

BY E-MAIL

July 11, 2024

Director Elizabeth Kelleher Dwyer  
Commissioner Glen Mulready  
Co-Chairs, NAIC Restructuring Mechanisms (E) Working Group (the “Working Group”)

Attention: Robin Marcotte (rmarcotte@naic.org)

Re: Comments on Working Group’s Re-Exposure of Best Practices

Dear Director Dwyer and Commissioner Mulready:

The undersigned companies welcome the opportunity to comment on the revised *Best Practices Procedures for IBT/Corporate Divisions* document (the “Best Practices”) and *Restructuring Methods: An NAIC White Paper* (the “White Paper”) that was re-exposed by the Working Group. We appreciate the thought and time that the Working Group members have devoted to refining the exposure, and, overall, believe that both documents provide a strong foundation for ensuring appropriate solvency and consumer protections are applied to Insurance Business Transfer (“IBT”) and Corporate Division (“CD”) (collectively, “IBT/CD”) transactions. Our group’s primary focus in this comment letter is on ensuring consumer protection by reducing the risks that come from allowing long-duration life and health business to be isolated through IBT/CD transactions.

*Need for Developing National Accreditation Standards*

Once the Best Practices and White Paper are finalized, we urge the Working Group to take the appropriate steps so that the Best Practices are recognized not simply as recommended but rather as required minimum review standards for accreditation. A robust accreditation system has been proven over time to be an essential tool to promote consistent and strong solvency regulation. We believe that establishing the Best Practices as an accreditation standard is the best way to protect against the potentially significant adverse consequences from transactions that deviate in any way from the Best Practices. Moreover, this is consistent with the Working Group’s charge to “recommend the best practices to the Financial Regulation Standards and Accreditation (F) Committee for its consideration.”

The White Paper noted several states have enacted IBT/CD laws and some states have in fact approved these types of transactions. Adopting the Best Practices as an accreditation standard will ensure consistent and uniform application of these important safety regulatory guidelines and will assure consumers that their insurance coverage is as reliable as it was prior to the transaction. Adopting the Best Practices as an accreditation standard also helps to protect insurers and customers from the costs and challenges of avoidable failures and related guaranty association workouts. Accreditation standards will provide uniformity, consistency, and greater confidence for consumers and the industry. Moreover, having accreditation standards would ensure consistent state adoption of these important protections and preclude forum shopping by

companies seeking to engage in an IBT or CD transaction in a jurisdiction with comparatively weaker regulation.

### *The Protections Should Apply Equally to IBTs and CDs*

In the current Best Practices Exposure, certain protections (including updates to the ORSA, description of proposed investment policies and third-party claims management and administration agreements, the form of notice to policyholders, and the use of independent experts to evaluate transactions) are required for an IBT, but not for a CD. To consumers whose underlying insurer is being fundamentally changed without their consent, it does not matter whether the mechanism being used by the insurer is IBT or CD. Accordingly, we believe that all protections should equally apply to both IBT and CD transactions.

### *Resulting Monoline Companies following an IBT/CD Transaction*

We appreciate the update to the Best Practices exposure under Section III, 2., c. related to policy line diversification. The revised Best Practices exposure includes the concept that a regulator should consider whether the insurer and its policyholders will lose the benefits of policy line diversification, which is a step in the right direction. In addition, we appreciate the Working Group incorporating the concept that a regulator should at a minimum consider whether there is increased risk based on the insurer's risk profile. We believe the language should be stronger, however, in that a domestic regulator should carefully scrutinize any transactions that would reduce policy line diversification and should not approve any transaction if the result could adversely affect consumers.

### *Clarifications to Create Stronger Consumer Protections*

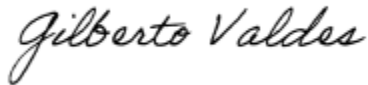
We also recommend making the following minor clarifications to the Best Practices document:

- Section II, 4., should make it clear whether subsection b is subject to subsection a. It is ambiguous as currently written. We believe that any IBT or CD plan should always include a parental or legally enforceable commitment for financial support to run off operations in the event of inadequate reserves, asset deterioration, or the inability to collect on reinsurance receivables.
- Section VI, 1., should consider including the definition of a “cut-through” provision, similar to which is defined in the White Paper on page 30 (*i.e.*, a cut-through provision provides policyholders the legal right to file a claim against the entity issuing it).
- Section IX, consider making it clear that the separate “Run-Off Procedures” are in addition to the preceding sections in the Best Practices document.

\*\*\*

We applaud the Working Group's improvements since the last draft and appreciate the opportunity to provide additional thoughts on this particularly critical issue. Thank you for your consideration.

Sincerely,



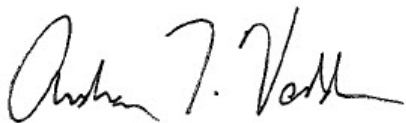
Gilberto Valdes  
Vice President, Office of Governmental Affairs  
New York Life Insurance Company



Kevin L. Howard  
Vice President, Deputy General Counsel & Head of Government Affairs  
Western & Southern Financial Group



Dominick M. Ianno  
Head of State Government Relations  
Massachusetts Mutual Life Insurance Company



Andrew T. Vedder  
Vice President – Enterprise Risk Management  
The Northwestern Mutual Life Insurance Company