



August 24, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chair, NAIC Group Capital Calculation (E) Working Group

via email to ddaveline@naic.org

Re.: Proposed revisions to the NAIC Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450)

Allianz Life Insurance Company of North America (“Allianz”) and the Transamerica Companies (“Transamerica”) appreciate the opportunity to comment on the Group Capital Calculation Working Group’s most recent exposure of proposed changes to the NAIC’s Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450).

In our July 15 comment letter, we explored the tractability and viability of a “subgroup reciprocity” provision by identifying a number of practical and legal issues that would need to be addressed before “subgroup reciprocity” would be suitable for inclusion in an NAIC model.

It is our understanding that the updated exposure is intended to replace “subgroup reciprocity” with a modified approach for “recognizing and accepting” the worldwide GCC:

- For non-Reciprocal Jurisdictions, non-application of a jurisdiction’s subgroup capital measures is installed as an additional condition for “recognizing and accepting” the GCC, while
- Reciprocal Jurisdictions “recognize and accept” the GCC by virtue of the fact that NAIC models consider such jurisdictions to “recognize and accept” state-based group supervision and group capital.

Attachment 1 describes how we arrived at this interpretation of the NAIC’s intent.

If our understanding is correct, this approach would address a significant number of the issues that we had identified in our prior letter about “subgroup reciprocity.” These include:

- Needing to define “U.S. operations”;
- Developing, field testing, and calibrating a version of the GCC that is suitably tailored for “U.S. operations”;
- Identifying a regulatory meaning for a “U.S. operations GCC” and developing guidance for how it would be used within the context of group supervision;
- Navigating information availability challenges in light of confidentiality restrictions;
- Addressing jurisdictional issues that are unique to the European Union; and
- Ensuring that the model law and regulation comply with the U.S.-EU and U.S.-UK Covered Agreements.

Therefore, we regard the updated approach—provided that we understand it correctly—as more tractable and implementable than the previously exposed version.

We offer some drafting suggestions for the NAIC's consideration as it finalizes these drafts:

- If our understanding of the NAIC's intent is correct, it seems that model law 440, section 4L(2)(e) should be removed. Both model 440, section 4L(2)(d)(ii)b and model 450, section 21D1a indicate that, if subgroup measures are applied, a worldwide GCC would be required.
- It appears that model law 440, section 4L(2)(d)(ii)b is intended to describe 4L(2)(d)(ii)a. Perhaps these two points could be combined, with the removal of the drafting note, which appears to be redundant.
- The reference to qualified jurisdictions within model 450, section 21D1 should probably be removed since it lacks relevance for group capital.
- There are some drafting challenges with structuring model 440, section 4L(2)(f) and model 450, section 21D. A possible way forward might be to create the following four "buckets" of jurisdictions (or five, if two sub-buckets below are separately listed):
 - (1) The EU and UK, provided such jurisdictions are subject to the current in-force covered agreements, as those jurisdictions are considered to recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those covered agreements.
 - (2) Other non-U.S. jurisdictions that are subject to in-force covered agreements, provided that such covered agreements recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those covered agreements.
 - (3) Reciprocal Jurisdictions that are not subject to an in-force covered agreement. Such jurisdictions, by definition, recognize and accept the U.S. state regulatory approach to group supervision and group capital. Such jurisdictions would be subject to verification provisions consistent with those of Reciprocal Jurisdictions.
 - (4) Non-U.S. jurisdictions that are neither subject to an in-force covered agreement nor are Reciprocal Jurisdictions, which recognize and accept the GCC. Two sub-buckets would exist:
 - Non-U.S. jurisdictions in which U.S. groups operate. Such jurisdictions would be subject to verification provisions regarding non-applicability of capital measures.
 - Non-U.S. jurisdictions in which no U.S. groups operate. Such jurisdictions would be subject to verification provisions regarding certain communications to the IAIS.

Additional considerations:

We understand that not all non-U.S. groups are proposed to be excluded from the GCC. In particular, groups based in non-Reciprocal Jurisdictions would be potentially subject to the tool. We offer some additional thoughts about the proposed construct applicable to these groups:

- Extreme care should be taken that "reciprocity" does not promote "escalation." In particular, the updated draft appears to require application of a worldwide GCC if a non-U.S. jurisdiction were to apply its own capital measure to U.S. groups at a subgroup level. Such perceived inequities could impair relationships among supervisors and promote retaliation, with cross-border insurance groups from all jurisdictions caught in the middle.

- We have found it difficult to draft legal language that reliably captures the “subgroup” concept that is proposed to be applicable to U.S. groups that are active in non-U.S. jurisdictions. “Operations” is vague and could be challenging to implement. The NAIC’s draft uses the term “parent of a U.S. entity operating in that jurisdiction.” However the “parent of a U.S. entity” could be a legal entity insurer, subject to legal entity capital requirements, with a subsidiary insurer. Another challenge relates to the fact that groups can have non-insurers (banks, asset managers) that are subject to various levels of capital requirements; we think it is necessary to limit any sort of trigger to insurance subgroup capital requirements. Finally, insurance group supervision within some insurance holding company systems is already applied at a “subgroup” level that excludes non-insurance parent entities. A possible way forward might be to link the capital measure with insurance subgroup supervision within broader insurance group supervision, as subgroup supervision is typically more identifiable in that context. However, as noted in our prior letter, confidentiality limitations in some jurisdictions might be an impediment to disclosure of this information.
- The inclusion of the subgroup clause communicates that the NAIC believes that subgroup supervisors outside the U.S. should rely on the U.S. GCC instead of local measures. Therefore we continue to believe it would be necessary to create a “subgroup” GCC that could be used by such supervisors in fulfillment of their duties.
- For jurisdictions in which no U.S. groups operate, the proposal indicates that insurance groups based in such jurisdictions can gain the benefits of “recognizing” of the GCC by sending a communication to the IAIS regarding the acceptability of the GCC “as an international capital standard.” Yet the GCC has not, to date, been promoted as an international capital standard; rather the “Aggregation Method”—a more generalized approach akin to the ICS—is being promoted as an international standard. We question whether any supervisors would or could satisfy this provision as drafted.
- As cross-border insurance groups, we have an interest in orderly and effective group-wide supervision, which generally aligns capital measures with supervisory responsibilities. The proposal applies the GCC, in certain circumstances, to insurance groups for which a U.S. state regulator is not the recognized group-wide supervisor and does not perform group-wide supervision. The regulatory use of the GCC in such circumstances is unclear to us. We suggest that the under-development guidance for the Financial Analysis Handbook should describe how regulators should use the GCC when the U.S. state regulator is not the group-wide supervisor.

We hope these comments are useful and constructive. Allianz and Transamerica continue to commit to the development of efficient and effective prudential regulation within the United States.

Contact information

Angela Hollan
Vice President, Head of Government Relations
Allianz Life of North America
(763) 765-2927
angela.hollan@allianzlife.com

Michael Demuth
Senior Actuary
Allianz Life of North America
(763) 765-6187
michael.demuth@allianzlife.com

Michael S. Gugig
VP and Director of State Government Relations
Transamerica
(475) 443-3143
michael.gugig@transamerica.com

Bill Schwegler
Senior Director – Financial Policy
Transamerica
(319) 355-2667
bill.schwegler@transamerica.com

cc: Steve Kelley, Commissioner, Minnesota Department of Commerce
Doug Ommen, Commissioner, Iowa Insurance Division

Attachment 1

Interpretation of the NAIC's Exposure

1. In both the model law 440, section 4L(2)(f) and model regulation 450, section 21D, there is a differentiation between “recognizes and accepts” (R&A) the state regulatory approach to group supervision and group capital and R&A the group capital calculation.
2. The structuring within both model law 440 (section 4L(2)(f)) and model regulation 450 (section 21D) indicates that all jurisdictions that R&A the state regulatory approach to group supervision and group capital are considered to R&A the group capital calculation. Putting it differently, the jurisdictions that R&A group supervision and group capital are a subset of the jurisdictions that R&A the group capital calculation.
3. Model regulation 450, sections 21D1 and 21D2 are essentially copied from two of the necessary provisions for non-Covered Agreement (CA) Reciprocal Jurisdictions in model regulation 786 (section 9B(3)(c) and 9B(3)(d)). The text in 21D1 refers to recognizing the U.S. state regulatory approach to group supervision and group capital. Therefore the drafting considers that all non-CA Reciprocal Jurisdictions R&A the state regulatory approach to group supervision and group capital.
4. Because Reciprocal Jurisdiction conditions were intended to mimic the major provisions of the U.S.-EU and U.S.-UK Covered Agreements (model law 785, section 2F(1)(a)(iii) defines reciprocal jurisdictions as accredited, non-Covered Agreement, qualified jurisdictions that meet certain additional requirements “consistent with the terms and conditions of in-force covered agreements”) and not to add substantively to those provisions, Covered Agreement Jurisdictions would also be considered to R&A the state regulatory approach to group supervision and group capital. This might also be indicated by the drafting in model law 440, section 4L(2)(f)(i).
5. Model Regulation 440, Section 4L(2)(f)(ii), describes the creation of a list of jurisdictions that R&A the group capital calculation. There is a single R&A list for all GCC purposes, and model regulation 450 Section 21D outlines the criteria for this list. Section 21D1 includes jurisdictions that R&A the U.S. state regulatory approach to group supervision and group capital, and Sections 21D1a and 21D1b describe conditions for additional jurisdictions to be added to this list (“may also be included”; “can be included”).
6. The subgroup trigger language in model law 440, section 4L(2)(e) refers to the non-application of a group capital standard to the parent of a U.S. entity. The only other reference to “parent” in model law 440 is in section 4L(2)(d)(ii)b, which describes exempted non-U.S. groups whose group-wide supervisor is based in an additional R&A jurisdiction. This is consistent with the reference to “parent” in section 21D1a in model regulation 450, which again refers to “parent companies of U.S. subsidiaries” in the context of additional R&A GCC jurisdictions. Therefore 21D1a establishes two criteria by referring to “[a jurisdiction’s] own reporting requirements” at both (1) the worldwide level (“to U.S. insurance groups”) and (2) the subgroup level (“or to parent companies of U.S. insurance subsidiaries”). It is likely that 4L(2)(d)(ii) has the same objective, although the use of “or” to connect three clauses creates some confusion.
7. Therefore we understand the exposure to indicate that the subgroup provision is applicable only to these additional jurisdictions that R&A the group capital calculation, and that provision is not applicable either to Covered Agreement jurisdictions or to non-Covered Agreement Reciprocal Jurisdictions, as such jurisdictions are considered to R&A the state regulatory approach to group supervision and group capital.

August 24, 2020

VIA EMAIL

ddaveline@naic.org

Commissioner David Altmaier
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Mr. Dan Daveline
Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Re: Draft Amendments to the NAIC Insurance Holding Company System Regulatory Act – Model 440

Dear Commissioner Altmaier:

Munich Re US appreciates the opportunity to comment on the recently exposed amendments to NAIC Insurance Holding Company System Regulatory Act (Model Act 440) to implement the Group Capital Calculation provisions. Our comments today focus on draft Model Act 440 sections 4L(2)(e) and 4L(2)(g).

Munich Re US supports level regulatory playing fields and supports meaningful regulation of insurance groups, including regulation that ensures that each insurance group will only be subject to one group capital regulatory measure, which should be mandated by the group-wide supervisor where the ultimate holding company is domiciled. Efforts to impose subgroup capital measures and duplicative or conflicting group capital measures should be deterred. To the extent that subgroup capital measurements exist under current laws, they should be eliminated. To the extent that jurisdictions are including group capital measures into the law for the first time, they should be avoided.

As drafted, Model Act 440 attempts to encourage a level regulatory playing field by including a “reciprocity” provision, which would impose the Group Capital Calculation on U.S. subgroups of non-U.S. groups whose group-wide supervisors impose subgroup capital requirements on U.S. subgroups. It is disappointing that this type of retaliatory measure is considered to be necessary to encourage level regulatory playing fields on a global basis and that this type of retaliatory measure is being suggested instead of diplomacy and requesting that international regulators work together to eliminate unnecessary subgroup capital requirements.

To the extent that the NAIC will move forward with this “reciprocity” provision, we recommend several revisions to it, which are designed to encourage a level playing field, to create an objective standard that

is focused on determining whether a non-US supervisor is subjecting U.S. subgroups to subgroup capital requirements and to allow U.S. regulators to decide whether imposing the Group Capital Calculation on U.S. subgroups of non-U.S. groups serves any regulatory purpose. These recommendations are included in our suggested edits to Model Act 440, which are attached for your consideration and are briefly summarized below:

- First, we recommend deleting the term “recognizes and accepts” from section 4L(2)(e) and replacing it with a more objective term that has not been separately and differently defined in Model Act 440. This “reciprocity” provision that is included with the Group Capital Calculation provisions should only focus on whether a non-U.S. supervisor is applying its group capital requirements on U.S. subgroups. Using the term “recognizes and accepts” implies that the inquiry is broader than subgroup capital measures. The concept of reciprocity should be more streamlined. The scope of the inquiry should be focused only on the imposition of subgroup capital requirements – not on a more broad inquiry into the acceptance of the U.S. insurance regulatory system.
- Second, we recommend that the NAIC should develop a transparent process for determining whether a non-U.S. jurisdiction is applying its group capital requirements on U.S. subgroups. We hope that the numbers of jurisdictions that are imposing subgroup capital requirements are low and will continue to shrink over time. Focusing on the jurisdictions that impose subgroup supervision will reduce the burden on the NAIC.
- Third, we recommend allowing a U.S. lead regulator to decide whether imposing subgroup capital requirements serves any regulatory purpose. If not, then the lead U.S. regulator should have the discretion not to retaliate and not to impose the Group Capital Calculation on U.S. subgroups of non-U.S. groups. Subgroup capital measures impose burdens on the insurance group that must comply with the measure and impose burdens on the regulator that must review the report. In each circumstance, regulators should be able to weigh the benefit of these retaliatory measures and decide whether it is necessary.
- Fourth, we recommend several other changes that are more procedural in nature, as reflected in the attached draft.

Thank you for your attention to these issues. If you have any questions, we are happy to discuss our recommendations further.

Sincerely,

Bonnie L. Guth
Munich Re America Services, Inc.

Paige S. Freeman
Munich American Reassurance Company

e. ~~Notwithstanding the provisions of~~The exemptions in Sections 4L(2)(c) and 4L(2)(d), ~~a lead state commissioner may require~~shall not apply to the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if ~~its~~the non-U.S. insurance holding company's group-wide supervisor ~~does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction. A jurisdiction is deemed to "recognize and accept" the group capital calculation for a U.S. insurance group when it does not apply~~applies its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection to address jurisdictions that apply their own version of a group capital standard, assessment or report, as determined through the NAIC Committee Process.

~~A jurisdiction is considered to "recognize and accept" the group capital calculation that meets one of the following:~~

- ~~(i) A non U.S. jurisdiction that is subject to an in force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;~~

~~*—~~

~~A non U.S. jurisdiction that is not otherwise subject to an in force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.~~

- f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.
- g. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act. If a determination is made that the U.S. operations of a non-U.S. insurance holding company is subsequently required to file under Section 4L(2)(e), the U.S. operations of the non-U.S. insurance holding company shall have one (1) year following the year in which that determination is made to make its initial filing under Section 4L(2)(e).

Via Electronic Mail

August 24, 2020

Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Mr. Dan Daveline
Director, Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Comments on Draft Amendments to the NAIC Holding Company Act & Regulation

Dear Messrs. Altmaier and Daveline:

The Reinsurance Association of America (RAA), headquartered in Washington, D.C., is the leading trade association of property and casualty reinsurers doing business in the United States. The RAA is committed to promoting a regulatory environment that ensures the industry remains globally competitive and financially robust. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis.

The RAA appreciates the opportunity to comment on the draft amendments to the NAIC Insurance Holding Company System Regulatory Act Model #440 (holding company act) and the Insurance Holding Company System Model Regulation Model 450 (regulation) regarding the scope of application of the GCC and confidentiality protections. These comments are informed by the recommendations that we made in July on an earlier draft of the holding company act and in February 2020, when the Group Capital Calculation Working Group (GCCWG) sought feedback on the referral letter to the Group Solvency Issues Working Group (GSIWG) on the same topics. We agree that the holding company act and regulation (NAIC Models 440 and 450) are the appropriate locations to incorporate the regulatory authority and guidance for annual GCC reporting.

Holding Company Act - Scope Exemptions in Section 4.L.(2)d.

As stated in our prior letters addressing the scope of the annual GCC requirement, RAA's position on group capital measures is centered on the premise that insurance groups should only be subject to a single group capital measure and should only be subject to group supervision administered by their global group-wide supervisor. Similarly, the RAA believes that insurance groups should not

be subject to multiple group capital measures and related requirements applied extraterritorially, whether they involve U.S. based multinational insurance groups operating globally or non-U.S. groups with operations in the United States. Stated simply, the RAA believes in one group, one group supervisor and one group capital measure/requirement.

In our last comment letter, the RAA expressed its opposition to the elimination of the scope exemption for U.S. subgroups of non-U.S. supervised insurance groups as proposed in the new “reciprocal treatment” language. We argued that requiring annual subgroup GCC filings for U.S. subgroups would not support the supervisory objectives of group supervision and that the reciprocal treatment requirement would unlikely be effective in ensuring that non-U.S. subgroups of U.S. supervised insurance groups are not subject to similar requirements elsewhere.

We opined that the reciprocal jurisdiction requirement should not result in mandatory subgroup GCC filings, which would not enhance policyholder protection and serves only as a threatening gesture. Instead, we urged the NAIC and other members of Team U.S.A. to engage through the E.U./U.S. dialogue and other fora to work together cooperatively eliminate subgroup capital requirements everywhere.

Our position on these matters remains unchanged. However, because the RAA has always strongly believed that U.S.-based insurance groups should similarly be exempt from subgroup requirements in non-U.S. jurisdictions, we are willing to support some amendments to the holding company act and regulation that might encourage other jurisdictions to provide similar exemptions for U.S. subgroups in other jurisdictions. As you are aware, the RAA has U.S. and non-U.S.-based members that fall on both sides of this equation.

Proposed Amendment to the Holding Company Act

In the interest of resolving these issues and promoting comity among U.S. and non-U.S. supervised groups and their supervisors, the RAA could support the following proposal, which we believe could advance a productive discussion among global supervisors to ultimately eliminate subgroup capital requirements and filings everywhere. Attached to this letter is a revised draft of the holding company act and regulation for your consideration.

Subsection L.(2)d.

- Retain subsection (ii)b. – which provides an exemption for U.S. subgroups supervised by jurisdictions that do not apply their own capital regimes on U.S. subgroups;
- Retain subsection (ii)c. – which provides an exemption for U.S. subgroups supervised by jurisdictions recognize the GCC as an acceptable standard in writing;
- Eliminate subsection (ii)a. – which provides and exemption for U.S. subgroups supervised by jurisdictions that “recognize and accept” the GCC for U.S. insurance groups that operate in their jurisdiction.

Subsection L.(2)e.

- Eliminate all references to “recognize and accepts” in describing when these exemptions do not apply and clarify that the exemptions for U.S. subgroups still may apply at the discretion of the lead state commissioner.

Subsection L.(2)f.

- Eliminate this entire section that attempts to describe the meaning of “recognize and accepts” for jurisdictions that may or may not be subject to a covered agreement.

Proposed Amendment to the Regulation

In order to make conforming changes to the draft model regulation, the RAA recommends that the entirety of section 21D. be eliminated.

Rationale for RAA’s Proposed Amendments

While our first preference would be to exclude subgroup reporting from the GCC scope, leaving the requirement in the model act and regulation may provide a basis to begin a cooperative discussion with other jurisdictions to ultimately eliminate subgroup reporting everywhere. We believe it is vastly preferable to have a simple, objective criteria for this exemption rather than the complex, subjective and in our opinion, confusing discussions about the definitions and criteria for recognizing and accepting the U.S. GCC for U.S. subgroups operating in non-U.S. jurisdictions. We are concerned that the recognize and accepts language may not be consistently described throughout these two drafts and are troubled that the regulation also creates a new NAIC process to establish, monitor and maintain a list of jurisdictions that meet this standard.

Equally important, the RAA believes that ultimately the requirement for a U.S. subgroup of a non-U.S. supervised insurance group to file an annual GCC should not be mandatory and should be subject to the discretion of the lead state commissioner. Such treatment is consistent with the U.S./E.U. Covered Agreement, which states the Host supervisor **may** (emphasis added) exercise group supervision at the level of the parent undertaking in the Host territory. Such discretion is also consistent with subsection 2L.(2)g., which allows commissioner discretion to exempt other categories of insurance groups that might otherwise be subject to an annual GCC filing. Finally, given the weight of objective evidence that subgroup capital requirements are not consistent with the goals of group supervision, the holding company act and regulation should not require states to review and analyze subgroup GCC filings, when it would not be the best use of state resources.

The recommendations above reflect the RAA’s longstanding policy on group supervision, which is to oppose duplicative, unnecessary and extraterritorial group capital requirements. It is also important for the working group to understand that several of our members who are U.S.-based reinsurers are subject to subgroup capital requirements in Solvency II jurisdictions. As stated above, the RAA opposes subgroup capital filings everywhere.

Our U.S.-based members strongly believe that mandatory subgroup filings for U.S. subgroups supervised by jurisdictions that do not recognize and accept the U.S. GCC should be included in the adopted revisions to the holding company act and regulation. These members believe that such an approach is the best way to ensure insurance groups led from these jurisdictions aren’t relieved from such subgroup capital reporting requirements under the US GCC system if their home regulator imposes these same capital reporting requirements on the local operations of U.S. insurance groups.

Thank you for the opportunity to provide these comments. We look forward to continued discussion of these issues at future working group meetings.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Sieverling". The signature is fluid and cursive, with a large initial "J" and a stylized "S".

Joseph B. Sieverling
Senior Vice President

**RAA Proposed Amendments to the July 23, Draft Holding Company Act
(includes only amended sections to conserve space)**

L. Enterprise Risk Filings.

- (1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state 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;
- (2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state 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, unless one of the following exemptions for the Insurance Holding Company System is met:

 - a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
 - b. An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;
 - a.c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];
 - d. An insurance holding company:

 - (i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC

Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

~~— Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or~~

~~**Drafting Note:** The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.~~

a. Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor; or

a.b. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor.

e. The exemptions in Sections 4(L)(2)(c) and 4(L)(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if ~~it~~the group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group’s operations in that group-wide supervisor’s jurisdiction. A jurisdiction is deemed to “recognize and accept” the group capital calculation for a U.S. insurance group when it does not apply applies its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction; provided that, if the exemptions in Sections 4(L)(2)(c) and 4(L)(2)(d) do not apply pursuant to this section 4(L)(2)(e), then the lead state commissioner of the U.S. operations of the non-U.S. insurance holding company has the discretion to require that the U.S. operations of the non-U.S. insurance holding company file the report required by this Section 4(L)(2).

~~— A jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:~~

~~— A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;~~

~~— A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.~~

- f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.
- g. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.
- h. The commissioner may promulgate regulations necessary for the administration of this section

**RAA Proposed Amendments to the July 23, Draft Holding Company Regulation
(includes only amended sections to conserve space)**

Section 21. Group Capital Calculation

- A. Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:
- (i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;
 - (ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
 - (iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;
 - (iv) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
 - (v) The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.
- B. The lead-state commissioner has the discretion to either accept or exempt the ultimate controlling person from filing a limited group capital filing or report on an annual basis if either:
- 1) Provided the insurance holding company conducts no insurance operations in a jurisdiction subject to a covered agreement, the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or
 - 2) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and the following additional criteria are met:
 - (a) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and
 - (b) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and
 - (c) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead-

state commissioner and the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption under either Section 21A or Section 21B of this regulation, the commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

- 1) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or
- 2) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or
- 3) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

~~— A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it meets the following requirements:~~

~~— Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and~~

~~— A non-U.S. jurisdiction that does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor, may also be included in 21D(1) if it provides written confirmation;~~

~~— A non-U.S. jurisdiction where no U.S. insurance groups operate can be included in 21D(1) as recognizing the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor. In this case this will serve as the documentation otherwise required in 21D(1);~~

~~— Provides written confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the~~

International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

- The lead state commissioner shall provide the home jurisdiction's confirmation to the NAIC for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.
- A list of jurisdictions that "recognize and accepts" the group capital calculation is published through the NAIC Committee Process. The commissioner may approve a jurisdiction that does not appear on the NAIC list of "recognize and accept" which meets the requirements of Section D(1) and Section D(2).
- The commissioner may remove a jurisdiction from the list of jurisdictions that "recognize and accepts" the group capital calculation upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions. Included will be processes for revocation or suspension of the status as a *Accepts and Recognizes*, provided that such process would not conflict with the terms of an in-force covered agreement.

August 24, 2020

Commissioner David Altmaier, Chair
Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners

Re: Proposed Revisions to the Model Holding Company Act and Regulation

Dear Commissioner Altmaier:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to comment on the Group Capital Calculation (E) Working Group’s proposed revisions to the Model Holding Company Act and Regulation to incorporate the Group Capital Calculation (GCC). APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

APCIA appreciates that the NAIC continues to move with the appropriate speed to develop the GCC and help incorporate it into state law. We likewise thank the Working Group and NAIC staff for their continued efforts to advance this important project.

Exemptions for Non-U.S. Groups - Model Act Section 4(L)(2)(d)

Section 4(L)(2)(d) of the Model Act provides exemption criteria for a group whose non-U.S. group-wide supervisor is located outside a Reciprocal Jurisdiction. To qualify for an exemption under Section 4(L)(2)(d)(ii)(a), an insurer’s group-wide supervisor must “recognize and accept” the GCC for U.S. insurers operating in that jurisdiction. However, this subsection does not define “recognize and accept” and that same phrase appears in two other subsections of the Model Act (i.e., subsections 4(L)(2)(e) and 4(L)(2)(f)), for presumably different purposes. For clarity, APCIA recommends modifying Section 4(L)(2)(d) using the following underlined language:

d. An insurance holding company:

(i) ...

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or

- another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the jurisdiction; or
- b. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors; and
 - (iii) Whose non-U.S. group-wide supervisor provides written confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

The new Section 4(L)(2)(d)(ii)(a) above would provide clarity and ensure that qualifying jurisdictions recognize the U.S. state regulatory approach to group capital at the worldwide level. A nearly identical requirement already exists in order for a jurisdiction to qualify as a Reciprocal Jurisdiction under the Credit for Reinsurance Model Regulation. Therefore, the new Section 4(L)(2)(d)(ii)(a) above would require all non-U.S. jurisdictions to recognize the U.S. state regulatory approach to group capital in order for a group based in that jurisdiction to qualify for a GCC exemption at the worldwide level—regardless of whether the group is exempt under Section 4(L)(2)(c) (for Reciprocal Jurisdictions) or (d) (for other non-U.S. jurisdictions).

Likewise, the information sharing requirement we propose in new Section 4(L)(2)(d)(iii) above is nearly identical to the information sharing requirement that Reciprocal Jurisdictions must meet under the Credit for Reinsurance Model Regulation. Accordingly, the new Section 4(L)(2)(d)(iii) above would similarly align the requirements that non-U.S. jurisdictions must meet in order for groups based in those jurisdictions to qualify for a GCC exemption at the worldwide level.

“Reciprocity” Provision – Model Act Section 4(L)(2)(e)

APCIA reiterates our support for the concept that each insurance group should be subject to only one group capital calculation, and that no jurisdiction should apply capital calculations at the subgroup level. As described in our comment letter last month, we believe the principle that groups should be subject to one group capital measure naturally requires subgroup reciprocity. This principle is critical to supporting a level regulatory playing field for U.S.-based and non-U.S.-based companies in both the U.S. and abroad. Therefore, we understand the concern that is addressed by Section 4(L)(2)(e)’s “reciprocity” provision, under which U.S. subgroups of a non-

U.S. group would be subject to the GCC if that group's home jurisdiction imposes a subgroup capital requirement on U.S. groups operating in that jurisdiction.

There are several different ways to support a level regulatory playing field across multiple jurisdictions. APCIA's comments below and suggested language for this "reciprocity" provision do not reflect the position of all APCIA members.

APCIA continues to believe that the NAIC should develop a transparent process for determining whether a non-U.S. jurisdiction recognizes and accepts the GCC. This process should involve consultation and coordination with U.S. regulators' international colleagues, and it should be made clear that the purpose of this process is to support mutual recognition and a level regulatory playing field. Therefore, if the Working Group's revisions to the Model Act include the reciprocity provision, we suggest the following language for this provision (deleted language omitted):

- e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation as determined through the NAIC Committee Process.

These revisions to Section 4(L)(2)(e) would establish that the assessment of whether a jurisdiction "recognizes and accepts" the GCC for purposes of this subsection is determined through a transparent NAIC process.

"Recognize and Accept" – Model Act Section 4(L)(2)(f)

The most recent draft Model Act includes a new Section 4(L)(2)(f), which provides criteria for determining whether a jurisdiction is deemed to "recognize and accept" the GCC. APCIA recommends deleting the new Section 4(L)(2)(f).

As explained above, the multiple references to "recognize and accept" can create confusion because the phrase appears three times in differing contexts. For example, the reference to "recognize and accept" in Section 4(L)(2)(e) is intended to have a different meaning than that same phrase in this subsection. We understand the reference to "recognize and accept" in this Section 4(L)(2)(f) is intended to provide criteria for determining whether a jurisdiction recognizes the GCC as an adequate worldwide group capital assessment. This objective can be accomplished with more clarity by amending Section 4(L)(2)(d)(ii)(a) as we recommend above. Our proposed revisions to Section 4(L)(2)(d)(ii)(a) would ensure all non-U.S. jurisdictions recognize the U.S. state regulatory approach to group capital in order for a group based in a non-U.S. jurisdiction to qualify for a GCC exemption at the worldwide level. Therefore, this subsection should be deleted.

Model Regulation Section 21(D)

Similarly, APCIA recommends deleting Section 21(D) of the proposed Model Regulation. Section 21(D)(1) of the Model Regulation provides criteria for determining whether a non-U.S. jurisdiction recognizes the GCC as an adequate worldwide group capital assessment, and Section 21(D)(2) of the Model Regulation provides information sharing requirements that non-U.S. jurisdictions must meet. We believe these requirements are more appropriately codified in Section 4(L)(2)(d) of the Model Act, as we propose above. After all, Reciprocal Jurisdictions must already meet nearly identical recognition and information sharing requirements under the Credit for Reinsurance Model Regulation. These requirements would be duplicative for any groups that qualify for a GCC exemption at the worldwide level because their group-wide supervisor is located in a Reciprocal Jurisdiction. Accordingly, these requirements are only necessary for evaluating non-Reciprocal Jurisdictions, so Section 21(D) of the Model Regulation should be deleted and Section 4(L)(2)(d) of the Model Act should be modified as recommended above.

Please contact us if you have any questions, and we look forward to discussing our comments with you and the Working Group.

Sincerely,

A handwritten signature in black ink, reading "Stephen W. Broadie". The signature is written in a cursive, flowing style.

Stephen W. Broadie
Vice President, Financial & Counsel

L. Enterprise Risk Filings.

- (1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state 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;
- (2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state 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, unless one of the following exemptions for the Insurance Holding Company System is met:
 - a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
 - b. An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;
 - c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];

d. An insurance holding company:

- (i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and
- (ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:

a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the jurisdiction; or

~~a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group wide supervisor; or~~

Drafting Note: The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

~~b. Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group wide supervisor; or~~

e.b. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors.

- (iii) Whose non-U.S. group-wide supervisor provides written confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

~~e. The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction. A jurisdiction is deemed to "recognize and accept" the group capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.~~

e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation as determined through the NAIC Committee Process.

~~f. A jurisdiction is considered to "recognize and accept" the group capital calculation that meets one of the following:~~

~~(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;~~

~~(ii) A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.~~

g.f. Notwithstanding In addition to the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.

h.g. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act. If a determination is made that the U.S. operations of a non-U.S. insurance holding company is subsequently required to file under Section 4(L)(2)(e), the U.S. operations of the non-U.S. insurance holding company shall have one (1) year following the year in which that determination is made to make its initial filing under Section 4(L)(2)(e).

i.h. The commissioner may promulgate regulations necessary for the administration of this section.

Commissioner David Altmaier, Chair
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
[via-email: ddaveline@naic.org]

August 24, 2020

Re: Comments on Group Capital Calculation Working Group's Draft Scope Related
Amendments to the Model Insurance Holding Company System Regulatory Act and Regulation

Dear Commissioner Altmaier:

The undersigned U.S. companies appreciate the opportunity to comment on the NAIC Group Capital Calculation (E) Working Group's ("the Working Group") revised draft amendments to the Model Insurance Holding Company System Regulatory Act ("Model Act") and Regulation ("Model Regulation"). We support the proposed amendments to include a requirement, subject to specified exemptions, that every insurance group operating in the U.S. must file the Group Capital Calculation ("GCC").

We strongly support mutual recognition of supervisory regimes across jurisdictions, particularly with respect to group supervision, as a condition for non-U.S. group exemptions to the requirement to file the GCC. As U.S. insurance groups with international operations, we believe this should include recognition and acceptance of the robust system of state-based group supervision and tools, including the GCC, by foreign jurisdictions and supervisors. We therefore support the Working Group's decision to take steps to promote mutual recognition of the GCC as part of its updates to the Model Act and Model Regulation.

We believe the exemptions in Sections 4L(2)(c) and 4L(2)(d) are appropriately conditioned on the GCC being reciprocally recognized in the non-U.S. insurance group's home jurisdiction, meaning that the supervisor of the non-U.S. jurisdiction does not subject a U.S. insurance group, at the worldwide group level, to its group capital standard or requirement ("measure"). We also strongly support inclusion of Section 4L(2)(e) so that such reciprocal treatment also applies at the subgroup level. We note that the NAIC has already developed a process to determine the lead state regulator for all the U.S. operations, or the subgroup, of non-U.S. based groups, as well as for U.S. based groups.

Sections 4L(2)(c), 4L(2)(d), and 4L(2)(e), which relate only to *group* capital, would not have an impact on or interfere with existing solvency supervision and reporting authority pertaining to individual or "solo" insurance entities within a jurisdiction. Further, these three provisions are drafted in a manner that respects both the EU-U.S. and UK-U.S. Covered Agreements and Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation – see attachment 1 for details. The inclusion of reciprocity at the subgroup level, as well as the worldwide group level, is critical to ensure that only jurisdictions that fully support mutual recognition of the GCC will be entitled to a complete exemption from the GCC. To safeguard the ability of the U.S. to promote mutual recognition, as well as consistent and fair application of these provisions across all groups

and subgroups from all jurisdictions, we believe that these important reciprocal provisions should not be subject to individual commissioner discretion.

To make these provisions effective, we believe a clear definition of “recognize and accept” is needed and that this definition would be best positioned within the Model Regulation. In attachment 2 we have proposed revisions that are intended to streamline the Working Group’s draft amendments and eliminate sometimes inconsistent “recognize and accept” definitions currently housed in both the draft Model Act and Model Regulation.

We also support the Working Group’s efforts to create a transparent and objective process for keeping track of the jurisdictions that recognize and accept the GCC at the worldwide and/or subgroup level. We have provided some suggested revisions to the proposed process that we believe will further ensure it is fair and transparent, while maintaining state authority as well as adherence to the EU-U.S. and UK-U.S. Covered Agreements.

Thank you for the opportunity to provide these comments. We would be happy to discuss these recommendations.

Sincerely,

Berkshire Hathaway Group of insurance companies
MetLife, Inc.
Odyssey Reinsurance Company
Prudential Financial, Inc.
Reinsurance Group of America, Incorporated
The Travelers Companies, Inc.
Transatlantic Reinsurance Company

Attachment 1

Section 4L(2)(e) is consistent with the EU-U.S. and UK-U.S. Covered Agreements and Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation. The Covered Agreements prohibit “Host” supervisors from exercising group supervision, including group capital measures, at the “worldwide” group level while retaining the authority for imposition of a group capital measure on the operations of an insurance group within the territory of the Host jurisdiction. Article 4(h) of the Covered Agreement addresses group capital specifically and provides that, “the Host supervisory authority does not impose a group capital assessment or requirement at the level of the worldwide parent undertaking of the insurance or reinsurance group according to the applicable law in its territory.” (Emphasis added.) The Statement of the United States on the Covered Agreement with the European Union dated September 22, 2017, reiterates this point: “The Agreement provides that U.S. insurers and reinsurers can operate in the EU without the U.S. parent being subject to the group level governance, solvency and capital, and reporting requirements of Solvency II,…” (Emphasis added.)

Pursuant to Articles 1(c) and 4(b) of the Covered Agreement, a Host supervisor retains the authority to exercise group supervision, including group capital measures, over a Home group’s subgroup operations in the Host’ supervisor’s own jurisdiction. Article 4(b) provides that “Host supervisory authorities may exercise group supervision, where appropriate, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its territory. Host supervisory authorities do not otherwise exercise worldwide group supervision with regard to a Home Party insurance or reinsurance group, without prejudice to group supervision of the insurance or reinsurance group at the level of the parent undertaking in the territory of the Host Party.”

Sections 9(B)(1) and 9(B)(3)(c) of the Credit for Reinsurance Model Regulation allow “Reciprocal Jurisdiction” status to be granted to non-U.S. jurisdictions subject to a covered agreement and for qualified jurisdictions that meet a list of requirements based on the covered agreement, including written confirmation by a qualified jurisdiction that a U.S. insurance group “will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.” (Emphasis added.)

Attachment 2

Model Law

L. Enterprise Risk Filings.

- (1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state 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;
- (2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state 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, unless one of the following exemptions for the Insurance Holding Company System is met:
 - a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
 - b. An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;
 - c. An insurance holding company whose non U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];
 - d. An insurance holding company:
 - (i) That ~~has provided~~ provides information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the

- NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and
- (ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements: recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor.
- a. Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or
- Drafting Note:** The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require apply its own version of a group capital filing to U.S. insurance groups.
- b. Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor; or
- c. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors.
- e. Notwithstanding the provisions of the exemptions in Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require not apply to the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the non-U.S. insurance holding company’s group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. insurance group’s operations in that non-U.S. group-wide supervisor’s jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to “recognize and accept” the group capital calculation as determined through the NAIC Committee Process. A jurisdiction is deemed to “recognize and accept” the group capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.
- f. A jurisdiction is considered to “recognize and accept” the group capital calculation that meets one of the following:
- (i) A non-U.S. jurisdiction that is subject to an in force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is

Commented [A1]: Update to L(2)d(i)

We find this point repetitive and suggest eliminating it.

Commented [A2]: Removal of L(2)d(ii)a, L(2)d(ii)b, L(2)d(ii)c

The current draft includes several references to the meaning or definition of “recognize and accept”. We recommend streamlining the documents by establishing the exemption in the Model Act and defining what “recognize and accepts” is in the Model Regulation.

Commented [A3]: Updates to L(2)e

We believe our proposed modifications provide clarity while retaining the intent and substance of the provision.

With respect to the last sentence that we have deleted in this section, the current draft includes several references to the meaning or definition of “recognize and accept”. We recommend streamlining the documents by establishing the exemption in the Model Act and defining what “recognize and accepts” is in the Model Regulation.

Commented [A4]: Updates to L(2)f

The current draft includes several references to the meaning or definition of “recognize and accept”. We recommend streamlining the documents by establishing the exemption in the Model Act and defining what “recognize and accepts” is in the Model Regulation.

We also suggest certain edits as shown in our markup to the Model Regulation.

Commented [A5]: Updates to L(2)f(i)

This subparagraph should be deleted in its entirety. The “recognize and accept” concept does not apply to Section 4L(2)(c) and reciprocal jurisdictions already include those that are subject to a covered agreement.

“Recognize and accepts” does apply to section 4L(2)(e) and if this language was maintained it would create a conflict by potentially making certain reciprocal jurisdictions (i.e., those subject to a covered agreement) not subject to the subgroup reciprocity provisions in section 4L(2)(e).

4L(2)(e) should apply to all jurisdictions, including those subject to a covered agreement, as the covered agreements do not preclude the application of group capital measures to subgroups within the respective jurisdictions.

currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;

(ii) ~~A non U.S. jurisdiction that is not otherwise subject to an in force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.~~

~~g.f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.~~

~~h.g. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.~~

~~i.h. The commissioner may promulgate regulations necessary for the administration of this section.~~

M. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

[Model Regulation]

Section 21. Group Capital Calculation

A. Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

- 1) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;

Commented [A6]: Updates to L(2)f(ii)

We believe this paragraph should be addressed in the regulation.

Commented [A7]: We recommend deleting the full exemption as it is overly broad and the draft Model Act already provides appropriate exemptions based on specific circumstances. Further, this exemption could result in the US failure to meet the requirements in the covered agreement and could negatively impact the ICS comparability determination. The limited exemption is addressed in our markup to the Model Regulation.

Commented [A8]: Updates to L(2)g

We recommend deleting the full exemption as it is overly broad and the draft Model Act already provides appropriate exemptions based on specific circumstances.

Further, this exemption could result in the US failure to meet the requirements in the covered agreements.

- 2) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
 - 3) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;
 - 4) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
 - 5) The non-insurers within the holding company system do not pose a material risk to the insurers' ability to honor policyholder obligations.
- B. The lead-state commissioner has the discretion to ~~either accept or exempt the ultimate controlling person from filing a limited group capital filing or report~~ calculation on an annual basis if either:
- 1) ~~Provided~~ the insurance holding company conducts no insurance operations in a jurisdiction subject to a covered agreement, the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or
 - 2) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and the following additional criteria are met:
 - (a) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and
 - (b) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and
 - (c) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead-state commissioner and the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.
- C. For an insurance holding company that has previously met an exemption under either Section 21A or Section 21B of this regulation, the commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

Commented [A9]: Updates to 21B1

We recommend deleting this because it could result in preferential treatment for some U.S. groups versus other based on the location of their foreign operations (i.e., in jurisdictions subject to a covered agreement)

Moreover, the NAIC has already declined to allow a similar exemption in the past drafts.

- 1) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or
- 2) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or
- 3) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. ~~A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it meets the following requirements:~~ Recognize and accept" the group capital calculation shall mean:

- 1) With respect to [insert cross-reference to Section 4L(2)(d) of the Model Act], the non-U.S. jurisdiction ~~Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority; in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters whose lead state is in this state or another jurisdiction accredited by the NAIC, shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state commissioner or the commissioner of the domiciliary state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified non-U.S. jurisdiction; and~~
- 2) With respect to [insert cross-reference to Section 4L(2)(e) of the Model Act], the non-U.S. jurisdiction ~~A non-U.S. jurisdiction that does not apply its own group capital reporting measure requirements to the operations of U.S. insurance groups within its jurisdiction, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor, may also be included in 21D(1) if it provides written confirmation;~~
- 3) ~~A non-U.S. jurisdiction where no~~ With respect to [insert cross-reference to Section 4L(2)(d), the non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that U.S. insurance groups operate can be included in 21D(1) as recognizing the group capital calculation as is an acceptable international group capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor. In this case this ~~This will serve as the documentation otherwise required in 21D(1).~~
- 4) Provides written confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the

Commented [A10]: Updates to 21D

We recommend housing the definition of "recognize and accepts" cohesively in a single section within the Model Regulation.

International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

E. A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process.

1) The lead state commissioner shall provide the home jurisdiction’s non-U.S. jurisdiction’s confirmation to the NAIC for recommendation to that it be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.

2) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Section D will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.

3) A list of jurisdictions that “recognize and accepts” the group capital calculation is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The commissioner may approve a jurisdiction that does not appear on the NAIC list of “recognize and accept” which meets the requirements of Section D(1) and Section D(2).

4) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state The commissioner shall provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed may remove a jurisdiction from the list of jurisdictions that “recognize and accepts” the group capital calculation, upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process.

Commented [A11]: Creation of 21E

We recommend establishing a separate point within the Model Regulation to outline the process that will be employed to track jurisdictions that recognize and accept the GCC.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions*. Included will be processes for revocation or suspension of the status as a *Accepts and Recognizes*, provided that such process would not conflict with the terms of an in-force covered agreement.

Mariana Gomez

Vice President & Associate General Counsel
202.624.2313 t
MarianaGomez@accli.com

Patrick Reeder

Vice President & Deputy General Counsel
202.624.2195 t
PatrickReeder@accli.com

via-email with copy to ddaveline@naic.org

August 24, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation (E) Working Group
Florida Office of Insurance Regulation

Re: NAIC Group Capital Calculation ("E") Working Group Revisions to the NAIC's Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act ("Model Act") and Model Holding Company Regulation ("Model Regulation"). We appreciate the significant and thoughtful work being done by the NAIC on this project and receptivity to discussing our members' recommended changes in the previous exposure.

Our engagement in this initiative continues to be guided by the following principles that ACLI's diverse set of members support. These principles were adopted by ACLI's Board of Directors:

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).
2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.
3. Subgroup reciprocity:
 - a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.
 - b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.
 - c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.

4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment (“ORSA”) group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.
5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

We appreciate that the latest version of the Model Holding Company Act and Model Holding Company Regulation reflect updates to address some of the points we raised in response to the prior consultation. As with any iterative process, we have additional comments and recommended changes to the exposure. We have provided a high-level summary of some of our comments below, which is followed by a more detailed set of technical comments and a redline, in Appendix 1, which includes the rationale for each suggested change. Appendix 2 is a clean version of ACLI’s recommended modifications.

High-level summary of ACLI comments on the Model Act and Regulation:

- We believe there is an opportunity to streamline the drafting and harmonize the text in the Model Act and the Model Regulation. Our detailed comments apply updates to sharpen the focus of the Model Act and Regulation. Most of our modifications are aimed at clarifying the text, while retaining the overarching intent of the original language as many of our members understand it.
- As stated in our previous comments, ACLI supports including a subgroup reciprocity provision in Section 4L(2)(e) and believes this concept needs to be included in the Model Law.
- At the same time, we believe subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction “recognizes and accepts the GCC”. We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.
- We believe that, following an initial filing and notwithstanding the reciprocity provisions, insurance groups that are exempt from having to file an ORSA because of their size should be exempt from the GCC. We support the Working Group’s proposed exemption for insurance holding company groups who are required to file group capital calculation specified by the Federal Reserve Board and we appreciate the recent changes that address information sharing and confidentiality requirements.
- We believe further work is necessary to define “materiality” and “financial entity” in the NAIC GCC Instructions. These Instructions should also include information around “other controlling persons” (per our recommendation in section 4L(2)) as well as additional guidance on what information is included in a “limited group capital filing or report.”

We appreciate that the latest version of the Model Holding Company Act and Model Holding Company Regulation reflect updates to address points ACLI raised in response to the prior

consultation. As with any iterative process, we have additional comments and recommended changes to the exposure. In addition to our high-level views, expressed above, we have enclosed a more detailed set of technical comments and a redline, in the appendix (Appendix 1), as well as a full set of our technical comments (Appendix 2), and a clean version of the Model Act and Regulation, as modified by our recommendations (Appendix 3).

Thank you for the opportunity to submit our comments. As always, we would be pleased to meet with you or your staff at your convenience to discuss our comments or provide additional detail.

Mariana Gomez-Vock



Patrick C. Reeder



Enclosures:

- **Appendix 1.** NAIC Model Act (440) and Regulation (450), with ACLI's suggested amendments, redlined and accompany technical comments and rationale in the comment bubbles.
- **Appendix 2.** Full text of ACLI technical comments
- **Appendix 3.** NAIC exposed Model Act and Regulation, with ACLI's suggested amendments – clean version

Appendix 1. NAIC Model Act (440) and Regulation (450), with ACLI's suggested amendments, redlined and accompanying technical comments/rationale in the comment bubbles.

Model Act – 440
ACLI Modifications Redlined

4L(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person or the controlling person as determined by the lead-state commissioner, as specified by the NAIC GCC Instructions, of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state 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, unless one of the following exemptions for the Insurance Holding Company System is met:

- a) An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
- b) An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;
- c) An insurance holding company whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];
- d) An insurance holding company
 - i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and
 - ii) Whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or
 - iii) For non-U.S. jurisdictions where no U.S. insurance groups operate, a competent regulatory authority in such a jurisdiction provides written confirmation to the lead-state commissioner, with a copy to the International Association of Insurance Supervisors recognizing the group capital calculation as an acceptable world-wide capital assessment for U.S. groups.

Drafting Note: The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

- e) Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require a group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation, for any U.S. insurance group's operations in that non-U.S. jurisdiction.
- f) Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to accept a limited group capital filing or report, if the insurance holding company meets the criteria for such an exception, as specified by the commissioner in regulation.
- g) If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the

insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.

- h) The commissioner may promulgate regulations necessary for the administration of this section.

Model Regulation (450)

ACLI modifications REDLINED

Section 21.

21A. The lead-state commissioner has the discretion to accept a limited group capital filing report if the lead-state commissioner determines that:

- 1) the insurance holding company has filed a group capital calculation at least once; and,
 - a. The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations, or
 - b. the insurance holding company system has annual direct written and unaffiliated assumed premiums (including international direct and assumed premiums), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; or
 - c. The insurance holding company:
 - (i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and
 - (ii) Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and
 - (iii) the lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

21B. For an insurance holding company that has previously met an exemption under **4L(2)(f)** or Section 21A of this regulation, the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

- 1) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or
- 2) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or
- 3) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

21C. For the purposes of [insert cross reference to Model Holding Company Act section 4L(2)(d)], a non-U.S. jurisdiction that is not a reciprocal jurisdiction, is considered to “recognize and accept” the group capital calculation as a world-wide capital assessment for U.S. insurance groups who operate within the jurisdiction of the group-wide supervisor, if it satisfies the following criteria:

- 1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction’s own regulatory measure of insurance group capital adequacy at the level of the worldwide parent undertaking of the insurance or reinsurance group to U.S. insurance groups who operate within that jurisdiction.
- 2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21D. [use language from 21C] For the purposes of [insert cross reference to 4L(2)(e)], a non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation for any U.S. insurance group’s operations in that non-U.S. jurisdiction if it satisfies the following criteria:

- 1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction’s own regulatory measure of insurance group capital adequacy for any U.S. insurance or reinsurance group’s operations in that non-U.S. jurisdiction.
- 2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21E. A list of jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process.

- 1) The lead state commissioner shall provide the home jurisdiction’s confirmation to the NAIC for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.
- 2) A list of jurisdictions that “recognize and accept” the group capital calculation is published through the NAIC Committee Process. The commissioner may approve a jurisdiction that does not appear on the NAIC list of “recognize and accept” which meets the requirements of this Act.

The commissioner may remove a jurisdiction from the list of jurisdictions that “recognize and accept” the group capital calculation upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process. **Drafting Note:** It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC

Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions. Included will be processes for revocation or suspension of the status as a Accepts and Recognizes, provided that such process would not conflict with the terms of an in-force covered agreement.

Appendix 2. Full text of ACLI technical comments

ACLI comments on the Model Act (#440)

#	Model section	ACLI comment
1	4L(2)	[Comment 1] 4L(2) currently requires the ultimate controlling person to submit the group capital calculation. However, it will likely be more appropriate for some insurance groups that may be required to file the GCC, including those that are part of non-financial conglomerates and the U.S. operations of foreign-based groups, to conduct the filing at a level below the ultimate controlling person. Our language broadens the model act to account for such circumstances.
2	4L(2)	[Comment 2] The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the “controlling person” as determined by the lead state, as well as specifying the situations where this may be necessary.
3	4L(2)(a).	[Comment 3] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with < \$1 billion in group premiums if the group has not filed a GCC at least once. That is why we are recommending, as an alternative to granting an exemption for

#	Model section	ACLI comment
		groups who don't file an ORSA because of size, giving the lead-state the discretion to accept a limited group capital report for such groups, as long as they have filed a GCC at least once (see comments to 21A).
4	4L(2)(b)	[Comment 4] ACLI supports 4L(2)(b) as it is written.
5	4L(2)(c)	[Comment 5] Appears unnecessary – recommend deleting to shorten text.
6	4L(2)(d)	[Comment 6] Changed to match how the terminology in the NAIC Financial Analysis Handbook.
7	4L(2)(d)	[Comment 7] Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i).
8	4L(2)(d)(iii)	[Comment 8] Streamline and make the language more consistent with what is required of other jurisdictions, by striking reference to recognizing the GCC as an acceptable ICS and replacing with recognition as an “acceptable world-wide capital assessment for U.S. groups.”
9	4L(2)(e)	[Comment 9] Clarify that even if the U.S. operations of a non-US group must file a GCC, this section does not invalidate the exemption at the world-wide level provided by 4L(2)(c) and (d). Without this change, the language could be interpreted as invalidating the exemption at the world-wide level, which we do not believe is what was intended with 4L(2)(e).
10	4L(2)(e)	[Comment 10] intended to align the Model Act with the ACLI Board-approved principles.
11	4L(2)(f)	[Comment 11] This section appears to give the Commissioner broad authority to exempt groups from the GCC, even if they do not meet the criteria in the model law for exemption. If states have the broad authority to exempt any group – beyond those exemptions specified in the law, it creates the risk of an unlevel playing field. We recommend limiting this discretionary authority to accept a limited group capital report from companies who meet the criteria in the model regulation.

ACLI comments on the Model Regulation (#450)

#	Model section	ACLI Comment
12	Section 21A	[Comment 12] A clean version incorporating ACLI's changes would read as...
13	Section 21A	[Comment 13] ACLI suggests limiting the discretion to accept a limited group capital report (vs. also allowing an exemption), because we heard multiple regulators on the GCCWG express a desire to collect at least one full group capital calculation before a group could become eligible for a limited filing reporting obligation. Alternatively, if the regulators would prefer the ability to exempt eligible groups from filing any GCC-related report, collecting at least one full-GCC prior to granting the exemption may help regulators determine the extent of material risk within the group's non-insurance operations.
14	Section 21A(1)	[Comment 14] 21A(1)(a-c) are not exemptions per se - a group would still have to file a full GCC at least once, and then an annual limited group report. 21A recognizes that there are some groups that may not meet the criteria for exemption in 4L(2)(a)-(d), but the GCC filing may not add new information that a lead state commissioner needs in order to meet the obligation as a group wide supervisor – per 21A(1).
15	Section 21A(1)(a)	[Comment 15] Additional work is needed to define “materiality” with respect to the GCC, including how to determine whether a non-US insurance operation was material, and what impact, if any, this might have on the Covered Agreement. This information could be included in the FAH and/or GCC Instructions.
16	Section 21A(1)(b)	[Comment 16] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in annual premiums).

#	Model section	ACLI comment
		However, if such an approach is not acceptable to regulators, then we propose adding a section to 21A to give regulators the discretion to accept a limited annual group capital filing from these groups, as long as the group has filed a full GCC at least once.
17	Section 21A(1)(c)	[Comment 17] 21(A)(1)(c) recognizes that there may be some groups where the lead-state has sufficiently clear line of sight into each of the holding company's material entities, and fully understands the holding company's financial position without the full GCC, they should have the same level of discretion as those companies covered by (a) to allow a limited annual filing, as long as the group has filed a full GCC at least once.
18	Section 21A(1)(c)(ii)	[Comment 18] Assuming the intent was to capture depository institutions or other bank-like entities that are not subject to insurance department regulation, then we recommend adding "material non-insurance" before financial entity, especially because the definition of financial entity remains unclear and may evolve as regulators get more experience with the GCC. This would avoid disqualifying groups who may have a broker-dealer that exists solely to support investing for the insurer from being able to qualify for a limited reporting schedule. A broker dealer that is immaterial (if materiality was defined at 2-5% of total assets) to the group is not going to have a significant impact on the GCC or pose a material risk to policyholders.
19	Section 21A(1)(c)	[Comment 19] We recommend deleting this section because these transactions are likely to be captured in a limited group filing that a supervisor will be able to review prior to determining if this discretion is appropriate. In addition, there are material intra-group transactions that occur in the ordinary course of business that we do not think should automatically disqualify a group from being able to file a limited group capital report. Some of these material transactions include the periodic payment of dividends, which requires regulatory notification and in the case of extraordinary dividends, regulatory approval; the use of non-insurance service companies to share overhead and operating costs among insurance subsidiaries, and tax-sharing agreements among affiliates.
20	Section 21C	[Comment 20] Proposed changes are intended to align the Model Regulation in line with the ACLI Board approved policy on the scope of the GCC.
21	Section 21D	[Comment 21] The proposed changes are intended to align the Model Act with ACLI's Board approved principles
22	Section 21D	[Comment 22] provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.
23	Section 21E	[Comment 23] Subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.

Appendix 3. **NAIC exposed Model Act and Regulation, with ACLI's suggested amendments – clean version**

MODEL ACT – 440 WITH ACLI MODIFICATIONS (CLEAN)

4L(2) Group Capital Calculation. Notwithstanding any exemptions from the registration contained in this Act, the ultimate controlling person or the controlling person as determined by the lead-state commissioner, as specified by the NAIC GCC Instructions, of every insurer subject to registration shall file an annual group capital calculation as directed by the lead state commissioner, completed in accordance with the NAIC Group Capital Calculation Instructions. The report shall be filed with the lead state 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, unless one of the following exemptions for the Insurance Holding Company System is met:

- a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
- b. An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent

permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;

- c. An insurance holding company whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];
- d. An insurance holding company
 - i. That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and
 - ii. Whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or
 - iii. For non-U.S. jurisdictions where no U.S. insurance groups operate, a competent regulatory authority in such a jurisdiction provides written confirmation to the lead-state commissioner, with a copy to the International Association of Insurance Supervisors recognizing the group capital calculation as an acceptable world-wide capital assessment for U.S. groups.

Drafting Note: The phrase “Recognizes and accepts” does not require the non-U.S. group-wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.

- e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require a group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the insurance holding company’s group-wide supervisor does not recognize and accept the group capital calculation, for any U.S. insurance group’s operations in that non-U.S. jurisdiction.
- f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to accept a limited group capital filing or report, if the insurance holding company meets the criteria for such an exception, as specified by the commissioner in regulation.
- g. If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act.
- h. The commissioner may promulgate regulations necessary for the administration of this section.

MODEL REGULATION (450)

WITH ACLI MODIFICATIONS (CLEAN)

Section 21.

21A. The lead-state commissioner has the discretion to accept a limited group capital filing report, as define if the lead-state commissioner determines that:

- 2) the insurance holding company has filed a group capital calculation at least once; and,
 - a. The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations, or

- b. the insurance holding company system has annual direct written and unaffiliated assumed premiums (including international direct and assumed premiums), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; or
- c. The insurance holding company:
 - (i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and
 - (ii) Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and
 - (iii) the lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.

21B. For an insurance holding company that has previously met an exemption under Section 21A of this regulation, the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

- 4) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or
- 5) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or
- 6) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

21C. For the purposes of [insert cross reference to Model Holding Company Act section **4L(2)(d)**], a non-U.S. jurisdiction that is not a reciprocal jurisdiction, is considered to “recognize and accept” the group capital calculation as a world-wide capital assessment for U.S. insurance groups who operate within the jurisdiction of the group-wide supervisor, if it satisfies the following criteria:

- 1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy at the level of the worldwide parent undertaking of the. insurance or reinsurance group to U.S. insurance groups who operate within that jurisdiction.
- 2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21D. [use language from 21C] For the purposes of [insert cross reference to 4L(2)(e)], a non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation for any U.S. insurance group's operations in that non-U.S. jurisdiction if it satisfies the following criteria:

- 1) The group-wide supervisor within the jurisdiction does not apply the jurisdiction's own regulatory measure of insurance group capital adequacy for any U.S. insurance or reinsurance group's operations in that non-

U.S. jurisdiction.

- 2) A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.

21E. A list of jurisdictions that recognize and accept the group capital calculation will be published through the NAIC Committee Process.

- 1) The lead state commissioner shall provide the home jurisdiction's confirmation to the NAIC for recommendation to be published as a jurisdiction that recognizes and accepts the group capital calculation through the NAIC Committee Process.
- 2) A list of jurisdictions that "recognize and accept" the group capital calculation is published through the NAIC Committee Process. The commissioner may approve a jurisdiction that does not appear on the NAIC list of "recognize and accept" which meets the requirements of this Act.
- 3) The commissioner may remove a jurisdiction from the list of jurisdictions that "recognize and accept" the group capital calculation upon a determination that the jurisdiction no longer meets one or more of the requirements for listing, or in accordance with a process published through the NAIC Committee Process.

Drafting Note: It is anticipated that the NAIC will develop criteria and a process with respect to *Accepts and Recognizes* that is similar to the NAIC *Process for Developing and Maintaining the NAIC List of Reciprocal and Qualified Jurisdictions*. Included will be processes for revocation or suspension of the status as a *Accepts and Recognizes*, provided that such process would not conflict with the terms of an in-force covered agreement.

August 24, 2020

Commissioner David Altmaier
Chair, Group Capital Calculation (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

VIA Email Transmission: ddaveline@naic.org; lfelice@naic.org

RE: NAMIC Comments on Proposed Amendments to NAIC Model 440: Insurance Holding Company System Regulatory Act and Model 450: Insurance Holding Company System Model Regulation

Dear Mr. Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies¹ regarding proposed changes to both the NAIC Model 440: Insurance Holding Company System Regulatory Act and Model 450: Insurance Holding Company System Model Regulation. NAMIC members are appreciative of the opportunity to provide comments on the most recent proposed changes to the holding company act and regulation and are pleased with the direction the working group has taken in regard to scope of application and exemption criteria.

In a previous comment letter to the working group, dated July 15, 2020, NAMIC noted the working group proposal of a new filing requirement – an annual GCC report – to be filed by the ultimate controlling parent with the lead state regulator. The proposed changes to Model #440 also included exemption criteria to determine who is required to file the GCC, added new definitions, and inserted new confidentiality language. Since that proposal, it appears that the working group has changed direction with regards to how to deal with exemption criteria. The current proposal gives the insurance commissioner the authority to provide exemptions by rule and has moved some of the exemption criteria from Model #440 to Model #450.

By moving some of the detailed exemption criteria to the model regulation, the working group also proposed changes to Model #440 Section 4L(2)(g) to add language providing an exemption from either the annual GCC or the “limited group capital filing” so to rely on Model #450 for the criteria as specified by the commissioner. NAMIC members are supportive of providing basic exemption criteria in Model #440 for groups that may potentially be subject to more than one group capital

¹ NAMIC membership includes more than 1,400-member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC member companies write more than \$278 billion in annual premiums. Our members account for 58 percent of homeowners, 44 percent of automobile, and 30 percent of the business insurance markets. Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they serve and foster greater understanding and recognition of the unique alignment of interests between management and policyholders of mutual companies.

standard or for small county, town, or farm mutual insurers and deferring to Model #450 for specific criteria such as if an ultimate controlling person already completes an annual Risk-Based Capital filing or including size-related thresholds.

Before we discuss our suggested changes to Model 450, we would like to highlight an issue that may have been overlooked in moving some of the exemption criteria from Model 440 to Model 450. For small county, town, and farm mutual insurers that do not file an annual Risk-Based Capital report but write over \$1,000,000 in direct written premiums, filing a GCC report would be overly burdensome. Lead state regulators of small insurance groups in this position would not be able to point to Sections 21A or 21B to exempt these insurers because they do not file an annual RBC report. In turn, these insurers would not be able to qualify for the exemption in Model 440 Section 4L(2)a. Therefore, we suggest the following change to model 440:

a. An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; ~~or~~ (b) has direct premiums written less than \$1,000,000 in any calendar year or (c) the ultimate controlling person is a U.S. regulated insurer that is not required by law to complete an annual Risk-Based Capital filing;

A new Section 21A and 21B in the model Regulation has been added to provide specific exemption criteria that NAMIC members largely support. Section 21A includes language to provide lead-state commissioner discretion to exempt the ultimate controlling person from filing the GCC if they have already previously filed a GCC. NAMIC agrees that the lead state commissioner should have discretion but suggests that it should include situations when there is an immaterial insurer that is domiciled outside the United States or one of its territories or in a territory not subject to the covered agreement. The lead state commissioner will be able to determine whether the GCC provides any additional information in these situations particularly after receiving an initial GCC filing. NAMIC suggests the following changes to Section 21A:

- A. Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:*
- 1) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;*
 - 2) Has no material insurers within its holding company structure that are domiciled outside of the United States or one of its territories in a jurisdiction subject to a covered agreement;*
 - 3) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;*

- 4) *The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and*
- 5) *The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.*

Similarly, Section 21B provides the lead-state commissioner discretion to either exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report on an annual basis if certain criteria are met. Again NAMIC members are largely supportive of these provisions but for similar reasons noted above suggest editing Section 21B(1) as follows:

*“Provided the insurance holding company conducts no **material** insurance operations in a jurisdiction subject to a covered agreement, the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations; or”*

We believe inserting the term “material” into the above provisions and making them consistent properly recognizes the risk-focused nature of state insurance regulation. Several NAIC model laws contain the concept of materiality, including both Model #440 and #450. The lead-state regulator is in the best position to determine whether to require a GCC or a “limited group capital filing” and therefore are also in the best position to determine whether any affiliate within the group poses a material risk to the insurance operations of the group. We think making this change recognizes the intent behind allowing regulator discretion.

We appreciate the opportunity to review the proposed language. Thank you for your consideration of these comments on this matter of importance to NAMIC, its member companies and their policyholders. If there are any questions, please feel free to contact me at 317-876-4206.

Sincerely,



Jonathan Rodgers
Director of Financial and Tax Policy
National Association of Mutual Insurance Companies