guidance, including the annual statement instructions and the SVO Purposes and Procedures (P&P) Manual, so that this is clear to all insurers. If all unaffiliated investments which are managed by an affiliate were required to be reported as affiliated, updates would have to be made to the SVO P&P manual to clarify that those investments continue to be Filing Exempt since the SVO does not provide designations on asset-backed securities and the manual requires filing for all affiliated debt investments. Furthermore, our understanding of the definition of affiliates and control under the Holding Company act is that they are based on voting rights of an equity holder. Therefore, asset managers that meet the definition of affiliates under the Holding Company Act are reported as affiliates on Schedule Y and any agreements with those affiliates are reported in the related party disclosure. However, investments that are simply managed by such affiliate with no credit risk exposure to an affiliate and where the underlying borrowers are not affiliates, would not meet the definition of an affiliate under the Holding Company Act.

All the language included in the exposure with the exception of the last sentence in the new paragraph 6b being proposed in SSAP No.43R support the view that unaffiliated investments managed by an affiliate shall be reported as unaffiliated. The last sentence in 6b indicates that “any arrangement that results in direct or indirect control, including control through a servicer” should be considered affiliated. While this statement is meant to make it clear, it is confusing as it relates to unaffiliated investments (where the insurer has no credit risk exposure to the underlying borrower), that are managed by an affiliate (either a subsidiary of the insurer or an entity under common control with the insurer). Interested parties request that the final sentence be removed as this sentence will only add confusion and will create inconsistency in reporting depending on how each insurer interprets these rules. As stated throughout the letter, the presence of certain arrangements such as an affiliated servicer do not usually mean that the investments managed are affiliated. A determination of direct or indirect control over the ultimate obligor pursuant to SSAP No. 25 is still required.

b. A loan-backed or structured security may involve a relationship with a related party but not be considered an affiliated investment. This may be because the relationship does not result in direct or indirect control of the issuer or because there is an approved disclaimer of control or affiliation. Regardless of whether investments involving a related party relationship are captured in the affiliated investment reporting lines, these securities shall be identified as related party investments in the investment schedules. Examples of related party relationships would include involvement of a related party in sponsoring or originating the loan-backed or structured security or any type of underlying servicing arrangement. For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, including control through a servicer or other controlling arrangement, shall be reported as affiliated in accordance with SSAP No. 25 — Affiliates and Other Related Parties.

As stated above, we are more than happy to provide the transparency that the regulators are looking for, which we believe will be accomplished through the new codes that will flag these investments as being managed by related parties.

3. ***Proposed annual statement changes to add a new electronic-only column to the investment schedules to identify investments involving related parties*** –The new codes being proposed in the related party exposure are as follows:

1. Direct loan or direct investment (excluding securitizations) in a related party, for which the related party represents a direct credit exposure.
2. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which 50% or more of the underlying collateral represents investments in or direct credit exposure to related parties.
3. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which less than 50% (including 0%) of the underlying collateral represents investments in or direct credit exposure to related parties.
4. Securitization or similar investment vehicles such as mutual funds, limited partnerships, and limited liability companies in which the structure reflects an in-substance related party transaction but does not involve a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role.
5. The investment is identified as related party, but the role of the related party represents a different arrangement than the options provided in choices 1-4.

Interested parties offer the following additional comments on the proposed codes:

- We understand that the codes will be required on all investment schedules. However, most of the codes appear to be more applicable to Schedule D and Schedule BA investments where investments can be made through an investment vehicle. For example, when we think of the relevancy of the codes to the mortgage loan schedule, it would appear that the only code that may potentially apply is code No. 1 if the insurer has issued a mortgage loan to a related party. Codes 2-5 do not seem applicable since mortgage loans reported on Schedule B can only be reported on Schedule B if the insurer has issued the mortgage loan directly to a borrower. The same would likely be true for Schedule DB.
- It is unclear to interested parties what “in-substance” related party transactions are referred to in code 4. Perhaps some examples can be provided as to the types of structures this is referring to so that insurers know what to report under this category.
- When reviewing the Blanks exposure on this item, we noted that the Blanks exposure added an additional code 6 for investments that have no related party relationship. We question the need for such code as a significant majority of insurers’ investments will probably be coded as such. There are other columns that are populated only if the code applies to that investment (e.g., Column 3 – Code; Column 5 – Bond Characteristics). Perhaps leaving the code blank will accomplish the same objective.

Recommended Action:

NAIC staff recommends that the Working Group 1) adopt the exposed agenda item with minor edits as shown below, 2) confirm key aspects detailed in the below bullets, and 3) provide direction to NAIC staff to consider footnote revisions, as proposed by interested parties to SSAP Nos. 25 & 97 in a separate agenda item.

Proposed revisions to the prior exposure, SSAP No. 43R, paragraph 6.b. are shown in grey below:

b. A loan-backed or structured security may involve a relationship with a related party but not be considered an affiliated investment. This may be because the relationship does not result in direct or indirect control of the issuer or because there is an approved disclaimer of control or affiliation. Regardless of whether investments involving a related party relationship are captured in the affiliated investment reporting lines, these securities shall be identified as related party investments in the investment schedules. Examples of related party relationships would include involvement of a related party in sponsoring or originating the loan-backed or structured security or any type of underlying servicing arrangement. For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, which include but are not limited to, including control through a servicer or other controlling arrangement, shall be reported as affiliated in accordance with SSAP No. 25—Affiliates and Other Related Parties.

Confirmation of Key Aspects:

- The related party electronic code column is effective Dec. 31, 2022.
- The related party new electronic code column is effective for all noted investment schedules: B – Mortgage Loans, D – Bonds, DB – Derivatives, BA – Other Invested Assets, DA – Short-Term, E2 – Cash Equivalents and DL – Securities Lending. (This is consistent with the exposure.)
- The related party new electronic code column shall be completed for all investments on any reporting line.
- The Working Group supports the inclusion of Code 6 (no related party relationship) as exposed by the Blanks (E) Working Group (2021-22 BWG) to eliminate potential confusion on whether a blank represents incomplete reporting or a non-related party relationship.

Direction of Footnote Revisions:

Interested Parties suggested revisions to reference open-end foreign regulated investments (captured in SSAP No. 30, paragraph 4.e) along with mutual funds and ETFs in the new footnote, **NAIC staff recommends that the Working Group direct staff to draft possible edits for consideration to SSAP No. 25 and corresponding edits to footnote 1 of SSAP No. 97 in a separate agenda item.** The proposed new footnote in SSAP No. 25 references the SSAP No. 97 footnote, so it would be important to be consistent.

Discussion:

The Working Group confirms that there are no proposed revisions within this agenda item that revises the current definition of an affiliate or reporting on the affiliate reporting line. Interested parties’ comments suggest that the additions to SSAP No. 25 require a “look through” exercise that does not exist under current SSAP No. 25 and the holding company act, thus presenting a new reporting burden for year-end 2022. SSAP No. 25 and the holding company act already state that control includes “possession, directly or **indirectly**, of the power to direct or cause the direction of the management and policies of the investee” and that “control shall be presumed to exist if a reporting entity **and its affiliates** directly or **indirectly**, own, control, hold the power to vote, or hold proxies **representing 10% or more** of the voting interest of the entity”. The added guidance is not changing this, and therefore should not introduce any new burden on reporting entities.

Although interested parties' comments have provided comments on this topic with both exposures, this discussion is unrelated to the current agenda item that proposes new reporting codes to identify the type of involvement of related parties, regardless of whether affiliated or unaffiliated. **The new electronic columns to capture related party relationships is applicable to all reporting lines regardless of affiliate determination. If consideration or clarity is needed on items captured within the affiliated reporting line, then NAIC staff requests that the Working Group direct consideration of that topic in a separate agenda item.**

It is particularly noted that the information contained in the interested parties' comments regarding the determination of affiliation under the holding company act, and that it is based solely on voting rights of an equity holder, is incorrect. The definition of an affiliate and control per the Holding Company Act (Model 440) and SSAP No. 25 are consistent and detailed below. As noted within this guidance, an affiliate is determined through control, and control can occur through other means besides ownership of voting securities. **Although ownership of 10% of voting securities results in a presumption of control, voting securities are clearly not the sole basis for determining control.** For many types of entities, control is not typically held through voting securities which has long been recognized under both GAAP and statutory accounting principles (see SSAP No. 25, Paragraph 7a as it pertains to limited partnerships). As has always been the case, determination of the affiliation of an investment is based on an evaluation of control of the investee, whether through voting interests or other means. This agenda item does not propose to change this in any way.

Although interested parties have requested deletion of the sentence copied below, the deletion of this sentence has no impact on the determination of whether an investment shall be reported as an affiliated investment. Pursuant to the existing guidance in Model #440 and existing guidance in SSAP No. 25, affiliation is determined through direct or indirect control, and that control can be based on voting rights, management and policies, contract or "otherwise."

NAIC staff recommend that the Working Group expand the sentence that was recommended to be deleted to instead reference all of the situations that could result with direct or indirect control pursuant to SSAP No. 25, paragraph 6. The proposed revisions are highlighted in grey below.

Sentence proposed to be deleted by industry:

For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, which include but are not limited to, ~~including~~ control through a servicer or other controlling arrangement, shall be reported as affiliated in accordance with SSAP No. 25— Affiliates and Other Related Parties.

Excerpts from the Holding Company Act as well as SSAP No. 25 are provided to further detail the existing guidance regarding determination of control.

Excerpt from Holding Company Act:

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.

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.

SSAP No. 25—Affiliates and Other Related Parties

5. An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*. Those entities are accounted for under the guidance provided in SSAP No. 48, which requires an equity method for all such investments. An affiliate is any person that is directly or indirectly, owned or controlled by the same person or by the same group of persons, that, directly or indirectly, own or control the reporting entity.

6. **Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship (d) by common management, or (e) otherwise.** Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity.

The comment letter is included as Attachment 5 (7 pages).

[https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national meetings/a. national meeting materials/2022/5-24-22/hearing/0 - 5-24-2022 - hearing agenda.docx](https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national%20meetings/a.%20national%20meeting%20materials/2022/5-24-22/hearing/0-5-24-2022-hearing%20agenda.docx)

**Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A**

Issue: Premium Adjustments Allocated to Jurisdictions

Check (applicable entity):

	P/C	Life	Health
Modification of Existing SSAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
New Issue or SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Description of Issue:

This agenda item has been drafted to propose blanks instructional changes primarily to Schedule T which reflects premiums, allocated by states and territories. NAIC staff received inquiries from 3 states in the fourth quarter of 2021 regarding a minor number of entities that primarily wrote health business related to the Affordable Care Act (ACA) which are believed to have not properly allocated premium adjustments by jurisdiction on the statutory financial statement. The states identified that a minority of entities reported some portion of their U.S.-based premium in the category of “aggregate other alien.” The aggregate other alien line is for non-U.S. premium therefore, reporting U.S.-based ACA premium as alien is problematic. The purpose of this agenda item is to add additional annual statement instructions to address this reporting inconsistency. Regardless of the cause of this specific issue, the proposed revisions intend to clarify that premium adjustments (both increases and decreases) shall be reflected in the appropriate jurisdiction. This proposal is to address this current issue as well as future situations.

The specific premium identified is understood to be ACA premium written in the U.S. and its territories. Based on the descriptions provided, most of the amounts are presumed to be from premium redistribution as a result of the risk adjustment program of the ACA. All of the premium adjustments from the ACA risk adjustment program, and the risk corridor program, are noted as premium in *SSAP No. 107—Risk-Sharing Provisions of the Affordable Care Act*. (Although the risk corridor program ended in 2016, distributions related to 2015-2016 plan years have been received in the last two years due to a U.S. Supreme Court decision.)

The ACA risk adjustment premium redistribution calculations are calculated by plan and by jurisdiction. Therefore, the jurisdictions are known. The ACA risk adjustment program redistributes premium from plans that have relatively healthier insureds and gives to plans with relatively less healthy insureds based on risk scores. *SSAP No. 107* directs reporting the premium adjustments in the ACA risk adjustment program as premium subject to redetermination, which requires accruing the adjustments based on policy experience as described in the authoritative literature section below.

NAIC staff understanding is that most states would treat the premium after adjustments (both increases and decreases) as the amount subject to premium tax. However, preliminary conversations some health entities have asserted that they believe their state only subjects the premium prior to adjustment to premium tax. In the statutory annual statement, the premium including adjustments should be reported as premium subject to redetermination as identified in *SSAP No. 107*. If a jurisdiction treats premium differently for tax purposes, that would be addressed on the jurisdiction’s premium tax return.

Because of the way the ACA risk adjustment program premium adjustments calculation works, an insurer can have both payables and receivables in different plans in the same jurisdiction. For example, they could be a receiver in the bronze plan in state A and a payor in the silver plan in state A. Total premium in the state is redistributed among plans at the same level in the state, no new funds are added. In the examples below the total premium columns are what is reported in the state A and B lines of Schedule T.

State A	Initial Premium	Premium Adjustments/Redistribution	Total Premium	State B	Initial Premium	Premium Adjustments/Redistribution	Total Premium
Bronze	\$ 100	\$ 40	\$ 140	Bronze	\$ 100	\$ 20	\$ 120
Silver	\$ 100	\$ (25)	\$ 75	Silver	\$ 100	\$ (25)	\$ 75
Gold	\$ 100	\$ -	\$ 100	Gold	\$ 100	\$ (15)	\$ 85
total	\$ 300	\$ 15	\$ 315	total	\$ 300	\$ (20)	\$ 280

Existing Authoritative Literature (bolding added for emphasis):

- *Uniform Deposit Law Model 300:*

“Alien insurer” means an insurer incorporated or organized under the laws of any country other than the United States.

- *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities:*

8.b.iv. Investments in foreign insurance SCA entities shall be recorded based on the underlying U.S. GAAP equity from the audited U.S. GAAP basis financial statements, adjusted to a limited statutory basis of accounting in accordance with paragraph 9, if available. If the audited U.S. GAAP basis financial statements are not available, the investment can be recorded on the audited foreign statutory basis financial statements of the respective entity adjusted to a limited statutory basis of accounting in accordance with paragraph 9 and adjusted for reserves of the foreign insurance SCA with respect to the business it assumes directly and indirectly from a U.S. insurer using the statutory accounting principles promulgated by the NAIC in the *Accounting Practices and Procedures Manual*. The audited foreign statutory basis financial statements must include an audited footnote that reconciles net income and equity on the foreign statutory basis of accounting to the U.S. GAAP basis. **Foreign insurance SCA entities are defined as alien insurers formed according to the legal requirements of a foreign country.**

- *SSAP No. 107—Risk-Sharing Provisions of the Affordable Care Act:*

Risk Adjustment Program – Accounting Treatment

14. Premium adjustments pursuant to the risk adjustment program will be based upon the risk scores (health status) of enrollees, participating in risk adjustment covered plans rather than the actual loss experience of the insured. This program bears some similarities to the Medicare Advantage risk adjustment program¹ under which the plan receives additional funding (or pays additional amounts) based on adjustments to risk scores of enrollees (see *INT 05-05: Accounting for Revenues Under Medicare Part D Coverage*).

15. **The risk adjustment payables and receivables shall be accounted for as premium adjustments subject to redetermination as specified in this statement.** Effective beginning with

¹ The ACA program also has significant differences from the Medicare Advantage risk adjustment program, which is retrospective, administered as a single national program, with most enrollees administered by the federal government. By contrast, the ACA risk adjustment is not retrospective, and is administered by each entity by state and by plan.

2018 benefit plan years, the risk adjustment assessments and distributions are calculated including the high-cost risk pool aspect of this program and should be reported on a net basis.

- a. Risk adjustment payables meet the definition of liabilities as set forth in *SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets*. Risk adjustment receivables meet the definition of an asset and are admissible to the extent that they meet all of the criteria in this statement.
- b. Risk adjustment payables and receivables shall be estimated based on experience to date. The method used to estimate the payables and receivables shall be reasonable and consistent between reporting periods. Reporting entities shall be aware of the significant uncertainties involved in preparing estimates and be both diligent and conservative in their estimations. In exercising the judgment required to prepare reasonable estimates for the financial reporting of risk adjustment program payables and receivables, the statutory accounting concept of conservatism shall be followed. In addition, reporting entities are required to have sufficient data to determine a reasonable estimate. Ensuring sufficient data requires that the reporting entity's estimate is based on demonstrated knowledge of the marketplace and annual information which includes patient encounter and diagnosis code data to determine the differences in the actuarial risk profile of the reporting entity's insureds versus the market participants in the particular market and state risk pool. Sufficient data shall incorporate patient default scores, if applicable, under the terms of the risk adjustment program. In addition, the estimates shall be consistent with other financial statement assertions and the pricing scenarios used by the reporting entity.
- c. Premium revenue adjustments for the risk adjustment program are estimated for the portion of the policy period that has expired and shall be reported as an immediate adjustment to premium. Accrued risk adjustment receivables shall be recorded in premium and considerations receivable, with a corresponding entry to written premiums. Accrued risk adjustment payables shall be recorded as a liability² with a corresponding entry to written premiums. Reporting entities shall record additions or reductions to revenue resulting from the risk adjustment program in the period in which the changes in risk scores of enrollees result in reasonably estimable additions or reductions. The risk adjustment program receivables shall be reported gross of payables.
- d. The risk adjustment receivables are administered through a federal governmental program. Once amounts are collected by the governmental entity, there is an obligation to distribute the funds. Amounts over 90 days due shall not cause the receivable to be treated as a nonadmitted asset based solely on aging.
- e. Provided that the risk adjustment receivables due the reporting entity are determined in a manner that is consistent with the requirements of this statement, the receivables are admitted assets until determination of impairment or payment denial is received from the governmental entity or government-sponsored entity administering the program. Upon notification that payments to be paid to the reporting entity will be less than the recorded receivables, any amount in excess of the confirmed amount shall be written off and charged to income, except for amounts that are under appeal. Any receivable for risk adjustment amounts under appeal shall be reflected as a nonadmitted asset.
- f. Evaluation of the collectibility of all amounts receivable from the risk adjustment program shall be made for each reporting period. If, in accordance with *SSAP No. 5R*,

² The annual statement liability lines will vary by the type of annual statement the reporting entity files. Managed care/accident and health reporting entities report as aggregate health policy reserves; life and accident and health reporting entities report as aggregate reserves for accident and health contracts; and property and casualty reporting entities report as aggregate write-ins for liabilities.

it is probable that the risk adjustment receivables are uncollectible, any uncollectible receivable shall be written off and charged to income in the period the determination is made. If it is reasonably possible that a portion of the balance determined in accordance with this paragraph is not anticipated to be collected and is therefore not written off, the disclosure requirements outlined in SSAP No. 5R shall be followed.

Risk Adjustment Program – High-Cost Risk Pool – Accounting Treatment

16. The individual and small group high-cost risk pools of the ACA risk adjustment program shall be accounted for consistent with the rest of the ACA risk adjustment program. Reporting entity issuers in the individual or small group markets need to account for the following risk adjustment payables and receivables including the impairment and aging guidance reflected in paragraph 15 and paragraph 16:

- a. **The high-cost risk pool assessment payable by the reporting entity, which is the percent-of-premium charge to the issuer in order to fund reimbursements across all issuers of claims above the high cost risk pool threshold, shall be accounted for as decreases to written premium subject to redetermination.**
- b. **High-cost risk pool distributions, which represent proportionate reimbursement for the issuer’s claims above the high cost risk pool threshold, would be accounted for as increases to written premium subject to redetermination.**
- c. As the risk adjustments and distributions described in paragraphs 4-9 are calculated after excluding the percentage of costs above the threshold specified in the high-cost risk pool aspect of this program, the payments described in paragraphs 4-9 will continue to be accounted for consistent with guidance in paragraph 15 and paragraph 16 (i.e., as a premium adjustment subject to redetermination).

Note that Schedule T, part 1 has slightly different names by annual statement type, but it reflects premiums, allocated by states and territories. Schedule T, Part 2 Interstate Compact- Exhibit of Premiums Written Allocated By States and Territories is the same name for all annual statement types.

- **Annual Statement Instructions Schedule T, Part 1 – Premiums and Other Considerations Allocated By States and Territories – Health:**

Details of Write-ins Aggregated at Line 58 for Other Alien

List separately each alien jurisdiction for which there is no pre-printed line on Schedule T.

If the premium from an alien jurisdiction is due to relocation of current policyholders, the amount may be aggregated and reported as “Other Alien.” Premiums from jurisdictions in which there is active writing must be reported by jurisdiction and include premium from relocated policyholders residing in the respective jurisdiction.

Identify each alien jurisdiction by using a **three-character (ISO Alpha 3) country code followed by the name of the country (e.g., DEU Germany)**. For premium that can be aggregated and reported as “Other Alien” as stated in the previous paragraph, use “ZZZ” for the country code and “Other Alien” for the country name. A comprehensive listing of country codes is available in the appendix of these instructions.

Include summary of remaining write-ins for Line 58 from the Overflow page on the separate line indicated.

- **Annual Statement Instructions Schedule T, Part 1 – Premiums and Annuity Considerations Allocated By States and Territories Life and Fraternal:**

Line 58 – Aggregate Other Alien

Enter the total of the write-ins listed in schedule “Details of Write-ins Aggregated at Line 58 for Other Alien.” **All U.S. business must be allocated by state regardless of license status.**

Details of Write-ins Aggregated on Line 58 for Other Alien
List separately each alien jurisdiction for which there is no pre-printed line on Schedule T.

If the premium from an alien jurisdiction is due to relocation of current policyholders, the amount may be aggregated and reported as “Other Alien.” Premiums from jurisdictions in which there is active writing must be reported by jurisdiction and include premium from relocated policyholders residing in the respective jurisdiction.

Identify each alien jurisdiction by using a three-character (ISO Alpha 3) country code followed by the name of the country (e.g., DEU Germany). For premium that can be aggregated and reported as “Other Alien” as stated in the previous paragraph, use “ZZZ” for the country code and “Other Alien” for the country name. A comprehensive listing of country codes is available in the appendix of these instructions.

Include summary of remaining write-ins for Line 58 from the Overflow page on the separate line indicated.

- **Annual Statement Instructions Schedule T , Part 1 – Property and Casualty:**

Line 58 – Aggregate Other Alien

Enter the total of the write-ins listed in Schedule Details of Write-ins Aggregated at Line 58 for Other Alien.

All U.S. business must be allocated by state regardless of license status.

Details of Write-ins Aggregated at Line 58 for Other Alien

List separately each alien jurisdiction for which there is no pre-printed line on Schedule T.

If the premium from an alien jurisdiction is due to relocation of current policyholders, the amount may be aggregated and reported as “Other Alien.” Premiums from jurisdictions in which there is active writing must be reported by jurisdiction and include premium from relocated policyholders residing in the respective jurisdiction.

Identify each alien jurisdiction by using a **three-character (ISO Alpha 3) country code followed by the name of the country (e.g., DEU Germany)**. For premium that can be aggregated and reported as “Other Alien” as stated in the previous paragraph, use “ZZZ” for the country code and “Other Alien” for the country name. A comprehensive listing of country codes is available in the appendix of these instructions.

Include summary of remaining write-ins for Line 58 from the Overflow page on the separate line indicated.

Schedule T, Part 2 Uniform instructions:

Line 58 – Aggregate Other Alien

Enter the total of all alien business in the appropriate columns. Details by countries are not required.

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups): None

Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:
None

Convergence with International Financial Reporting Standards (IFRS): Not applicable

Staff Recommendation: NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and concurrently expose an annual statement blanks proposal for 2022 annual reporting. The sponsored blanks proposal has been forwarded to the Blanks (E) Working Group to modify the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE) to clarify guidance for premium adjustments to ensure that entities are reporting premium by jurisdiction. This agenda item does not result in SSAP revisions. The proposed additions to the blanks instructions are shown below.

1. Schedule T, part 1 annual statement instructions for Health (This revision will make Health instructions consistent with the property casualty and life fraternal annual statement instructions.)

Line 58 – Aggregate Other Alien

Enter the total of the write-ins listed in schedule “Details of Write-ins Aggregated at Line 58 for Other Alien.” All U.S. business shall be allocated by state regardless of license status.

Details of Write-ins Aggregated at Line 58 for Other Alien

List separately each alien jurisdiction for which there is no pre-printed line on Schedule T.

If the premium from an alien jurisdiction is due to relocation of current policyholders, the amount may be aggregated and reported as “Other Alien.” Premiums from jurisdictions in which there is active writing must be reported by jurisdiction and include premium from relocated policyholders residing in the respective jurisdiction.

Identify each alien jurisdiction by using a **three-character (ISO Alpha 3) country code followed by the name of the country (e.g., DEU Germany)**. For premium that can be aggregated and reported as “Other Alien” as stated in the previous paragraph, use “ZZZ” for the country code and “Other Alien” for the country name. A comprehensive listing of country codes is available in the appendix of these instructions.

2. Schedule T, part 1 annual statement instructions for Health; Life and Fraternal and Property and Casualty

Add to general instructions:

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

3. Schedule T, Part 2 Uniform instructions:

Line 58 – Aggregate Other Alien

Enter the total of all alien business in the appropriate columns. Details by countries are not required.

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

4. Add additional instructions to line 58 - Aggregate Other Alien to the annual statement instructions for Health; Life and Fraternal and Property and Casualty

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

5. State Page - general instructions to the annual statement instructions for Health; Life and Fraternal and Property and Casualty

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

6. Accident and Health Policy Experience Exhibit (AHPEE) to the annual statement instructions for Health; Life and Fraternal and Property and Casualty

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

Staff Review Completed by: Robin Marcotte– NAIC Staff, February 2022

Recommendation:

NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and concurrently expose an annual statement blanks proposal for 2022 annual reporting. The sponsored blanks proposal has been forwarded to the Blanks (E) Working Group to modify the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE) to clarify guidance for premium adjustments. This agenda item does not result in SSAP revisions. The proposed additions to the blanks instructions are shown in the agenda item, but the primary instructional revision is as follows:

All premium adjustments (both increases and decreases), including but not limited to Affordable Care Act (ACA) premium adjustments related to the risk adjustment program, shall be allocated as premium in the respective jurisdiction.

Status:

On April 4, 2022, the Statutory Accounting Principles (E) Working Group moved this item to the active listing and exposed proposed revisions to be incorporated into a Blanks (E) Working Group proposal (2022-10BWG) which would modify the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE). The proposed revisions clarify that all premium adjustments shall be allocated as premium in each respective jurisdiction. This agenda item did not propose statutory revisions. This item was exposed with a shortened comment period ending May 6 to permit consideration for a year-end 2022 effective date of the reporting revisions.

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/NationalMeetings/A.NationalMeetingMaterials/2022/5-24-22/Hearing/1-22-03-PremiumAdjbyJurisdiction.docx>

**Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A**

Issue: Treatment of Freddie Mac WI Certificates

Check (applicable entity):

	P/C	Life	Health
Modification of existing SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New Issue or SSAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Description of Issue:

Freddie Mac “When Issued K-Deal” certificates (“WI”) are backed by an asset pool held in trust, but those assets do not initially include any mortgages or mortgage-backed assets. Rather these assets include cash from the sale of the WI certificates and a commitment by Freddie Mac to deliver one or more structured pass through certificates (SPCs) in exchange for the WI trust’s cash within approximately 90 days of settlement. The date on which this delivery occurs is referred to as the “Subsequent Transfer Date”.

Prior to the Subsequent Transfer Date, the WI trusts pay fixed coupons to certificate holders which are funded from a Freddie Mac guarantee on the WI certificates. After the Subsequent Transfer Date the WI trust will hold the promised SPCs which are backed by mortgages and guaranteed by Freddie Mac. Additionally, after this date the WI trust becomes a pass-through of the underlying trust. The WI certificates have an optional exchange right where they can be exchanged for the underlying SPCs, but if not exchanged, the WI certificates after the Subsequent Transfer Date will still be backed by the SPCs.

The issue is the statutory accounting treatment of WI certificates prior to the Subsequent Transfer Date.

Existing Authoritative Literature:

SSAP No. 43R—Loan-Backed and Structured Securities, paragraphs 2-4:

2. Loan-backed securities are defined as securitized assets not included in structured securities, as defined below, for which the payment of interest and/or principal is directly proportional to the payments received by the issuer from the underlying assets, including but not limited to pass-through securities, lease-backed securities, and equipment trust certificates.
3. Structured securities are defined as loan-backed securities which have been divided into two or more classes for which the payment of interest and/or principal of any class of securities has been allocated in a manner which is not proportional to payments received by the issuer from the underlying assets.
4. Loan-backed securities are issued by special-purpose corporations or trusts (issuer) established by a sponsoring organization. The assets securing the loan-backed obligation are acquired by the issuer and pledged to an independent trustee until the issuer’s obligation has been fully satisfied. The investor only has direct recourse to the issuer’s assets, but may have secondary recourse to third parties through insurance or guarantee for repayment of the obligation. As a result, the sponsor and its other affiliates may have no financial obligation under the instrument, although one of those entities may retain the responsibility for servicing the underlying assets. Some sponsors do guarantee the performance of the underlying assets.

SSAP No. 86—Derivatives. Key excerpts from SSAP No. 86 are as follows:

The definition of a derivative instrument and forwards from SSAP No. 86, paragraph 4 and 5d:

4. "Derivative instrument" means an agreement, option, instrument or a series or combination thereof:
- a. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or
 - b. That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.
- 5.d. "Forwards" are agreements (other than futures) between two parties that commit one party to purchase and the other to sell the instrument or commodity underlying the contract at a specified future date. Forward contracts fix the price, quantity, quality, and date of the purchase and sale. Some forward contracts involve the initial payment of cash and may be settled in cash instead of by physical delivery of the underlying instrument.

Guidance on TBAs from the Annual Statement Instructions:

"To Be Announced" securities (commonly referred to as TBAs) are to be reported in Schedule D unless the structure of the security more closely resembles a derivative, as defined within *SSAP No. 86—Derivatives*, in which case the security should be reported on Schedule DB. The exact placement of TBAs in the investment schedules depends upon how a company uses TBA.

Excerpt from Annual Statement Instructions, Schedule D, Part 3 and 4 on Disposals / Acquisitions:

This schedule should include a detailed listing of all securities that were purchased/acquired during the current reporting year that are still owned as of the end of the current reporting year (amounts purchased and sold during the current reporting year are reported in detail on Schedule D, Part 5 and only in subtotal in Schedule D, Part 3). This should include all transactions that adjust the cost basis of the securities. **Thus, it should not be used for allocations of TBAs to specific pools subsequent to initial recording in Schedule D, Part 3 or other situations such as CUSIP number changes.**

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups):
Reporting entity has filed a RTAS with the NAIC SVO.

Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:
The inaugural offering was the WI-K132 transaction (CUSIP: 3137H2NM2) which settled on September 28th, 2021 with the promised K-deal certificates being the K-132's AM class. The K-132 class AM certificates (CUSIP: 3137H3EW8) were settled and delivered to the WI-K132 trust on October 14th, 2021. The purpose of this request is to evaluate the structure of the WI offering more broadly but the WI-K132 transaction may serve as a helpful example for evaluation. To that end the offering documents for both the WI-K132 and the related K-132's certificate offerings are linked below. The webpage housing the base offering documents for the WI and K-Deal programs are also linked for ease of reference along with informational materials further detailing the WI program.

WI-K132 Offering Circular Supplement: <http://capitalmarkets.freddiemac.com/mbs/data/wik132oc.pdf>
K132 Offering Circular Supplement: <http://capitalmarkets.freddiemac.com/mbs/data/k132oc.pdf>
WI/K-Deal Base Offering Documents: <http://capitalmarkets.freddiemac.com/mbs/legal/>

WI Program Page: <https://mf.freddiemac.com/investors/when-issued-k-deals.html>
WI Investor Presentation: https://mf.freddiemac.com/docs/wi_investor_presentation.pdf
WI Frequently Asked Questions: https://mf.freddiemac.com/docs/wi_frequently_asked_questions.pdf
Video Overview of the WI Program: <https://www.youtube.com/watch?v=Lv7YaPvNspo&feature=youtu.be>

Recommended Conclusion or Future Action on Issue:

Sponsoring entity requests statutory accounting guidance to confirm that WI Trust SPCs shall be reported in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* and not as a forward contract under *SSAP No. 86—Derivatives*.

Recommending Party:

State Farm Mutual Automobile Insurance Company
Mark Ludy, Staff Finance Analyst
Mark.E.Ludy.GC98@StateFarm.Com
March 8, 2022

Staff Recommendation:

NAIC staff recommends that the Working Group expose a tentative statutory accounting interpretation to clarify that investments in the Freddie Mac WI Program shall be captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from initial acquisition. Key elements for this recommendation include:

- The WI Program is fully guaranteed by Freddie Mac and ensures that the investor will receive pass-through certificates, backed by mortgage loans held in trust, that reflect the terms of the investment set at original acquisition. In the event that the K-Deal certificates cannot be acquired, Freddie Mac is guaranteed to provide payment to the investor that reflects the full principal and interest per the original terms of the agreement, which reflects the payments that would have been received overtime if K-Deal certificates had been acquired.
- The definition of a forward contract in *SSAP No. 86* reflects an agreement between two parties that commit one party to purchase and another party to sell the instrument underlying the contract at a specified future date. With the WI Trust Program, the investor does not have a future commitment to acquire securities, as the investor acquires the WI Trust certificate on day one of the transaction and the investor is not required to convert the WI Trust certificates at any time. This WI Trust certificate is not a derivative instrument, as at the time of acquisition, the certificate reflects a tradeable investment in a trust structure backed by cash and a Freddie Mac guarantee of cash flows in accordance with terms established at original acquisition. In addition to having no variation to the investor as a result of an underlying interest, there is no requirement on the investor to take delivery of a different investment. The ability to convert the WI Trust certificate to a K-Deal certificate is strictly an election to the investor and is not a requirement to receive the pass-through cash flows per the terms of the initial investment.
- The WI Program, and resulting obligation of Freddie Mac, ultimately reflects an investment where the investor receives pass-through cash flows generated from mortgage loans acquired and held in trust. This is within the scope of *SSAP No. 43R—Loan-Backed and Structured Securities*, paragraphs 2-4.
- The WI Program, and treatment as a *SSAP No. 43R* security, is consistent with the current guidance for TBA securities when an insurer intends to take possession of the resulting mortgage-backed security. A TBA security reflects the pre-purchase of mortgage-backed securities prior to the finalization of the security issuance. Pursuant to the annual statement instructions, TBA securities are to be reported on Schedule D-1: Long-Term Bonds unless the structure more closely resembles a derivative. This determination depends on how a company uses the TBA. (For example, if a company intended to assume the mortgage-backed security once issued, the TBA would be captured on Schedule D-1 at initial acquisition. If a reporting entity was to continually trade/roll TBA exposures, this would be more characteristics of a derivative and would be captured on Schedule DB as a derivative.)

Staff Review Completed by: Julie Gann, NAIC Staff – March 14, 2022

Status:

On April 4, 2022, the Statutory Accounting Principles (E) Working Group moved this agenda item to the active listing and exposed a tentative interpretation *INT 22-01: Freddie Mac When-Issued K-Deal (WI Trust) Certificates* to clarify that investments in the Freddie Mac “When Issued K-Deal” (WI) Program are in scope of SSAP No. 43R. This item has a shortened comment deadline of May 6.

[https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national meetings/a. national meeting materials/2022/5-24-22/hearing/2 - 22-08 - wi trust.docx](https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/national%20meetings/a.national%20meeting%20materials/2022/5-24-22/hearing/2-22-08-wi-trust.docx)

Interpretation of the Statutory Accounting Principles (E) Working Group

INT 22-01T: Freddie Mac When-Issued K-Deal (WI Trust) Certificates

INT 22-01T Dates Discussed

April 4, 2022

INT 22-01T References

SSAP No. 43R—Loan-Backed and Structured Securities

SSAP No. 86—Derivatives

INT 22-01T Issue

1. This interpretation is to address questions on the accounting and reporting for Freddie Mac “When-Issued K-Deal (WI Trust) Certificates” (WI Program). Ultimately, the question is whether the structure should be initially captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* or as a forward contract in scope of *SSAP No. 86—Derivatives*.
2. The design of the WI Program is summarized as follows:
 - a. Investor acquires WI Trust certificates, which are backed by cash held in the WI Trust and pay a fixed coupon amount funded from a Freddie Mac guarantee.
 - b. Within 90 days, the trust uses the cash to acquire newly issued K-Deal structured pass-through certificates (SPCs) meeting certain pooling parameters laid out in the respective WI Offering Circular Supplement. K-Deal SPC (s) are Freddie Mac-issued structured pass-through certificates backed by the corresponding class of certificates issued by a separate REMIC trust that holds multifamily fixed-rate mortgage loans. The cash flows from the mortgage loans held by the REMIC trust provide pass-through payments to holders of the K-Deal SPCs.
 - c. An investor can choose to continue to hold the WI Trust certificates or exchange dollar-for-dollar their WI-securities into the underlying K-Deal SPCs. In either case, the investor receives a pass-through of cash flows generated by the mortgages held in the REMIC trust and the performance of the K-Deal SPCs is guaranteed by Freddie Mac. If continuing to hold the WI Trust certificates – rather than convert the certificates to K-deal SPCs – the K-Deal SPCs are held by the WI Trust, who in turn passes the cashflows to WI Trust investors. The WI Trust certificates benefit from Freddie Mac payment guarantee which guarantees that any cashflows collected from the K-Deal SPCs will be paid to the WI certificate holders.
3. Additional characteristics on this program include the following:
 - a. The WI Trust certificates are public securities and tradeable shortly after pricing.
 - b. The WI Trust certificates are backed by a Freddie Mac guarantee from acquisition.
 - c. From acquisition of the WI Trust certificates, the investor receives fixed coupon amounts reflective of the investment terms of the K-Deal SPCs.

- d. The WI Trust is obligated to acquire, and Freddie Mac is required to sell, the K-Deal SPCs at the amount stated at the time of initial investment. Meaning, the investor is not at a risk of loss, nor will experience any variation in outcome due to underlying variables that occur from the time of initial investment in the WI Trust until the K-Deal SPCs are acquired. If market forces change the purchase price of the K-Deal SPCs during the 90-days after initial acquisition of the WI Trust certificates, then Freddie Mac is still required to sell the K-Deal certificates at the terms agreed to at original investment. Ultimately, the investor is guaranteed an investment in K-Deal SPCs that reflects the notional value of the WI Trust-certificates and coupon terms at initial acquisition. (For example, if the investor acquired \$100 million of WI Trust Trust certificates at acquisition, when the K-Deals are subsequently acquired, the entity will receive \$100 million of K-Deal SPCs with the same payment terms regardless of any market impacts.)
- e. In the event that Freddie Mac is unable to acquire the K-Deal SPCs within the 90-day period, Freddie Mac is required to return the principal to the investor as well as provide a yield maintenance payment calculated using the full coupon payments that would have been received over the course of the investment.
- f. In the event that the investor elects to exchange the WI Trust certificates to the K-Deal SPCs, the investor receives an equivalent principal amount of the K-Deal SPCs of the same class. Although the investment will have a change in CUSIP, any such exchange is not deemed to be a taxable event as described in the respective Offering Circular Supplements for the WI Certificates. As such investors will not recognize a gain or loss on the exchange and investors will be treated as continuing to own the interests that were owned immediately prior to the exchange. Stated differently, any gains or losses on the exchanged WI-Certificates are “rolled into” the investors’ new K-Deal Certificate position.

4. The question of whether the structure is a loan-backed or structured security, or a derivative is primarily focused on the initial acquisition and the 90-day (or less) timeframe before the WI Trust acquires K-Deal certificates. The question is whether the initial 90-day acquisition of the WI Trust certificate, prior to the trust’s acquisition of the K-Deal certificates, represents a forward contract required to be accounted for under *SSAP No. 86—Derivatives*. Key excerpts from SSAP No. 86 are as follows:

- a. The definition of a derivative instrument from SSAP No. 86, paragraph 4:
 - 4. “Derivative instrument” means an agreement, option, instrument or a series or combination thereof:
 - a. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or
 - b. That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.
- b. The definition of a forward contract from SSAP No. 86, paragraph 5d:
 - 5.d. “Forwards” are agreements (other than futures) between two parties that commit one party to purchase and the other to sell the instrument or commodity underlying the contract at a specified future date. Forward contracts fix the price, quantity, quality, and date of the purchase and sale. Some forward contracts involve the initial payment of cash and may be settled in cash instead of by physical delivery of the underlying instrument.

5. This interpretation intends to clarify whether investments in the Freddie Mac WI Program shall be initially captured in scope of *SSAP No. 86—Derivatives* or captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities*.

INT 21-01T Discussion

6. This tentative interpretation clarifies that investments in the Freddie Mac WI Program shall be captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from initial acquisition, and not as a derivative forward contract, for the following reasons:

- a. The WI Program is fully guaranteed by Freddie Mac and ensures that the investor will receive pass-through certificates, backed by mortgage loans held in trust, that reflect the terms of the investment set at original acquisition. In the event that the K-Deal certificates cannot be acquired, Freddie Mac is guaranteed to provide payment to the investor that reflects the full principal and interest per the original terms of the agreement, which reflects the payments that would have been received overtime if K-Deal certificates had been acquired.
- b. The definition of a forward contract in *SSAP No. 86* reflects an agreement between two parties that commit one party to purchase and another party to sell the instrument underlying the contract at a specified future date. With the WI Trust Program, the investor does not have a future commitment to acquire securities, as the investor acquires the WI Trust certificate on day one of the transaction and the investor is not required to convert the WI Trust certificates at any time. This WI Trust certificate is not a derivative instrument, as at the time of acquisition, the certificate reflects a tradeable investment in a trust structure backed by cash and a Freddie Mac guarantee of cash flows in accordance with terms established at original acquisition. In addition to having no variation to the investor as a result of an underlying interest, there is no requirement on the investor to take delivery of a different investment. The ability to convert the WI Trust certificate to a K-Deal certificate is strictly an election to the investor and is not a requirement to receive the pass-through cash flows per the terms of the initial investment.
- c. The WI Program, and resulting obligation of Freddie Mac, ultimately reflects an investment where the investor receives pass-through cash flows generated from mortgage loans acquired and held in trust. This investment dynamic is within the scope of *SSAP No. 43R—Loan-Backed and Structured Securities*, paragraphs 2-4:
 2. Loan-backed securities are defined as securitized assets not included in structured securities, as defined below, for which the payment of interest and/or principal is directly proportional to the payments received by the issuer from the underlying assets, including but not limited to pass-through securities, lease-backed securities, and equipment trust certificates.
 3. Structured securities are defined as loan-backed securities which have been divided into two or more classes for which the payment of interest and/or principal of any class of securities has been allocated in a manner which is not proportional to payments received by the issuer from the underlying assets.
 4. Loan-backed securities are issued by special-purpose corporations or trusts (issuer) established by a sponsoring organization. The assets securing the loan-backed obligation are acquired by the issuer and pledged to an independent trustee until the issuer's obligation has been fully satisfied. The investor only has direct recourse to the issuer's assets, but may have secondary recourse to third parties through insurance or guarantee for repayment of the obligation. As a result,

the sponsor and its other affiliates may have no financial obligation under the instrument, although one of those entities may retain the responsibility for servicing the underlying assets. Some sponsors do guarantee the performance of the underlying assets.

- d. The WI Program, and treatment as a SSAP No. 43R security, is consistent with the current guidance for TBA securities when an insurer intends to take possession of the resulting mortgage-backed security. A TBA security reflects the pre-purchase of mortgage-backed securities prior to the finalization of the security issuance. Pursuant to the annual statement instructions, TBA securities are to be reported on Schedule D-1: Long-Term Bonds unless the structure more closely resembles a derivative. This determination depends on how a company uses the TBA. (For example, if a company intended to assume the mortgage-backed security once issued, the TBA would be captured on Schedule D-1 at initial acquisition. If a reporting entity was to continually trade/roll TBA exposures, this would be more characteristics of a derivative and would be captured on Schedule DB as a derivative.)

INT 22-01T Consensus

5. The Statutory Accounting Principles (E) Working Group reached a tentative consensus that investments in the WI Trust Program shall be captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from initial acquisition.

6. If a reporting entity elects to convert WI Trust SPC securities into K-Deal SPC securities, the guidance in the Annual Statement Instructions, Schedule D, Part 3 and Part 4 shall be followed. Per that guidance, the transition from a WI Trust to a K-Deal shall not be reported as a disposal or acquisition. As the terms and cost basis of the SPC certificates would be identical, and the change would only reflect a CUSIP number change, a disposal and reacquisition shall not be recorded.

7. Excerpt from Annual Statement Instructions, Schedule D, Part 3 and 4:

This schedule should include a detailed listing of all securities that were purchased/acquired during the current reporting year that are still owned as of the end of the current reporting year (amounts purchased and sold during the current reporting year are reported in detail on Schedule D, Part 5 and only in subtotal in Schedule D, Part 3). This should include all transactions that adjust the cost basis of the securities. Thus, it should not be used for allocations of TBAs to specific pools subsequent to initial recording in Schedule D, Part 3 or other situations such as CUSIP number changes.

INT 22-01T Status

8. Further discussion is planned.

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/NationalMeetings/A.NationalMeetingMaterials/2022/5-24-22/Hearing/3-INT22-01-K-Deals.docx>

**Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A**

Issue: Related Party Reporting

Check (applicable entity):

	P/C	Life	Health
Modification of Existing SSAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
New Issue or SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Description of Issue: This agenda item has been drafted in response to recent discussions on the reporting and disclosure requirements for investments with related parties. This agenda item intends to encompass two main goals:

1. Clarify the reporting of affiliate transactions within existing reporting lines in the investment schedules. This clarification intends to be consistent with the definition of an “affiliate” pursuant to the *Insurance Holding Company System Regulatory Act (Model #440)*, *SSAP No. 25—Affiliates and Other Related Parties* and *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*.
2. Incorporate new reporting requirements for investment transactions with related parties. Pursuant to recent discussions, regulators desire additional information on investment transactions involving related parties, regardless of whether the related party is “affiliate” pursuant to Model #440. To preserve the affiliate definition and reporting categories, these additional proposed reporting elements will be captured outside of the current affiliate reporting requirements.

Affiliate Definition and Identified Reporting Issues:

The *Insurance Holding Company System Regulatory Act (Model #440)* defines “affiliate” and “control” as:

- **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.
- **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.

The guidance / concepts from Model #440 are reflected in SSAP No. 25, paragraphs 5-7 and SSAP No. 97, paragraphs 5-7 and are summarized as follows:

- An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*. An affiliate is any person that is directly or indirectly, owned or

controlled by the same person or by the same group of persons, that, directly or indirectly, own or control the reporting entity.

- Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship (d) by common management, or (e) otherwise. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity.
- Control shall be measured at the holding company level. For example, if one member of an affiliated group has a 5% interest in an entity and a second member of the group has an 8% interest in the same entity, the total interest is 13%, and therefore, each member of the affiliated group shall be presumed to have control. This presumption will stand until rebutted by an evaluation of all the facts and circumstances relating to the investment based on the criteria in *FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18*. The corollary is required to demonstrate control when a reporting entity owns less than 10% of the voting securities of an investee. The insurer shall maintain documents substantiating its determination for review by the domiciliary commissioner. Examples of situations where the presumption of control may be in doubt include the following:
 1. Any limited partner investment in a limited partnership, unless the limited partner is affiliated with the general partner.
 2. An entity where the insurer owns less than 50% of an entity and there is an unaffiliated individual or group of investors who own a controlling interest.
 3. An entity where the insurer has given up participation rights as a shareholder to the investee.

The Annual Statement Instructions identifies what is captured in the reporting lines for “Parent, Subsidiary and Affiliates” as “Defined by *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*.”

Under the existing guidance, the following investments would likely not be reported as affiliated unless a domiciliary state has directed otherwise:

- Qualifying affiliated investments for which the domiciliary state has approved a disclaimer of affiliation or disclaimer of control from the affiliated entity. Once a disclaimer has been granted, the qualifying affiliate relationship is no longer considered an affiliate and any investments issued or held from the entity would not be reported as affiliated.
- Investments held from entities that do not qualify as affiliates, even if the entity qualifies as a related party. The determination of an affiliate is based on direct or indirect control. If the control determinants are not met, investments held from related parties are not reported as affiliated.
- Any investments acquired that were sponsored / originated by an affiliate, but the actual investment is not in the affiliate or other companies within the controlled holding company structure.

Model #440 explicitly excludes the purchase of securities solely for investment purposes from the determination of a change in control, so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in the state. This guidance further states that if the purchase of securities results in a presumption of control, then the acquisition of securities would not be considered

solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control of affirmatively finds that control does not exist.

Proposed Related Party Revisions

Although the affiliate definition may preclude certain investments from being captured in the "affiliated" reporting lines, there is a regulator desire to have improved information on investments with non-affiliated related parties as well as investments acquired from affiliates and non-affiliated related parties that do not reflect an investment within the affiliate/related party. For example, if the affiliate/related party was to sponsor or originate the investment, such investment would likely not be captured in the designated affiliate reported lines. This agenda item proposes revisions to SSAP No. 25 and SSAP No. 43R, as well as proposed concepts for an annual statement reporting change to capture information on these investments. Additionally, the proposed revisions would provide clarity, consistent with the existing affiliate definition, on scenarios that would qualify as affiliated transactions.

As an additional item, the existing reference in SSAP No. 25 to *FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18* (FIN 35) has been proposed to be removed. Although the intent was to originally update the U.S. GAAP reference to reflect the current Accounting Standards Codification (ASC) citations, it was noted that the original provisions in FIN 35 (captured now in ASC 323-10-15-8, 323-10-15-10 and 323-10-15-11) only reiterate that the presumption that the investor has the ability to exercise significant influence over the investee's operating and financial policies based on ownership of voting stock stands until overcome by prominent evidence to the contrary. The ASC includes the following indicators originally in FIN 35 for when investors would be unable to exercise significant influence over the operating and financial policies of an investee:

- Opposition by the investee, such as litigation or complaints to government regulatory authorities, challenges the investor's ability to exercise significant influence.
- The investor and investee sign an agreement (such as a standstill agreement) under which the investor surrenders significant rights as a shareholder.
- Majority ownership of the investee is concentrated among a small group of shareholders who operate the investee without regards to the views of the investor.
- The investor wants or needs more financial information to apply the equity method than is available to the investee's other shareholders, tries to obtain that information, and fails. (The ASC example is a request for quarterly info when the investee only provides public information annually.)
- The investor tries and fails to obtain representation on the investee's board of directors.

The ASC also notes that these situations are just indicators and are not all-inclusive and that none of the individual circumstances are necessarily conclusive that the investee is unable to exercise significant influence over the investee's operating and financial policies. Rather, if any of these situations exist, an investor with controlling voting ownership shall evaluate all facts and circumstances related to the investment to reach a judgment about whether the presumption that the investor has the ability to exercise significant influence over the investee's operating and financial policies is overcome. Furthermore, the guidance indicates that it may be necessary to evaluate the facts and circumstances over a period of time before reaching a judgment.

After a review of the ASC / FIN 35 guidance, it is proposed that the reference be deleted from SSAP No. 25. The general concepts for a review of all facts and circumstances, as well as example indicators, are already reflected directly in SSAP No. 25. Lastly, the reference to FIN 35 / ASC could be confusing as U.S. GAAP utilizes a different (higher) percentage of voting ownership than statutory accounting.

Existing Authoritative Literature:

- *Insurance Holding Company System Regulatory Act* (Model #440) – This model is an accreditation standard and is adopted by all states in a substantially similar manner. Only the territories of America Samoa, Guam and the Northern Mariana Islands do not have this model adopted.
- *SSAP No. 25—Affiliates and Other Related Parties* establishes statutory accounting principles and disclosure requirements for related party transactions. This statement shall be followed for all related party transactions, even if the transaction is also governed by other statutory accounting principles. As detailed in paragraph 1, related party transactions are subject to abuse as reporting entities may be induced to enter transactions that may not reflect economic realities or may not be fair and reasonable to the reporting entity or its policyholders. As such, related party transactions require specialized accounting rules and increased regulatory scrutiny. The guidance in paragraphs 4-8 include the definition of related parties and affiliates:
 4. Related parties are defined as entities that have common interests as a result of ownership, control, affiliation or by contract. Related parties shall include but are not limited to the following:
 - a. Affiliates of the reporting entity, as defined in paragraph 5;
 - b. Trusts for the benefit of employees, such as pension and profit-sharing trusts and Employee Stock Ownership Plans that are managed by or under the trusteeship of management of the reporting entity, its parent or affiliates;
 - c. The principal owners, directors, officers of the reporting entity;
 - d. Any immediate family member of a principal owner, director or executive officer of the reporting entity, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, or individual related by blood or marriage whose close association is equivalent to a family relationship of such director, executive officer or nominee for director, or any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director;
 - e. Companies and entities which share common control, such as principal owners, directors, or officers, including situations where principal owners, directors, or officers have a controlling stake in another reporting entity;
 - f. Any direct or indirect ownership greater than 10% of the reporting entity results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation;
 - g. The management of the reporting entity, its parent or affiliates (including directors);
 - h. Members of the immediate families of principal owners and management of the reporting entity, its parent or affiliates and their management;
 - i. Parties with which the reporting entity may deal if either party directly or indirectly controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interest;
 - j. A party which can, directly or indirectly, significantly influence the management or operating policies of the reporting entity, which may include a provider who is contracting with the reporting entity. This is not intended to suggest that all provider contracts create related party relationships;

- k. A party which has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests;
 - l. Attorney-in-fact of a reciprocal reporting entity or any affiliate of the attorney-in-fact; and
 - m. A U.S. manager of a U.S. Branch or any affiliate of the U.S. manager of a U.S. Branch.
5. An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies. Those entities are accounted for under the guidance provided in SSAP No. 48, which requires an equity method for all such investments. An affiliate is any person that is directly or indirectly, owned or controlled by the same person or by the same group of persons, that, directly or indirectly, own or control the reporting entity.
6. Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship (d) by common management, or (e) otherwise. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity.
7. Control as defined in paragraph 6 shall be measured at the holding company level. For example, if one member of an affiliated group has a 5% interest in an entity and a second member of the group has an 8% interest in the same entity, the total interest is 13%, and therefore, each member of the affiliated group shall be presumed to have control. This presumption will stand until rebutted by an evaluation of all the facts and circumstances relating to the investment based on the criteria in FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18. The corollary is required to demonstrate control when a reporting entity owns less than 10% of the voting securities of an investee. The insurer shall maintain documents substantiating its determination for review by the domiciliary commissioner. Examples of situations where the presumption of control may be in doubt include the following:
- a. Any limited partner investment in a limited partnership, unless the limited partner is affiliated with the general partner.
 - b. An entity where the insurer owns less than 50% of an entity and there is an unaffiliated individual or group of investors who own a controlling interest.
 - c. An entity where the insurer has given up participation rights¹ as a shareholder to the investee.
 - d. Agreements where direct or indirect non-controlling ownership interest is less than 10% where the parties have structured the arrangement in this structure to avoid the 10% threshold in paragraph 4.f. and paragraph 8.
8. Any direct or indirect ownership interest of the reporting entity greater than 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation. The *Insurance Holding Company System Regulatory Act (#440)* and the *Insurance Holding Company System Model Regulation*

¹ The term "participating rights" refers to the type of rights that allows an investor to effectively participate in significant decisions related to an investee's ordinary course of business and is distinguished from the more limited type of rights referred to as "protective rights". Refer to the sections entitled: "Protective Rights" and "Substantive Participating Rights" in EITF 96-16, *Investor's Accounting for an Investee When the Investor Owns a Majority of the Voting Stock but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights*. The term "participating rights" shall be used consistent with the discussion of substantive participating rights in this EITF.

(#450) include a provision that allows for the disclaimer of affiliation and/or the disclaimer of control for members of an insurance holding company system. The disclaimer must be filed with the state insurance commissioner. Entities whose relationship is subject to a disclaimer of affiliation or a disclaimer of control are related parties and are subject to the related party disclosures within this statement. Such a disclaimer does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.

- *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies* establishes guidance for these investments. The guidance in this SSAP provides different guidance when there is a “more than minor” or “minor ownership interest.” Pursuant to existing guidance, reporting entities must also identify whether the investment is a related-party transaction.

6. Investments in these ventures, except for joint ventures, partnerships and limited liability companies with a minor ownership interest¹, shall be reported using an equity method as defined in *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*, paragraphs 8.b.i. through 8.b.iv. (The equity method calculation may result with a negative valuation of the investment; therefore, the SSAP No. 97 equity method calculation shall occur regardless of whether the investment is supported by an audit and the reporting entity will nonadmit the investment.) A reporting entity whose shares of losses in a SSAP No. 48 entity exceeds its investment in the SSAP No. 48 entity shall disclose the information required by SSAP No. 97, paragraph 35.a.

Footnote: With the identification of whether the reporting entity has a minor ownership interest, reporting entities must also identify whether the investment is a related-party transaction. Pursuant to the concepts reflected in *SSAP No. 25—Affiliates and Other Related Parties*, consideration shall be given to the substance of the transaction and the parties whose action or performance materially impacts the insurance reporting entity holding the security. For example, if the underlying assets within a SSAP No. 48 entity represent assets issued by an affiliate, then the SSAP No. 48 entity shall be considered a related party (affiliate) investment, with the transaction subject to the accounting and reporting provisions of SSAP No. 25. As identified in SSAP No. 25, it is erroneous to conclude that the inclusion of a non-related intermediary, or the presence of non-related assets in a structure predominantly comprised of related party investments, eliminates the requirement to identify and assess the investment transaction as a related party arrangement.

- *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities* establishes statutory accounting principles for investments in subsidiaries, controlled and affiliated entities. The guidance in paragraphs 3-6 include the definitions for parent, subsidiary, and affiliate. (The definition for an affiliate and control is identical to SSAP No. 25.) (As noted, the Annual Statement reporting lines for “Parent, Subsidiary and Affiliates” refers to the definition within SSAP No. 97. If an investment is held for an entity that does not meet the SSAP No. 97 definitions, or for which a disclaimer of control or affiliation has been received, then the investment would not be captured within the Parent, Subsidiary or Affiliate reporting line.)

3. Parent and subsidiary are defined as follows:

- a. Parent—An entity that directly or indirectly owns and controls the reporting entity;
- b. Subsidiary—An entity that is, directly or indirectly, owned and controlled by the reporting entity.

4. An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*. Those entities are accounted for under the guidance provided in SSAP No. 48, which requires an equity method for all such investments.

5. Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by common management, or (d) otherwise. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity².

6. Control as defined in paragraph 5 shall be measured at the holding company level. For example, if one member of an affiliated group has a 5% interest in an entity and a second member of the group has an 8% interest in the same entity, the total interest is 13% and therefore each member of the affiliated group shall be presumed to have control. This presumption will stand until rebutted by an evaluation of all the facts and circumstances relating to the investment based on the criteria in *FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18*. The corollary is required to demonstrate control when a reporting entity owns less than 10% of the voting securities of an investee. The insurer shall maintain documents substantiating its determination for review by the domiciliary commissioner. An investment in an SCA entity may fall below the level of ownership described in paragraph 5, in which case, the reporting entity would discontinue the use of the equity method, as prescribed in paragraph 13.g. Additionally, through an increase in the level of ownership, a reporting entity may become qualified to use the equity method of accounting (paragraph 8.b.), in which case, the reporting entity shall add the cost of acquiring additional interest to the current basis of the previously held interest and shall apply the equity method prospectively, as of the date the investment becomes qualified for equity method accounting. Examples of situations where the presumption of control may be in doubt include the following:

- a. Any limited partner investment in a limited partnership, unless the limited partner is affiliated with the general partner.
- b. An entity where the insurer owns less than 50% of an entity and there is an unaffiliated individual or group of investors who own a controlling interest.
- c. An entity where the insurer has given up participating rights³ as a shareholder to the investee.

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups): In March 2021, the Statutory Accounting Principles (E) Working Group adopted revisions to SSAP No. 25 pursuant to agenda item 2019-34: Related Parties, Disclaimers of Affiliation and Variable Interest Entities. Additionally, a new reporting Schedule Y, Part 3 was adopted by the Blanks (E) Working Group in proposal 2020-37BWG, with an initial effective date of Dec. 31, 2021, to capture information on all entities with ownership greater than 10%, the ultimate controlling parties of those owners and other entities that the ultimate controlling party controls.

² Investments in an exchange traded fund (ETF) or a mutual fund (as defined by the SEC) does not reflect ownership in an underlying entity, regardless of the ownership percentage the reporting entity (or the holding company group) has of the ETF or mutual fund unless ownership of the ETF actually results in "control" with the power to direct or cause the direction of management of an underlying company. ETFs and mutual funds are comprised of portfolios of securities subject to the regulatory requirements of the federal securities laws. ETFs and mutual funds held by a reporting entity shall be reported as common stock, unless the ETF qualifies for bond or preferred stock treatment per the *Purposes and Procedures Manual of the NAIC Investment Analysis Office*. Reporting entities are not required to verify that SCAs (subject to SSAP No. 97) are represented in the portfolio of securities held in ETFs or mutual funds or to adjust the value of SCAs as a result of investments in ETFs or mutual funds.

³ The term "participating rights" refers to the type of rights that allows an investor to effectively participate in significant decisions related to an investee's ordinary course of business and is distinguished from the more limited type of rights referred to as "protective rights". Refer to the sections entitled: "Protective Rights" and "Substantive Participating Rights" in *EITF 96-16, Investor's Accounting for an Investee When the Investor Has a Majority of the Voting Interest but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights*. The term "participating rights" shall be used consistent with the discussion of substantive participating rights in this EITF.

The adopted revisions to SSAP No. 25 from agenda item 2019-34 are summarized as follows:

- Clarify the identification of related parties and ensure that any related party identified under U.S. GAAP or SEC reporting requirements would be considered a related party under statutory accounting principles.
- Clarify that non-controlling ownership over 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation.
- Clarify the impact of a disclaimer of control or disclaimer of affiliate under SAP. As detailed, such disclaimers impact holding company group allocation and reporting as an SCA under SSAP No. 97, but do not eliminate the classification as a “related party” and the disclosure of material transactions as required under SSAP No. 25.
- Rejected several U.S. GAAP standards addressing variable interest entities.

Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:
None

Convergence with International Financial Reporting Standards (IFRS): Not applicable.

Staff Recommendation:

NAIC staff recommends that the Working Group move this item to the active listing, categorized as a nonsubstantive change, and expose revisions to SSAP No. 25 and SSAP No. 43R to clarify application of the existing affiliate definition as well as to incorporate new disclosure requirements for investments acquired through, or in, related parties, regardless of if they meet the affiliate definition. (Staff Note: Pursuant to the NAIC Policy Statement on Maintenance of Statutory Accounting Principles, new disclosures and modifications to existing disclosures are considered nonsubstantive changes.)

Proposed edits to SSAP No. 25: (New paragraph 9. Remaining paragraphs would be renumbered.)

This new paragraph 9 clarifies the application of the existing affiliate and control definitions to limited partnerships, trusts and other special purpose entities when control is held by an affiliated general partner, servicer or other arrangement. (The proposed deletion of FIN 35 is discussed earlier in the agenda item, but is noted as not necessary with the existing statutory accounting guidance.)

5. An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies. Those entities are accounted for under the guidance provided in SSAP No. 48, which requires an equity method for all such investments. An affiliate is any person that is directly or indirectly, owned or controlled by the same person or by the same group of persons, that, directly or indirectly, own or control the reporting entity.

6. Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship (d) by common management, or (e) otherwise. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity.

7. Control as defined in paragraph 6 shall be measured at the holding company level. For example, if one member of an affiliated group has a 5% interest in an entity and a second member of the group has an

8% interest in the same entity, the total interest is 13%, and therefore, each member of the affiliated group shall be presumed to have control. This presumption will stand until rebutted by an evaluation of all the facts and circumstances relating to the investment ~~based on the criteria in FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18. The corollary is required to demonstrate control when a reporting entity owns less than 10% of the voting securities of an investee.~~ The insurer shall maintain documents substantiating its determination for review by the domiciliary commissioner. Examples of situations where the presumption of control may be in doubt include the following:

- a. Any limited partner investment in a limited partnership, unless the limited partner is affiliated with the general partner.
- b. An entity where the insurer owns less than 50% of an entity and there is an unaffiliated individual or group of investors who own a controlling interest.
- c. An entity where the insurer has given up participation rights⁴ as a shareholder to the investee.

8. Any direct or indirect ownership interest of the reporting entity greater than 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation. The *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation* (#450) include a provision that allows for the disclaimer of affiliation and/or the disclaimer of control for members of an insurance holding company system. The disclaimer must be filed with the state insurance commissioner. Entities whose relationship is subject to a disclaimer of affiliation or a disclaimer of control are related parties and are subject to the related party disclosures within this statement. Such a disclaimer does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.

9. For entities not controlled by voting interests, such as limited partnerships, trusts and other special purpose entities, control may be held by a general partner, servicer, or by other arrangements. The ability of the reporting entity or its affiliates to direct the management and policies of an entity through such arrangements shall constitute control as defined in paragraph 6. Additionally, a reporting entity or its affiliates may have indirect control of other entities through such arrangements. For example, if a limited partnership were to be controlled by an affiliated general partner, and that limited partnership held greater than 10% of the voting interests of another company, indirect control shall be presumed to exist. If direct or indirect control exists, whether through voting securities, contracts, common management or otherwise, the arrangement is considered affiliated under paragraph 5. Consistent with paragraph 8, a disclaimer of affiliation does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25

Proposed edits to SSAP No. 43R:

These revisions move the existing guidance in paragraph 4.a. to paragraph 6 and notes the requirement to identify related party investments in the investment schedules. (Note Footnote 5 is just moved to a new paragraph.)

4. Loan-backed securities are issued by special-purpose corporations or trusts (issuer) established by a sponsoring organization. The assets securing the loan-backed obligation are acquired by the issuer and pledged to an independent trustee until the issuer’s obligation has been fully satisfied. The investor only has direct recourse to the issuer’s assets, but may have secondary recourse to third parties through insurance or guarantee for repayment of the obligation. As a result, the sponsor and its other affiliates may have no financial

⁴ The term “participating rights” refers to the type of rights that allows an investor to effectively participate in significant decisions related to an investee’s ordinary course of business and is distinguished from the more limited type of rights referred to as “protective rights”. Refer to the sections entitled: “Protective Rights” and “Substantive Participating Rights” in EITF 96-16, *Investor’s Accounting for an Investee When the Investor Owns a Majority of the Voting Stock but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights*. The term “participating rights” shall be used consistent with the discussion of substantive participating rights in this EITF.

obligation under the instrument, although one of those entities may retain the responsibility for servicing the underlying assets. Some sponsors do guarantee the performance of the underlying assets.

~~a. In determining whether a loan-backed structure is a related party investment, consideration shall be given to the substance of the transaction, and the parties whose action or performance materially impacts the insurance reporting entity holding the security. For example, although a loan-backed security may be acquired from a non-related issuer, if the assets held in trust predominantly⁵ reflect assets issued by affiliates of the insurance reporting entity, and the insurance reporting entity only has direct recourse to the assets held in trust, the transaction shall be considered an affiliated investment, and the transaction shall also be subject to the accounting and reporting provisions in SSAP No. 25—Affiliates and Other Related Parties.~~

5. Mortgage-referenced securities do not meet the definition of a loan-backed or structured security but are explicitly captured in scope of this statement. In order to qualify as a mortgage-referenced security, the security must be issued by a government sponsored enterprise⁶ or by a special purpose trust in a transaction sponsored by a government sponsored enterprise in the form of a “credit risk transfer” in which the issued security is tied to a referenced pool of mortgages and the payments received are linked to the credit and principal payment risk of the underlying mortgage loan borrowers captured in the referenced pool of mortgages. For these instruments, reporting entity holders may not receive a return of their full principal as principal repayment is contingent on repayment by the mortgage loan borrowers in the referenced pool of mortgages. Unless specifically noted, the provisions for loan-backed securities within this standard apply to mortgage-referenced securities.

6. Investments within the scope of this statement issued by a related party or acquired through a related party transaction or arrangement are also subject to the provisions, admittance assessments and disclosure requirements of SSAP No. 25. In determining whether a security is a related party investment, consideration should be given to the substance of the transaction, and the parties whose action or performance materially impacts the insurance reporting entity holding the security if the SSAP No. 43R transaction is a related party arrangement⁷. Loan-backed and structured securities meet the definition of assets as defined in SSAP No. 4—Assets and Nonadmitted Assets and are admitted assets to the extent they conform to the requirements of this statement and SSAP No. 25.

a. Although a loan-backed or structured security may be acquired from a non-related issuer, if the assets held in trust predominantly⁸ reflect assets issued by affiliates of the insurance reporting entity, and the insurance reporting entity only has direct recourse to the assets held in trust, the transaction shall be considered an affiliated investment. In such situations where the underlying

~~⁵ In applying this guidance, a reporting entity is not required to complete a detailed review of the assets held in trust to determine the extent, if any, the assets were issued by related parties. Rather, this guidance is a principle concept intended to prevent situations in which related party transactions (particularly those involving affiliates) is knowingly captured in a SSAP No. 43R structure and not identified as a related party transaction (or not reported as an affiliated investment on the investment schedule) because of the involvement of a non-related trustee or SSAP No. 43R security issuer. As identified in SSAP No. 25—Affiliates and Other Related Parties, it is erroneous to conclude that the inclusion of a non-related intermediary, or the presence of non-related assets in a structure predominantly comprised of related party investments, eliminates the requirement to identify and assess the investment transaction as a related party arrangement.~~

⁶ Currently, only Fannie Mae and Freddie Mac are the government sponsored entities that either directly issue qualifying mortgage-referenced securities or sponsor transactions in which a special purpose trust issues qualifying mortgage-reference securities. However, this guidance would apply to mortgage-referenced securities issued by any other government sponsored entity that subsequently engages in the transfer of mortgage credit risk.

~~⁷ As discussed in paragraph 4.a. of this statement, a SSAP No. 43R security may still be considered a related party transaction even if the asset trustee or security issuer is a non-related party.~~

⁸ In applying this guidance, a reporting entity is not required to complete a detailed review of the assets held in trust to determine the extent, if any, the assets were issued by related parties. Rather, this guidance is a principle concept intended to prevent situations in which related party transactions (particularly those involving affiliates) is knowingly captured in a SSAP No. 43R structure and not identified as a related party transaction (or not reported as an affiliated investment on the investment schedule) because of the involvement of a non-related trustee or SSAP No. 43R security issuer. As identified in SSAP No. 25—Affiliates and Other Related Parties, it is erroneous to conclude that the inclusion of a non-related intermediary, or the presence of non-related assets in a structure predominantly comprised of related party investments, eliminates the requirement to identify and assess the investment transaction as a related party arrangement.

collateral assets are issued by related parties that do not qualify as affiliates, these securities shall be identified as related party investments in the investment schedules.

- b. A loan-backed or structured security may involve a relationship with a related party but not be considered an affiliated investment. This may be because the relationship does not result in direct or indirect control of the issuer or because there is an approved disclaimer of control or affiliation. Regardless of whether investments involving a related party relationship are captured in the affiliated investment reporting lines, these securities shall be identified as related party investments in the investment schedules. Examples of related party relationships would include involvement of a related party in sponsoring or originating the loan-backed or structured security or any type of underlying servicing arrangement. For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, including control through a servicer or other controlling arrangement, shall be reported as affiliated in accordance with SSAP No. 25—Affiliates and Other Related Parties.

Proposed Annual Statement Reporting Changes: (These will be captured in a blanks proposal.)

These reflect a new electronic-only column for the investment schedules and the related instructions.

Column XX: Investments Involving Related Parties:

Required for all investments involving related parties including, but not limited to, those captured as affiliate investments. This disclosure intends to capture information on investments held that reflect interactions involving related parties, regardless of whether the related party meets the affiliate definition, or the reporting entity has received domiciliary state approval to disclaim control / affiliation.

Enter one of the following codes to identify the role of the related party in the investment.

1. Direct loan or direct investment (excluding securitizations) in a related party, for which the related party represents a direct credit exposure.
2. Securitization or similar investment involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which 50% or more of the underlying collateral represents investments in or direct credit exposure to related parties.
3. Securitization or similar investment involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which less than 50% (including 0%) of the underlying collateral represents investments in or direct credit exposure to related parties.
4. Securitization or similar investment in which the structure reflects an in-substance related party transaction but does not involve a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role.
5. The investment is identified as related party, but the role of the related party represents a different arrangement than the options provided in choices 1-4.

Staff Review Completed by: Julie Gann, NAIC Staff – October 2021

Status:

On December 11, 2021, the Statutory Accounting Principles (E) Working Group moved this agenda item to the active listing, categorized as nonsubstantive, and exposed revisions to SSAP No. 25 and SSAP No. 43R, as illustrated above, to clarify application of the existing affiliate definition and incorporate disclosure requirements for all investments that involve related parties, regardless of if they meet the affiliate definition. In addition, draft annual statement reporting revisions were also exposed, in anticipation of incorporating those revisions into a Blanks (E) Working Group proposal.

On April 4, 2022, the Statutory Accounting Principles (E) Working Group exposed this agenda item, incorporating proposed revisions after considering comments from interested parties shown highlighted in gray below. The changes from the prior exposure only clarify previous components of the proposed revisions. Similar changes to the blanks proposal are also concurrently exposed by the Blanks (E) Working Group in their corresponding agenda item (2021-22BWG) to allow for a year-end 2022 effective date. This item was exposed with a shortened comment period ending May 6.

Proposed edits to SSAP No. 25: (New paragraph 9. Remaining paragraphs would be renumbered.)

This new paragraph 9 clarifies the application of the existing affiliate and control definitions to limited partnerships, trusts and other special purpose entities when control is held by an affiliated general partner, servicer or other arrangement. (The proposed deletion of FIN 35 is discussed earlier in the agenda item, but is noted as not necessary with the existing statutory accounting guidance.)

5. An affiliate is defined as an entity that is within the holding company system or a party that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the reporting entity. An affiliate includes a parent or subsidiary and may also include partnerships, joint ventures, and limited liability companies as defined in SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies. Those entities are accounted for under the guidance provided in SSAP No. 48, which requires an equity method for all such investments. An affiliate is any person that is directly or indirectly, owned or controlled by the same person or by the same group of persons, that, directly or indirectly, own or control the reporting entity.

6. Control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the investee, whether through the (a) ownership of voting securities, (b) by contract other than a commercial contract for goods or nonmanagement services, (c) by contract for goods or nonmanagement services where the volume of activity results in a reliance relationship (d) by common management, or (e) otherwise. Control shall be presumed to exist if a reporting entity and its affiliates directly or indirectly, own, control, hold with the power to vote, or hold proxies representing 10% or more of the voting interests of the entity.

7. Control as defined in paragraph 6 shall be measured at the holding company level. For example, if one member of an affiliated group has a 5% interest in an entity and a second member of the group has an 8% interest in the same entity, the total interest is 13%, and therefore, each member of the affiliated group shall be presumed to have control. This presumption will stand until rebutted by an evaluation of all the facts and circumstances relating to the investment ~~based on the criteria in FASB Interpretation No. 35, Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, an Interpretation of APB Opinion No. 18. The corollary is required to demonstrate control when a reporting entity owns less than 10% of the voting securities of an investee.~~ The insurer shall maintain documents substantiating its determination for review by the domiciliary commissioner. Examples of situations where the presumption of control may be in doubt include the following:

- a. Any limited partner investment in a limited partnership, unless the limited partner is affiliated with the general partner.
- b. An entity where the insurer owns less than 50% of an entity and there is an unaffiliated individual or group of investors who own a controlling interest.
- c. An entity where the insurer has given up participation rights⁹ as a shareholder to the investee.

⁹ The term "participating rights" refers to the type of rights that allows an investor to effectively participate in significant decisions related to an investee's ordinary course of business and is distinguished from the more limited type of rights referred to as "protective rights". Refer to the sections entitled: "Protective Rights" and "Substantive Participating Rights" in EITF 96-16, *Investor's Accounting for an Investee When the Investor Owns a Majority of the Voting Stock but the Minority Shareholder or Shareholders Have Certain Approval or Veto Rights*. The term "participating rights" shall be used consistent with the discussion of substantive participating rights in this EITF.

8. Any direct or indirect ownership interest of the reporting entity greater than 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation. The *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation* (#450) include a provision that allows for the disclaimer of affiliation and/or the disclaimer of control for members of an insurance holding company system. The disclaimer must be filed with the state insurance commissioner. Entities whose relationship is subject to a disclaimer of affiliation or a disclaimer of control are related parties and are subject to the related party disclosures within this statement. Such a disclaimer does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.

9. For entities not controlled by voting interests, such as limited partnerships, trusts and other special purpose entities, control may be held by a general partner, servicer, or by other arrangements. The ability of the reporting entity or its affiliates to direct the management and policies of an entity through such arrangements shall constitute control as defined in paragraph 6. Additionally, a reporting entity or its affiliates may have indirect control of other entities through such arrangements. For example, if a limited partnership were to be controlled by an affiliated general partner, and that limited partnership held greater than 10% of the voting interests of another company¹⁰, indirect control shall be presumed to exist unless the presumption of control can be overcome as detailed in paragraph 7. If direct or indirect control exists, whether through voting securities, contracts, common management or otherwise, the arrangement is considered affiliated under paragraph 5. Consistent with paragraph 8, a disclaimer of affiliation does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.

Proposed edits to SSAP No. 43R:

These revisions move the existing guidance in paragraph 4.a. to paragraph 6 and notes the requirement to identify related party investments in the investment schedules. (Note Footnote 5 is just moved to a new paragraph.)

4. Loan-backed securities are issued by special-purpose corporations or trusts (issuer) established by a sponsoring organization. The assets securing the loan-backed obligation are acquired by the issuer and pledged to an independent trustee until the issuer’s obligation has been fully satisfied. The investor only has direct recourse to the issuer’s assets, but may have secondary recourse to third parties through insurance or guarantee for repayment of the obligation. As a result, the sponsor and its other affiliates may have no financial obligation under the instrument, although one of those entities may retain the responsibility for servicing the underlying assets. Some sponsors do guarantee the performance of the underlying assets.

~~a. In determining whether a loan-backed structure is a related party investment, consideration shall be given to the substance of the transaction, and the parties whose action or performance materially impacts the insurance reporting entity holding the security. For example, although a loan-backed security may be acquired from a non-related issuer, if the assets held in trust predominantly¹⁴ reflect assets issued by affiliates of the insurance reporting entity, and the insurance reporting entity only has direct recourse to the assets held in trust, the transaction~~

¹⁰ Consistent with SSAP No. 97, footnote 1, investments in an exchange traded fund (ETF) or a mutual fund (as defined by the SEC) does not reflect ownership in an underlying entity, regardless of the ownership percentage the reporting entity (or the holding company group) has of the ETF or mutual fund unless ownership of the ETF actually results in “control” with the power to direct or cause the direction of management of an underlying company. ETFs and mutual funds are comprised of portfolios of securities subject to the regulatory requirements of the federal securities laws.

¹⁴ In applying this guidance, a reporting entity is not required to complete a detailed review of the assets held in trust to determine the extent, if any, the assets were issued by related parties. Rather, this guidance is a principle concept intended to prevent situations in which related party transactions (particularly those involving affiliates) is knowingly captured in a SSAP No. 43R structure and not identified as a related party transaction (or not reported as an affiliated investment on the investment schedule) because of the involvement of a non-related trustee or SSAP No. 43R security issuer. As identified in SSAP No. 25—*Affiliates and Other Related Parties*, it is erroneous to conclude that the inclusion of a non-related intermediary, or the presence of non-related assets in a structure predominantly comprised of related party investments, eliminates the requirement to identify and assess the investment transaction as a related party arrangement.

~~shall be considered an affiliated investment, and the transaction shall also be subject to the accounting and reporting provisions in SSAP No. 25—Affiliates and Other Related Parties.~~

5. Mortgage-referenced securities do not meet the definition of a loan-backed or structured security but are explicitly captured in scope of this statement. In order to qualify as a mortgage-referenced security, the security must be issued by a government sponsored enterprise¹² or by a special purpose trust in a transaction sponsored by a government sponsored enterprise in the form of a “credit risk transfer” in which the issued security is tied to a referenced pool of mortgages and the payments received are linked to the credit and principal payment risk of the underlying mortgage loan borrowers captured in the referenced pool of mortgages. For these instruments, reporting entity holders may not receive a return of their full principal as principal repayment is contingent on repayment by the mortgage loan borrowers in the referenced pool of mortgages. Unless specifically noted, the provisions for loan-backed securities within this standard apply to mortgage-referenced securities.

6. Investments within the scope of this statement issued by a related party or acquired through a related party transaction or arrangement are also subject to the provisions, admittance assessments and disclosure requirements of SSAP No. 25. In determining whether a security is a related party investment, consideration should be given to the substance of the transaction, and the parties whose action or performance materially impacts the insurance reporting entity holding the security if the SSAP No. 43R transaction is a related party arrangement¹³. Loan-backed and structured securities meet the definition of assets as defined in SSAP No. 4—Assets and Nonadmitted Assets and are admitted assets to the extent they conform to the requirements of this statement and SSAP No. 25.

- a. Although a loan-backed or structured security may be acquired from a non-related issuer, if the assets held in trust predominantly¹⁴ reflect assets issued by affiliates of the insurance reporting entity, and the insurance reporting entity only has direct recourse to the assets held in trust, the transaction shall be considered an affiliated investment. In such situations where the underlying collateral assets are issued by related parties that do not qualify as affiliates, these securities shall be identified as related party investments in the investment schedules.
- b. A loan-backed or structured security may involve a relationship with a related party but not be considered an affiliated investment. This may be because the relationship does not result in direct or indirect control of the issuer or because there is an approved disclaimer of control or affiliation. Regardless of whether investments involving a related party relationship are captured in the affiliated investment reporting lines, these securities shall be identified as related party investments in the investment schedules. Examples of related party relationships would include involvement of a related party in sponsoring or originating the loan-backed or structured security or any type of underlying servicing arrangement. For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, including control through a servicer or other controlling arrangement, shall be

¹² Currently, only Fannie Mae and Freddie Mac are the government sponsored entities that either directly issue qualifying mortgage-referenced securities or sponsor transactions in which a special purpose trust issues qualifying mortgage-reference securities. However, this guidance would apply to mortgage-referenced securities issued by any other government sponsored entity that subsequently engages in the transfer of mortgage credit risk.

¹³ ~~As discussed in paragraph 4.a. of this statement, a SSAP No. 43R security may still be considered a related party transaction even if the asset trustee or security issuer is a non-related party.~~

¹⁴ In applying this guidance, a reporting entity is not required to complete a detailed review of the assets held in trust to determine the extent, if any, the assets were issued by related parties. Rather, this guidance is a principle concept intended to prevent situations in which related party transactions (particularly those involving affiliates) is knowingly captured in a SSAP No. 43R structure and not identified as a related party transaction (or not reported as an affiliated investment on the investment schedule) because of the involvement of a non-related trustee or SSAP No. 43R security issuer. As identified in SSAP No. 25—Affiliates and Other Related Parties, it is erroneous to conclude that the inclusion of a non-related intermediary, or the presence of non-related assets in a structure predominantly comprised of related party investments, eliminates the requirement to identify and assess the investment transaction as a related party arrangement.

[reported as affiliated in accordance with SSAP No. 25—Affiliates and Other Related Parties.](#)

Proposed Annual Statement Reporting Changes: (These in a blanks proposal 2021-22BWG.)

These reflect a new electronic-only column for the investment schedules and the related instructions.

[Column XX: Investments Involving Related Parties:](#)

[Required for all investments involving related parties including, but not limited to, those captured as affiliate investments. This disclosure intends to capture information on investments held that reflect interactions involving related parties, regardless of whether the related party meets the affiliate definition, or the reporting entity has received domiciliary state approval to disclaim control / affiliation.](#)

[Enter one of the following codes to identify the role of the related party in the investment.](#)

- [1. Direct loan or direct investment \(excluding securitizations\) in a related party, for which the related party represents a direct credit exposure.](#)
- [2. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which 50% or more of the underlying collateral represents investments in or direct credit exposure to related parties.](#)
- [3. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which less than 50% \(including 0%\) of the underlying collateral represents investments in or direct credit exposure to related parties.](#)
- [4. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies in which the structure reflects an in-substance related party transaction but does not involve a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role.](#)
- [5. The investment is identified as related party, but the role of the related party represents a different arrangement than the options provided in choices 1-4.](#)

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/NationalMeetings/A.NationalMeetingMaterials/2022/5-24-22/Hearing/4-21-21-RelatedPartyReporting.docx>

**Statutory Accounting Principles (E) Working Group
May 24, 2022 – Interim Call
Comment Letters Received**

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May 6, 2022

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Items Exposed for Comment by the Statutory Accounting Principles Working Group on April 4, 2022, with Comments due May 6th.

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the exposure drafts released for comment by the NAIC Statutory Accounting Principles (E) Working Group (the Working Group) during its meeting on April 4 in Kansas City.

We offer the following comments:

Ref #2019-21: Proposed Bond Definition

Pursuant to the direction from the Working Group in October 2020, a small group of regulators and industry have been meeting regularly to draft a bond definition for consideration. The intent of this project is to clarify what should be considered a bond (whether captured in SSAP No. 26R—*Bonds* or SSAP No. 43R—*Loan-Backed and Structured Securities*) and reported on Schedule D-1: Long-Term Bonds. This exposure is specific to the proposed bond definition included in the exposed Form A, along with the glossary (page 5) and appendices (pages 6-12), but comments on future developments (such as reporting changes, accounting and reporting guidance for items that do not qualify as bonds, transition guidance, etc.) may also be submitted to assist in the development of these items.

Interested parties are providing comments in a separate letter for this item due to the number of issues involved.

Ref #2022-03: *Premium Adjustments Allocated to Jurisdictions*

The Working Group moved this item to the active listing and exposed proposed revisions to be incorporated into a Blanks (E) Working Group proposal (2022-10BWG) which would modify the instructions for Schedule T, the State Page and Accident and Health Policy Experience Exhibit (AHPEE). The proposed revisions clarify that all premium adjustments shall be allocated as premium in each respective jurisdiction. This agenda item did not propose statutory revisions. This item was exposed with a shortened comment period ending May 6 to permit consideration for a year-end 2022 effective date of the reporting revisions.

Interested parties have no comment on this item.

Ref #2022-08: *Treatment of Freddie Mac WI Certificates*

The Working Group moved this agenda item to the active listing and exposed a tentative interpretation INT 22-01: Freddie Mac When-Issued K-Deal (I Trust) Certificates to clarify that investments in the Freddie Mac “When Issued K-Deal” (WI) Program are in scope of SSAP No. 43R. This item has a shortened comment deadline of May 6.

Interested parties support the conclusions reached on this interpretation.

Ref #2021-21: *Related Party Reporting*

The Working Group exposed this agenda item, incorporating proposed revisions after considering comments from interested parties shown highlighted in gray below. The changes from the prior exposure only clarify previous components of the proposed revisions. Similar changes to the blanks proposal are also concurrently exposed by the Blanks (E) Working Group in their corresponding agenda item (2021-22BWG) to allow for a year-end 2022 effective date. This item was exposed with a shortened comment period ending May 6.

Interested parties appreciate the opportunity to provide additional comments for this item regarding Related Party Reporting (the “Related Party Exposure”), which was re-exposed by the Working Group (the “SAPWG”) on April 4, 2022.

As stated in our original comment letter on this item, we understand that one of the goals of the proposal is to identify investments that are originated, managed, sponsored, or serviced by an affiliate or related party of the insurer (referred to as managed by affiliates for the remainder of this letter). Interested parties agree that this information can be useful for the regulators, but we continue to stress that it is critical to differentiate investments where there is direct credit exposure to an affiliate from those investments that are only managed by affiliates with no underlying credit exposure to the affiliate of the insurer.

In addition to the above, we have the following additional comments on the re-exposure:

1. **SSAP No. 25** - The Related Party Exposure is proposing to add the paragraph below, which would require a look through of affiliated investment structures to identify entities over which the insurer may have indirect control. To address Interested Parties' comments, the Working Group has added the footnote in red below to clarify that the look-through requirement is not required for SEC-registered mutual funds and ETFs.

“For entities not controlled by voting interests, such as limited partnerships, trusts and other special purpose entities, control may be held by a general partner, servicer, or by other arrangements. The ability of the reporting entity or its affiliates to direct the management and policies of an entity through such arrangements shall constitute control as defined in paragraph 6. Additionally, a reporting entity or its affiliates may have indirect control of other entities through such arrangements. For example, if a limited partnership were to be controlled by an affiliated general partner, and that limited partnership held greater than 10% of the voting interests of another company (FN10), indirect control shall be presumed to exist. If direct or indirect control exists, whether through voting securities, contracts, common management or otherwise, the arrangement is considered affiliated under paragraph 5. Consistent with paragraph 8, a disclaimer of affiliation does not eliminate a “related party” distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.”

FN10 Consistent with SSAP No. 97, footnote 1, investments in an exchange traded fund (ETF) or a mutual fund (as defined by the SEC) does not reflect ownership in an underlying entity, regardless of the ownership percentage the reporting entity (or the holding company group) has of the ETF or mutual fund unless ownership of the ETF actually results in “control” with the power to direct or cause the direction of management of an underlying company. ETFs and mutual funds are comprised of portfolios of securities subject to the regulatory requirements of the federal securities laws.

Interested parties' comments on the amendments are as follows:

- We agree that the look-through requirement should not extend to SEC registered mutual funds and ETFs as those investments are subject to many regulatory requirements. However, the exemption should also extend to foreign open-end investment funds governed and authorized in accordance with regulations established by the applicable foreign jurisdiction, which are within the scope of SSAP No. 30 - *Unaffiliated Common Stock* and which are very similar to open-end mutual funds in the United States.
- As stated on our previous comment letter, doing a look-through of the underlying investments of investment funds managed by affiliates to determine if there is indirect control will be a significant operational change as information will need to be requested from affiliated funds regarding their underlying investments along with percentage ownership. Once the information is obtained, insurers will need to go through each investment where the affiliated fund owns more than 10% of the equity of another company to document whether the presumption of control is

overcome or not. We kindly request again for a 2023 implementation date to be considered.

- Interested parties would like to confirm our understanding of the look through proposal. We believe an insurer would be required to look through to the underlying investments only in the situation where the entity (managed by an affiliate) in which the insurer owns equity instruments (e.g., private equity funds and CFOs). For example, if the insurer owns debt tranches of a CFO managed by an affiliate, we assume the look through analysis would be applied since the underlying investments of the CFO are equities. However, if the insurer owns an interest (debt or equity) in a CLO investment where the underlying assets are loans, we would not expect the look through to be applied since the CLO loans do not usually give an investor any control. As the look through paragraph is being inserted into SSAP 25 (which applies to all types of instruments), we believe clarification may be needed.
 - We also suggest adding the new footnote that was added to the new proposed paragraph 9 of SSAP No. 25 to the new codes being proposed to the investment schedules so that there is consistency regarding the types of assets for which the insurer would have to do a look-through of underlying investments of an affiliated fund.
2. ***Proposed changes to SSAP No. 43R to clarify that investments managed by affiliates are viewed as affiliated even if the underlying assets in the structure do not have any credit exposure to an affiliate*** – As stated above and in our previous comment letter, many insurers own asset management subsidiaries which manage securitization transactions. There is no question that the asset manager itself is a Subsidiary, Controlled and Affiliate (SCA) of the insurer and such asset managers are reported on Schedule Y as affiliates of the insurer and in the related party disclosures. However, when any debt tranches purchased from those securitization vehicles do not have any credit exposure to SCAs of the insurer, the debt tranches are not reported in the affiliated section of Schedule D and not filed as affiliated debt investments with the Securities Valuation Office (SVO) since they do not have affiliated credit risk exposure, even if the securitization vehicle is managed by a related party.

It is very important to interested parties that this distinction is understood for Schedule D bond investments. Schedule D bond investments should not be reported in the affiliated section of Schedule D if they do not have affiliated credit exposure. We believe that the new codes that are being proposed should provide the regulators with information regarding investments that have credit risk exposure to affiliates versus those investments that are only managed by affiliates or other related parties. If the intent is to change how investments are actually reported between affiliated and non-affiliated lines in the schedules, additional changes would need to be made to the current guidance, including the annual statement instructions and the SVO Purposes and Procedures (P&P) Manual, so that this is clear to all insurers. If all unaffiliated investments which are managed by

an affiliate were required to be reported as affiliated, updates would have to be made to the SVO P&P manual to clarify that those investments continue to be Filing Exempt since the SVO does not provide designations on asset-backed securities and the manual requires filing for all affiliated debt investments. Furthermore, our understanding of the definition of affiliates and control under the Holding Company act is that they are based on voting rights of an equity holder. Therefore, asset managers that meet the definition of affiliates under the Holding Company Act are reported as affiliates on Schedule Y and any agreements with those affiliates are reported in the related party disclosure. However, investments that are simply managed by such affiliate with no credit risk exposure to an affiliate and where the underlying borrowers are not affiliates, would not meet the definition of an affiliate under the Holding Company Act.

All the language included in the exposure with the exception of the last sentence in the new paragraph 6b being proposed in SSAP No.43R support the view that unaffiliated investments managed by an affiliate shall be reported as unaffiliated. The last sentence in 6b indicates that “any arrangement that results in direct or indirect control, including control through a servicer” should be considered affiliated. While this statement is meant to make it clear, it is confusing as it relates to unaffiliated investments (where the insurer has no credit risk exposure to the underlying borrower), that are managed by an affiliate (either a subsidiary of the insurer or an entity under common control with the insurer). Interested parties request that the final sentence be removed as this sentence will only add confusion and will create inconsistency in reporting depending on how each insurer interprets these rules. As stated throughout the letter, the presence of certain arrangements such as an affiliated servicer do not usually mean that the investments managed are affiliated. A determination of direct or indirect control over the ultimate obligor pursuant to SSAP No. 25 is still required.

b. A loan-backed or structured security may involve a relationship with a related party but not be considered an affiliated investment. This may be because the relationship does not result in direct or indirect control of the issuer or because there is an approved disclaimer of control or affiliation. Regardless of whether investments involving a related party relationship are captured in the affiliated investment reporting lines, these securities shall be identified as related party investments in the investment schedules. Examples of related party relationships would include involvement of a related party in sponsoring or originating the loan-backed or structured security or any type of underlying servicing arrangement. For the avoidance of doubt, investments from any arrangement that results in direct or indirect control, including control through a servicer or other controlling arrangement, shall be reported as affiliated in accordance with SSAP No. 25 — Affiliates and Other Related Parties.

As stated above, we are more than happy to provide the transparency that the regulators are looking for, which we believe will be accomplished through the new codes that will flag these investments as being managed by related parties.

3. ***Proposed annual statement changes to add a new electronic-only column to the investment schedules to identify investments involving related parties*** –The new codes being proposed in the related party exposure are as follows:

1. Direct loan or direct investment (excluding securitizations) in a related party, for which the related party represents a direct credit exposure.
2. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which 50% or more of the underlying collateral represents investments in or direct credit exposure to related parties.
3. Securitization or similar investment vehicles such as mutual funds, limited partnerships and limited liability companies involving a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role and for which less than 50% (including 0%) of the underlying collateral represents investments in or direct credit exposure to related parties.
4. Securitization or similar investment vehicles such as mutual funds, limited partnerships, and limited liability companies in which the structure reflects an in-substance related party transaction but does not involve a relationship with a related party as sponsor, originator, manager, servicer, or other similar influential role.
5. The investment is identified as related party, but the role of the related party represents a different arrangement than the options provided in choices 1-4.

Interested parties offer the following additional comments on the proposed codes:

- We understand that the codes will be required on all investment schedules. However, most of the codes appear to be more applicable to Schedule D and Schedule BA investments where investments can be made through an investment vehicle. For example, when we think of the relevancy of the codes to the mortgage loan schedule, it would appear that the only code that may potentially apply is code No. 1 if the insurer has issued a mortgage loan to a related party. Codes 2-5 do not seem applicable since mortgage loans reported on Schedule B can only be reported on Schedule B if the insurer has issued the mortgage loan directly to a borrower. The same would likely be true for Schedule DB.
- It is unclear to interested parties what “in-substance” related party transactions are referred to in code 4. Perhaps some examples can be provided as to the types of

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structures this is referring to so that insurers know what to report under this category.

- When reviewing the Blanks exposure on this item, we noted that the Blanks exposure added an additional code 6 for investments that have no related party relationship. We question the need for such code as a significant majority of insurers' investments will probably be coded as such. There are other columns that are populated only if the code applies to that investment (e.g., Column 3 – Code; Column 5 – Bond Characteristics). Perhaps leaving the code blank will accomplish the same objective.

* * *

Thank you for considering interested parties' comments. If you have any questions in the interim, please do not hesitate to contact us.

Sincerely,

D. Keith Bell

Rose Albrizio

cc: NAIC staff
Interested parties