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Re: Liquidity Scope and Confidentiality revisions to the NAIC Model Holding Company Act.
(#440)

Thank you for the opportunity to comment on the proposed changes to the NAIC Model Holding Company Act regarding the scope and applicable confidentiality provisions for the Liquidity Stress Test (LST) framework. We have several suggested changes with accompanying rationale set forth below.

Scope

As an overarching comment, ACLI shares the regulator goal of maintaining consistency from year-to-year with respect to the composition of scoped-in entities. This consistency will foster the ability to make meaningful comparisons of aggregated data over periods of time. This is consistent with the macroprudential surveillance purpose of the LST, which is to monitor the liquidity impacts (if any) of a large and well-defined portion of the life insurance industry on the broader financial services sector and the overall economy. It will also avoid a company or group being included in one year only to be excluded in the next based on closely making or missing the mark of a single scope criterion. We, therefore, appreciate the role of lead-state regulators in having some flexibility in scoping companies or groups in or out of the LST. However, we believe this flexibility should be limited and used sparingly. The primary point of the exercise is to aggregate data and variations in the collected data could result in inconsistencies. The NAIC Financial Stability Task Force and lead state regulators should maintain a transparent process consistent with the usual good governance practices of the NAIC with respect to the maintenance of the Liquidity Stress Test Framework. To this end, any exceptions allowed by a lead state regulator should be clearly explained and supported by compelling reasons. We also suggest a timing reprieve for any newly scoped-in entity

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or criteria as ramping up for the LST or making changes will be a significant undertaking. Our recommended language is immediately below.

I. “NAIC Liquidity Stress Test Framework.” The “NAIC Liquidity Stress Test Framework” is a separate NAIC publication which includes a history of the NAIC’s development of regulatory liquidity stress testing, the Scope Criteria applicable for a specific data year, and the Liquidity Stress Test instructions and reporting templates for a specific data year, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC. The regulatory authority and confidentiality protections for the insurers’ filings from the NAIC Liquidity Stress Test Framework are included within this Act.

M. Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework [housed where?] shall file the results of a specific year’s Liquidity Stress Test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(1) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific data year. These Scope Criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the Scope Criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the at specified data year unless the lead state insurance commissioner, working with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year. Similarly, insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the at specified data year, unless the lead state insurance commissioner, working with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year.

a. Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis. The lead state insurance commissioner, working with the Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.

- (2) The performance of, and filing of the results from, a specific year's Liquidity Stress Test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations provided within the Framework.

In *Section 8.2 (A)(4)(c)*, we strongly suggest removing the phrase "and potential solvency threats" from the opening sentence in this section. The LST was never been intended as a solvency tool. As part of the Macroprudential Initiative, its purpose is to determine if liquidity trends emanating from the life insurance industry may have an impact on the broader economy. The stated purpose of the Macroprudential Initiative is to "better monitor and respond to risks emanating from or amplified by the insurance industry that might be transmitted externally. . . ." There are other ample solvency tools at regulators disposal, and we therefore urge the deletion of the reference to solvency here.

Confidentiality

ACLI is very supportive of the strong confidentiality language. The suggested changes below we believe clarify and, in some cases, make this confidentiality language consistent with that existing elsewhere, either in the Own Risk Solvency Assessment (ORSA) or the proposed confidentiality language for the Group Capital Calculation (GCC):

8.2 (A)(1)

The commissioner shall maintain the confidentiality, and privileged nature of the liquidity stress test results, ~~and~~ supporting disclosures, ~~and~~ any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors, and: With respect to all other documents, material or other information covered by this subsection. and All such information is considered proprietary and trade secret and, to the extent the information is not publicly available, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. ~~to the commissioner will not make such documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.~~

"With respect to the foregoing and all other documents, material or other information covered by this subsection . . . "

8.2(A)(2)

“Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be compelled to testify nor may they voluntarily ~~permitted or required to~~ testify in any private civil action concerning . . . “

Finally, at the end of the LST confidentiality section, we note that, unlike the proposed GCC language, there is no requirement to get an insurer’s consent when NAIC is sharing the LST information with third-parties. We would ask that the following language be added to the end of this section, as the confidentiality section does speak to sharing information with third-parties: “In the case of an agreement involving a third-party consultant, provide for the insurer’s written consent.”

We understand the GCC and LST confidentiality sections may be further combined. We would support aligning these sections as much as possible, consistent with strong confidentiality protections.

Sincerely,

A handwritten signature in black ink that reads "David M. Leifer". The signature is written in a cursive, slightly slanted style.

Dave Leifer
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