



DATE: March 6, 2018

TO: Members of the Receivership and Insolvency (E) Task Force (“RITF”)

FROM: Kristine A. Maurer, Chair of RITF

SUBJECT: Referral from the Financial Stability (EX) Task Force Regarding Consideration of Additional Requirements for Recovery and Resolution

On December 2, 2017, RITF received a referral from the Financial Stability (EX) Task Force (“FSTF”) as a part of its Macro-prudential Initiative (“MPI”), which is also a project expressly referenced in the NAIC’s State Ahead strategic plan (see: <http://www.naic.org/documents/state Ahead Strategic Plan.pdf?680>). This referral requests us to consider whether any enhancements to our system are appropriate to address recovery and resolution issues due to the evolution of supervisory standards, best practices, and law in these areas related to financial stability concerns. The referral does not request us to reconsider the issue of having U.S. insurers file full resolution plans.

Specifically, the referral requests RITF to:

- A) Undertake an evaluation of our current recovery and resolution laws, guidance, tools, etc. to evaluate whether they incorporate best practices regarding the above areas identified as important to financial stability;
- B) Review what information and/or processes in recovery and resolution planning as applicable in other jurisdictions or to groups that may be systemically important could be most valuable for state insurance regulators to consider requiring of large cross-border (state borders included) U.S. groups, including whether such information should be available prospectively and without regard to whether the group/insurer is troubled, taking into account how quickly such events can occur and the perceived benefits of such prospective processes; and,
- C) Evaluate whether there are any current misalignments between federal and state laws that could be an obstacle to achieving effective and orderly recovery and resolutions for U.S. insurance groups, e.g. Federal rule recognizing importance of temporary stays on the termination of master netting agreements for qualified financial contracts (“QFCs”) that does not recognize the utility and import of state-based stays in state receivership proceedings.

NAIC staff, Co-Vice Chairs Commissioner Stephen Taylor and James Kennedy, and I have engaged in preliminary discussions about possible paths forward to achieve the above objectives. We do not believe that this referral requires additions/amendments to our current charges because it is currently captured in the charges of RITF and our reporting Working Groups. The purpose of this memorandum is to introduce our early thoughts for consideration by the TF members with the aim of engaging in substantive discussion to formalize a plan at our meeting at the NAIC Spring National Meeting in Milwaukee, Wisconsin on Sunday, March 25, 2018 at 11 a.m.

The following will provide possible work streams for each of the above referenced categories:

A) Best practice review of current recovery/resolution laws, procedures, manuals, handbooks, etc.:

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- 1) Review updated sources of standards and practices regarding recovery/resolution:
 - a. International Association of Insurance Supervisors' Insurance Core Principles (ICPs) with proposed on Recovery (currently ICP 10) and Resolution (ICP 12) as accepted by IAIS' ExCo in November 2017;
 - (i) Review integration of Com-Frame into ICPs for internationally-active insurance groups (IAIGs) (currently pending & anticipated for full Com-Frame consult in Summer 2018);
 - b. Financial Stability Board's Key Attributes for Effective Resolution Regimes:
 - (i) Results of IMF's FSAP of U.S. regarding resolution;
 - (ii) FSB's Pending Key Attributes Assessment Methodology for Effective Resolution Regimes; and
 - (iii) NAIC/RITF amendments to Receivers' Handbook post-FSAP;
 - (a) Status of Key Provisions to be Addressed post-FSAP; and
 - c. Compare above with current models & handbooks for state-based receivership and evaluate areas for addition/update based upon current evolution of recovery/resolution processes.

- B) Information from Recovery/Resolution Planning that may be valuable in prospective planning for large cross-border (state borders included) U.S. insurance groups:
 - 1) Review ICPs and Com-Frame sections addressing formal and informal plans recovery/resolution, including supervisory best practices, elements of same, purpose, proportionality concepts;
 - 2) Review FSB research/papers on recovery/resolution planning'
 - 3) Re-review FDIC checklist for receivership pre-planning;
 - 4) Review federal code, rules and guidelines regarding recovery/resolution planning (e.g. Dodd-Frank Act provisions and implementing rules);
 - 5) Survey other jurisdiction's best practices;
 - 6) Discuss experiences and costs/benefits of recovery/resolution planning and Crisis Management Group with group-wide supervisors/lead states and federal supervisors of IAIGs or G-SIIs currently subject to such supervisory mechanisms; and
 - 7) Coordinate evaluation of other financial solvency reports/tools/guidelines/handbooks with appropriate NAIC bodies for possible enhancements addressing aspects of prospective recovery/resolution planning.

- C) Misalignments Between State/Federal Laws:
 - 1) Evaluate and propose a path forward on QFCs and federal rules regarding recognition of stays;
 - 2) Review NAIC prior work addressing the impact of the Dodd-Frank Act, and specifically its Title II Orderly Liquidation Authority, and evaluate interpretations of effect on state receivership system based upon implementation as to SIFIs;
 - 3) Review and evaluate impact of U.S. Treasury Department's recent report on Orderly Liquidation Authority (Feb. 21, 2018); and
 - 4) Identify any areas where there are misalignments or clarifications are needed.

As this preliminary list demonstrates, there will be a significant amount of work under this MPI referral. Therefore, we are considering the creation of small drafting groups of the RITF by topic to organize and perform the initial work for presentation to RITF as a full body and with recommendations as next steps. We are hoping to staff these work streams with volunteers to lead and participate in each drafting group, and welcoming non-member regulators to participate in the work. This will require a greater number of RITF and/or drafting group interim teleconferences as this work progresses. It will also be important to solicit and receive input/expertise from interested parties, including but not limited to the guaranty associations, industry trades, individual insurers, and consumer representatives.

Therefore, please start considering this new referral, the proposed work streams, and our suggestion for drafting groups to tackle developing recommendations for each topic. We would like to engage in a full discussion in Milwaukee and welcome all suggestions to what is proposed in this memo. Thank you for your service on RITF, and we look forward to embarking on this important MPI work stream to address recovery and resolution.