FINANCIAL CONDITION (E) COMMITTEE

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Revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions (Attachment Nine)
Draft Pending Adoption

Draft: 12/9/19

Financial Condition (E) Committee
Austin, Texas
December 9, 2019

The Financial Condition (E) Committee met in Austin, TX, Dec. 9, 2019. The following Committee members participated:
David Altmaier, Chair (FL); Kent Sullivan, Vice Chair, and Jamie Walker (TX); Michael Conway represented by Rolf Kaumann (CO); Robert H. Muriel and Kevin Fry (IL); Eric A. Cioppa and Vanessa Sullivan (ME); Steve Kelley and Kathleen Orth (MN); Chlora Lindley-Myers and John Rehagen (MO); Matthew Rosendale represented by Steve Matthews (MT); Marlene Caride (NJ); Glen Mulready represented by Eli Snowbarger (OK); Raymond G. Farmer represented by Lee Hill (SC); James A. Dodrill represented by Justin Parr (WV); and Jeff Rude (WY).

1. Adopted its Oct. 31, Aug. 29 and Summer National Meeting Minutes

The Committee met Oct. 31, Aug. 29 and Aug. 5. During its Oct. 31 meeting, the Committee took the following action: 1) adopted its 2020 proposed charges; 2) adopted a Request for NAIC Model Law Development related to the group capital calculation (GCC); and 3) adopted revisions to the Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts (#1556). During its Aug. 29 meeting, the Committee adopted proposed changes to the Annual Statement Instructions – Property/Casualty specifically related to the actuarial opinion, including, among other things, the definition of “qualified actuary.”

Commissioner Sullivan made a motion, seconded by Ms. Orth, to adopt the Committee’s Oct. 31, Aug. 29 (Attachments One and Two) and Aug. 5 (see NAIC Proceedings – Summer 2018, Financial Condition (E) Committee) minutes. The motion passed unanimously.

2. Adopted the Reports of its Task Forces and Working Groups

Commissioner Altmaier stated that items adopted within the Committee’s task force and working group reports that are considered technical, noncontroversial and not significant by NAIC standards—i.e., they do not include model laws, model regulations, model guidelines or items considered to be controversial—will be considered for adoption by the Executive (EX) Committee and Plenary through the Financial Condition (E) Committee’s technical changes report process. Pursuant to this process, which was adopted by the NAIC in 2009, a listing of the various technical changes will be sent to NAIC members shortly after completion of the Fall National Meeting, and the members will have 10 days to comment with respect to those items. If no objections are received with respect to an item, the technical changes will be considered adopted by the NAIC membership and effective immediately.

Commissioner Lindley-Myers made a motion, seconded by Commissioner Caride, to adopt the following task force and working group reports: Accounting Practices and Procedures (E) Task Force; Capital Adequacy (E) Task Force; Examination Oversight (E) Task Force; Receivership and Insolvency (E) Task Force; Reinsurance (E) Task Force; Risk Retention Group (E) Task Force; Valuation of Securities (E) Task Force; Group Capital Calculation (E) Working Group (Attachment Three); Mortgage Guaranty Insurance (E) Working Group (Attachment Four); National Treatment and Coordination (E) Working Group (Attachment Five); Restructuring Mechanisms (E) Working Group (Attachment Six); and Group Solvency Issues (E) Working Group (Attachment Seven). The motion passed unanimously.

The Financial Analysis (E) Working Group met Oct. 28 and Oct. 7 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss letter responses related to second-quarter 2019 financial results. Additionally, the Valuation Analysis (E) Working Group met Nov. 25 and Nov. 15 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss valuation items related to specific companies.

3. Adopted the 2019 Examiners’ Suggested Salary Rate

Commissioner Altmaier reminded the Committee members that each year, NAIC staff provide an average recommended increase for examiners’ salaries based on the consumer price index (CPI) for the prior year ending July 31. Commissioner Altmaier emphasized that in order to avoid negative impact to any states, the base compensation on the current salary and per diem guidelines, NAIC staff have continued to maintain the existing Financial Condition Examiners Handbook guidance on
compensation, which is being updated via this memorandum. NAIC staff also recommend that the Risk-Focused Surveillance (E) Working Group assume the responsibility to oversee development of updates to all compensation-related guidance.

Commissioner Caride made a motion, seconded by Commissioner Lindley-Myers, to adopt the 2020 examiners’ suggested salary rate (Attachment Eight). The motion passed unanimously.

4. **Adopted Revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions**

Mr. Rehagen reminded members of the Committee that the NAIC originally adopted this process now being considered for modification in 2013 as a method of evaluating the reinsurance supervisory systems of non-U.S. jurisdictions. He stated the purpose was for developing and maintaining a list of jurisdictions for recognition by the states as qualified jurisdictions for reinsurance collateral reduction purposes. He described how the process worked well over the years, and noted the NAIC currently has seven qualified jurisdictions: Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom (UK). He stated the expectation is that the NAIC Plenary will approve the re-evaluations of these seven qualified jurisdictions upon the completion of their initial five-year periods, effective for Jan. 1, 2020, during its Dec. 10 meeting.

Mr. Rehagen noted that given the NAIC’s adopted revisions to the Credit for Reinsurance Model Act (#785) and Credit for Reinsurance Model Regulation (#786) in June, the proposed revisions for the process conform to the models to the reinsurance collateral elimination provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” and the “Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreements). In addition, not only are jurisdictions that are subject to Covered Agreements treated as reciprocal jurisdictions for reinsurance collateral purposes, but other qualified jurisdictions can also qualify for collateral elimination as reciprocal jurisdictions. States that meet the requirements of the NAIC Financial Standards and Accreditation Program are also considered to be reciprocal jurisdictions.

Mr. Rehagen reported that the Reinsurance (E) Task Force amended the process to reflect the revisions to Model #785 and Model #786 and to add a new section on the review of qualified jurisdictions as reciprocal jurisdictions. In addition, the Task Force added several improvements with respect to the evaluation of qualified jurisdictions, most important being the elimination of the five-year re-evaluation requirement. He stated that as revised, qualified jurisdictions and reciprocal jurisdictions will remain on the lists until such time that there is a reason identified to remove them from the lists. He stated the evaluations of Bermuda, Japan and Switzerland as reciprocal jurisdictions under this revised process will be considered by Plenary Dec. 10, but the Committee needs to approve the documented modified process.

Mr. Rehagen made a motion, seconded by Superintendent Cioppa, to adopt the revised process for evaluating qualified and reciprocal jurisdictions (Attachment Nine).

Having no further business, the Financial Condition (E) Committee adjourned.

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Financial Condition (E) Committee
Conference Call
October 31, 2019

The Financial Condition (E) Committee met via conference call Oct. 31, 2019. The following Committee members participated: David Altmaier, Chair (FL); Kent Sullivan, Vice Chair, represented by Doug Slape, Jamie Walker and James Kennedy (TX); Ricardo Lara represented by Susan Bernard and Kim Hudson (CA); Michael Conway represented by Rolf Kaumann (CO); Robert H. Muriel represented by Susan Berry (IL); Chlora Lindley-Myers represented by John Rehagen (MO); Eric A. Cioppa represented by Vanessa Sullivan (ME); Mike Chaney represented by Chad Bridges (MS); Marlene Caride and Diana Sherman (NJ); Glen Mulready represented by Joel Sander (OK); Raymond G. Farmer represented by Lee Hill (SC); James A. Dodrill represented by Jamie Taylor (WV); and Jeff Rude represented by Linda Johnson (WY).

1. **Adopted its 2020 Proposed Charges**

Commissioner Altmaier stated that proposed charges had previously been shared and now incorporate final charges from task forces reporting to the Committee.

Mr. Kaumann made a motion, seconded by Commissioner Caride, to adopt its 2020 proposed charges (Attachment One-A). The motion passed unanimously.

2. **Adopted a Request for NAIC Model Law Development**

Commissioner Altmaier discussed that the Group Capital Calculation (E) Working Group recently adopted a Request for NAIC Model Law Development that requests the authority to make changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) to add important confidentiality requirements to a group capital calculation (GCC) filing. He emphasized that the request seeks authority only to require such filing and hold it confidential but does not include any level of regulatory intervention as a result of the filing. He noted that technical changes would be contemplated as the confidentiality language is developed, but first it must seek the approval of the Committee and the Executive (EX) Committee. He noted that the Working Group will work with the Group Solvency Issues (E) Working Group to complete the task if approved.

Mr. Slape made a motion, seconded by Ms. Berry, to adopt the Request for NAIC Model Law Development (Attachment One-B). The motion passed unanimously.

3. **Adopted a Guideline for Stay on Termination of Netting Agreements and QFCs**

Mr. Kennedy said that the Receivership and Insolvency (E) Task Force drafted amendments to the NAIC’s *Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts* (#1556). He stated that Guideline #1556 was originally adopted in 2013 to provide a temporary stay on qualified financial contracts (QFCs). He stated that currently Section 711 of the *Insurer Receivership Model Act* (#555) does not allow any type of a stay when a company is placed into receivership. He stated that in 2017, the Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) each adopted final rules regarding financial contracts, including a definition of a master netting agreement. This definition recognizes the stay under federal rules but does not recognize stays under state receivership laws. This created a conflict with the current guideline. On Dec. 2, 2017, the Receivership and Insolvency (E) Task Force received a referral from the Financial Stability (EX) Task Force to 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. To address the conflict with the federal rule, the drafting group proposed amendments to the drafting note of Guideline #1556 explaining the issue.

Mr. Kennedy made a motion, seconded by Mr. Rehagen, to adopt the revised Guideline #1556 (Attachment One-C). The motion passed unanimously.

Having no further business, the Financial Condition (E) Committee adjourned.
2020 Proposed Charges

FINANCIAL CONDITION (E) COMMITTEE

The mission of the Financial Condition (E) Committee is to be the central forum and coordinator of solvency-related considerations of the NAIC relating to accounting practices and procedures; blanks; valuation of securities; financial analysis and solvency; multistate examinations and examiner and analysis training; and issues concerning insurer insolvencies and insolvency guarantees. In addition, the Committee interacts with the technical task forces.

Ongoing Support of NAIC Programs, Products or Services

1. The Financial Condition (E) Committee will:
   B. Appoint and oversee the activities of the following: Accounting Practices and Procedures (E) Task Force; Capital Adequacy (E) Task Force; Examination Oversight (E) Task Force; Long-Term Care Insurance (B/E) Task Force; Receivership and Insolvency (E) Task Force; Reinsurance (E) Task Force; Risk Retention Group (E) Task Force; and Valuation of Securities (E) Task Force.
   C. Recommend salary rate adjustments for examiners.
   D. Oversee a process to address financial issues that may compromise the consistency and uniformity of the U.S. solvency framework, referring valuation and other issues to the appropriate committees as needed.
   E. Use the Risk-Focused Surveillance (E) Working Group to address specific industry concerns regarding regulatory redundancy and review any issues industry subsequently escalates to the Committee.

2. The Financial Analysis (E) Working Group will:
   A. Analyze nationally significant insurers and groups that exhibit characteristics of trending toward or being financially troubled; determine if appropriate action is being taken.
   B. Interact with domiciliary regulators and lead states to assist and advise as to what might be the most appropriate regulatory strategies, methods and action(s).
   C. Support, encourage, promote and coordinate multistate efforts in addressing solvency problems, including identifying adverse industry trends.
   D. Increase information-sharing and coordination between state regulators and federal authorities, including through representation of state regulators in national bodies with responsibilities for system-wide oversight.

3. The Group Capital Calculation (E) Working Group will:
   A. Construct a U.S. group capital calculation (GCC) using a RBC aggregation methodology. Complete by the 2020 Summer National Meeting; liaise as necessary with the ComFrame Development and Analysis (G) Working Group on international capital developments and consider group capital developments by the Federal Reserve Board, both of which may help inform the construction of a U.S. group capital calculation.
   B. Provide direction to the Group Solvency Issues (E) Working Group on appropriate changes to existing authority or existing regulatory guidance related to the GCC. Complete by the 2020 Fall National Meeting.
   C. Liaise, as necessary, with the International Insurance Relations (G) Committee on international group capital developments and consider input from participation of U.S. state insurance regulators in the International Association of Insurance Supervisors (IAIS) monitoring process.
   D. Continually review and monitor the effectiveness of the GCC and consider revisions, as necessary, to maintain the effectiveness of its objective under U.S. solvency system.

4. The Group Solvency Issues (E) Working Group will:
   A. Continue to develop potential enhancements to the current regulatory solvency system as it relates to group- solvency-related issues.
B. Critically review and provide input and drafting to the International Association of Insurance Supervisors (IAIS), Insurance Groups Working Group or on other IAIS material dealing with group supervision issues.

C. Continually review and monitor the effectiveness of the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450) and consider revisions as necessary to maintain effective oversight of insurance groups.

C-D. Assess the IAIS Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and make recommendations on its implementation in a manner appropriate for the U.S.

5. The ORSA Implementation (E) Subgroup of the Group Solvency Issues (E) Working Group will:
   A. Continue to provide and enhance an enterprise risk management (ERM) education program for regulators in support of the Own Risk and Solvency Assessment (ORSA) implementation.
   B. Continually review and monitor the effectiveness of the Risk Management and Own Risk and Solvency Assessment Model Act (#505) and its corresponding NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual; consider revisions as necessary.

6. The Mortgage Guaranty Insurance (E) Working Group will:
   A. Develop changes to the Mortgage Guaranty Insurance Model Act (#630) and other areas of the solvency regulation of mortgage guaranty insurers, including, but not limited to, revisions to Statement of Statutory Accounting Principles (SSAP) No. 58—Mortgage Guaranty Insurance and develop an extensive mortgage guaranty supplemental filing. Oversee the work of the consultant on the testing and finalization of proposed risk-based mortgage guaranty capital model and finalize Model #630 by the 2020 Spring Summer National Meeting.

7. The NAIC/AICPA (E) Working Group will:
   A. Continually review the Annual Financial Reporting Model Regulation (#205) and its corresponding implementation guide; revise as appropriate.
   B. Address financial solvency issues by working with the American Institute of Certified Public Accountants (AICPA) and responding to AICPA exposure drafts.
   C. Monitor the federal Sarbanes-Oxley Act, as well as rules and regulations promulgated by the U.S. Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB) and other financial services regulatory entities.
   D. Review annually the premium threshold amount included in Section 16 of Model #205, with the general intent that those insurers subject to the Section 16 requirements would capture at least approximately 90% of industry premium and/or in response to any future regulatory or market developments.

8. The National Treatment and Coordination (E) Working Group will:
   A. Increase utilization and implementation of the Company Licensing Best Practices Handbook.
   B. Encourage synergies between corporate changes/amendments and rate and form filing review and approval to improve efficiency.
   C. Continue to monitor the usage and make necessary enhancements to the Form A Database.
   D. Maintain educational courses in the existing NAIC Insurance Regulator Professional Designation Program for company licensing regulators.

9. The Biographical Third-Party Review (E) Subgroup of the National Treatment and Coordination (E) Working Group will:
   A. Increase the uniformity of the third-party vendors that prepare background investigative reports to those state insurance departments that require them. Reduce the inefficiency of applications by developing procedures and approval processes.
   B. Monitor the ongoing adherence of background investigation reports and third-party vendors.
   C. Encourage uniformity of requirements in relation to individuals’ fitness and propriety and the company’s responsibility in notifying state insurance departments of concerns or changes to key individuals.

10. The Restructuring Mechanisms (E) Working Group will:
    A. Evaluate and prepare a White Paper that:
        1. Addresses the perceived need for restructuring statutes and the issues those statutes are designed to remedy.
        Also, consider alternatives that insurers are currently employing to achieve similar results.

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2. Summarizes the existing state restructuring statutes.
3. Addresses the legal issues posed by an Order of a Court (or approval by an Insurance Department) in one state affecting the policyholders of other states.

**FINANCIAL CONDITION (E) COMMITTEE (continued)**

4. Considers the impact that a restructuring might have on Guaranty Associations and policyholders that had Guaranty Fund protection prior to the restructuring. Complete by the 2020 Summer National Meeting.

B. Identifies and addresses the legal issues associated with restructuring using a protected cell. Complete by the 2020 Summer National Meeting.

B.C. Consider requesting approval from the Executive (EX) Committee on developing changes to specific NAIC models as a result of findings from the development of the White Paper. Complete by the 2020 Fall National Meeting.

Review and propose changes to the Guaranty Association Model Act to ensure that policyholders that had guaranty fund protection prior to a restructuring continue to have it after the restructuring.

Review and propose changes to the Protected Cell Companies Model Act to allow for restructuring mechanisms.

Develop financial solvency and reporting requirements for companies in runoff (create subgroup of qualified financial regulators to address this charge).

11. The Restructuring Mechanisms (E) Subgroup will:

A. Develop best practices to be used in considering the approval of proposed restructuring transactions, including among other things, the expected level of reserves and capital expected after the transfer along with the adequacy of long-term liquidity needs, and also develop best practices to be used in monitoring the companies after the transaction is completed. Once completed, recommend to the Financial Regulation Standards and Accreditation (F) Committee for their consideration. Complete by the 2020 Summer National Meeting. Consider the development of financial surveillance tools that are specifically designed for companies in runoff (companies that are no longer actively writing insurance business or collecting premiums).

B. Consider the need to make changes to the RBC formula to better assess the minimum surplus requirements for companies in runoff. Complete by the 2020 Fall National Meeting.

C. Review the various restructuring mechanisms and develop, if deemed needed, protected cell accounting and reporting requirements for referring to the Statutory Accounting Principles (E) Working Group. Complete by the 2020 Fall National Meeting.

A. Minimum standards of review
B. Minimum capital requirements
C. Specific actuarial guidance in determining initial reserving levels
D. Protected cell reporting requirements
E. Proposed accreditation standards

12. The Risk-Focused Surveillance (E) Working Group will:

A. Continually review the effectiveness of risk-focused surveillance and develop enhancements to processes as necessary.

B. Continually review regulatory redundancy issues identified by interested parties and provide recommendations to other NAIC committee groups to address as needed.

C. Oversee and monitor the Peer Review Program to encourage consistent and effective risk-focused surveillance processes.

D. Consider recommendations to the Financial Regulation Standards and Accreditation (F) Committee for the purpose of evaluating the suitability of insurance department staffing in relation to the necessary skill sets. Complete by the 2019 Fall National Meeting.

E. Continually maintain and update standardized job descriptions/requirements and salary range recommendations for common solvency monitoring positions to assist insurance departments in attracting and maintaining suitable staff.

F. Review the Financial Condition Examiners Handbook salary and per diem guidelines to determine the applicability, value and use to the states; consider alternative approaches based on current financial solvency responsibilities. Complete by the 2019 Fall National Meeting.

13. The Valuation Analysis (E) Working Group will:

A. Respond to states in a confidential forum regarding questions and issues arising during the course of annual principle-based reserving (PBR) reviews or PBR examination and which also may include consideration of asset adequacy analysis questions and issues.
B. Work with NAIC resources to assist in prioritizing and responding to issues and questions regarding PBR and asset adequacy analysis including actuarial guidelines or other requirements making use of or relating to PBR such as Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation (AG 38), Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued Under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48), and the Term and Universal Life Insurance Reserve Financing Model Regulation (AG 787).

C. Develop and implement a plan with NAIC resources to identify outliers/concerns regarding PBR/asset adequacy analysis.

D. Refer questions/issues as appropriate to the Life Actuarial (A) Task Force that may require consideration of changes/interpretations to be provided in the Valuation Manual.

E. Assist NAIC resources in development of a standard asset/liability model portfolio used to calibrate company PBR models.

F. Make referrals as appropriate to the Financial Analysis (E) Working Group.

G. Perform other work to carry out the Valuation Analysis (E) Working Group procedures.

14. The Variable Annuities Issues (E) Working Group will:
   A. Oversee the NAIC’s efforts to study and address, as appropriate, regulatory issues resulting in variable annuity captive reinsurance transactions.

NAIC Support Staff: Dan Daveline/Julie Gann/Bruce Jenson
The mission of the Accounting Practices and Procedures (E) Task Force is to identify, investigate and develop solutions to accounting problems with the ultimate goal of guiding insurers in properly accounting for various aspects of their operations; modify the Accounting Practices and Procedures Manual (AP&P Manual) to reflect changes necessitated by Task Force action; and study innovative insurer accounting practices that affect the ability of state insurance regulators to determine the true financial condition of insurers.

Ongoing Support of NAIC Programs, Products or Services

1. The Accounting Practices and Procedures (E) Task Force will:

2. The Blanks (E) Working Group will:
   A. Consider improvements and revisions to the various annual/quarterly statement blanks to:
      1. Conform these blanks to changes made in other areas of the NAIC to promote uniformity in reporting of financial information by insurers.
      2. Develop reporting formats for other entities subject to the jurisdiction of state insurance departments.
      3. Conform the various NAIC blanks and instructions to adopted NAIC policy.
      4. Oversee the development of additional reporting formats within the existing annual financial statements as needs are identified.
   B. Continue to monitor state filing checklists to maintain current filing requirements.
   C. Continue to monitor and improve the quality of financial data filed by insurance companies by recommending improved or additional language for the Annual Statement Instructions.
   D. Continue to monitor and review all proposals necessary for the implementation of statutory accounting guidance to ensure proper implementation of any action taken by the Accounting Practices and Procedures (E) Task Force affecting annual financial statements and/or instructions.
   E. Continue to coordinate with other task forces of the NAIC to ensure proper implementation of reporting and instructions changes as proposed by these task forces.
   F. Coordinate with the Life Actuarial (A) Task Force to use any special reports developed and avoid duplication of reporting.
   G. Review requests for investment schedule blanks and instructions changes in connection with the work being performed by the Investment Risk-Based Capital (E) Working Group.
   H. Review changes requested by the Valuation of Securities (E) Task Force relating to its work on other invested assets reporting for technical consistency within the investment reporting schedules and instructions.

3. The Statutory Accounting Principles (E) Working Group will:
   A. Maintain codified statutory accounting principles by providing periodic updates to the guidance that address new statutory issues and new generally accepted accounting principles (GAAP) pronouncements. Provide authoritative responses to questions of application and clarifications for existing statutory accounting principles. Report all actions and provide updates to the Accounting Practices and Procedures (E) Task Force.
   B. At the discretion of the Working Group chair, develop comments on exposed GAAP and International Financial Reporting Standards (IFRS) pronouncements affecting financial accounting and reporting. Any comments are subject to review and approval by the chairs of the Accounting Practices and Procedures (E) Task Force and the Financial Condition (E) Committee.
   C. Coordinate with the Life Actuarial (A) Task Force on changes to the Accounting Practices and Procedures Manual (AP&P Manual) related to the Valuation Manual VM-A, Requirements, and VM-C, Actuarial Guidelines, as well as other Valuation Manual requirements. This process will include the receipt of periodic reports on changes to the Valuation Manual on items that require coordination.
ACCOUNTING PRACTICES AND PROCEDURES (E) TASK FORCE (continued)

D. Obtain, analyze and review information on permitted practices, prescribed practices or other accounting treatments suggesting that issues or trends occurring within the industry may compromise the consistency and uniformity of statutory accounting, including, but not limited to, activities conducted by insurers for which there is currently no statutory accounting guidance or where the states have prescribed statutory accounting that differs from the guidance issued by the NAIC. Use this information to consider possible changes to statutory accounting.

E. Develop specific statutory accounting guidance for certain limited derivative contracts hedging variable annuity guarantees, subject to fluctuations as a result of interest rate sensitivity, reserved for in accordance with Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43). This guidance shall place an emphasis on reducing non-economic surplus volatility for these specific hedges in situations where strong risk management is in place, with safeguards to ensure appropriate financial statement presentation and disclosures, sufficient transparency, and regulatory oversight. This charge shall be a high priority, with the earliest effective date feasible that allows for adequate development of guidance and related reporting schedules. Complete by the 2019 Summer National Meeting.

F. Consider whether current or future changes to reserves resulting from implementation of the Variable Annuities Framework will be reported in the annual financial statement as a “change in basis.” Complete by the 2019 Summer National Meeting.

G. Review and possibly modify Schedule F and any corresponding annual financial statement pages to determine how best to reflect the expected changes to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786). Give due consideration to alternatives, including whether an allowance for doubtful accounts is appropriate. Complete by the 2020 Fall National Meeting.

H. Develop a model guideline that represents narrowly defined statutory language the states may use in removing the limitations that may exist within their investment statutes that may otherwise limit the extent of hedges an insurer may use in its risk management. Complete by the 2019 Fall National Meeting.

NAIC Support Staff: Robin Marcotte
The mission of the Capital Adequacy (E) Task Force is to evaluate and recommend appropriate refinements to capital requirements for all types of insurers.

Ongoing Support of NAIC Programs, Products or Services

1. The **Capital Adequacy (E) Task Force** will:
   - A. Evaluate emerging “risk” issues for referral to the risk-based capital (RBC) working groups/subgroups for certain issues involving more than one RBC formula. Monitor emerging and existing risks relative to their consistent or divergent treatment in the three RBC formulas.
   - B. Review and evaluate company submissions for the schedule and corresponding adjustment to total adjusted capital (TAC).
   - C. Review and possibly modify the life and health RBC formulas specific to reinsurance credit risk charges to be based on the financial strength of the reinsurer consistent with the property/casualty (P/C) RBC formula, giving due consideration to public default experience and current factors used by credit rating agencies. Consider also whether adjustments are needed to the P/C RBC formula to consider such information relative to non-rated reinsurers. Complete by the 2020 Fall National Meeting.

2. The **Health Risk-Based Capital (E) Working Group, Life Risk-Based Capital (E) Working Group** and **Property and Casualty Risk-Based Capital (E) Working Group** will:
   - A. Evaluate refinements to the existing NAIC risk-based capital (RBC) formulas implemented in the prior year. Forward the final version of the structure of the current year life and fraternal, property/casualty (P/C), and health and fraternal RBC formulas to the Financial Condition (E) Committee by June.
   - B. Consider improvements and revisions to the various RBC blanks to: 1) conform the RBC blanks to changes made in other areas of the NAIC to promote uniformity; and 2) oversee the development of additional reporting formats within the existing RBC blanks as needs are identified. Any proposal that affects the RBC structure must be adopted no later than April 30 in the year of the change, and adopted changes will be forwarded to the Financial Condition (E) Committee by the next scheduled meeting or conference call. Any adoptions made to the annual financial statement blanks or statutory accounting principles that affect an RBC change adopted by April 30 and results in an amended change may be considered by July 30 for those exceptions where the Capital Adequacy (E) Task Force votes to pursue by super-majority (two-thirds) consent of members present, no later than June 30 for the current reporting year.
   - C. Monitor changes in accounting and reporting requirements resulting from the adoption and continuing maintenance of the revised *Accounting Practices and Procedures Manual* (AP&P Manual) to ensure that model laws, publications, formulas, analysis tools, etc., supported by the Task Force continue to meet regulatory objectives.
   - D. Review the effectiveness of the NAIC’s RBC policies and procedures as they affect the accuracy, audit ability, timeliness of reporting access to RBC results and comparability between the RBC formulas. Report on data quality problems in the prior year RBC filings at the summer and fall national meetings.

3. The **Investment Risk-Based Capital (E) Working Group** will:
   - A. Evaluate relevant historical data and apply defined statistical safety levels over appropriate time horizons in developing recommendations for revisions to the current asset risk structure and factors in each of the risk-based capital (RBC) formulas and delivering those recommendations to the Capital Adequacy (E) Task Force.

4. The **Variable Annuities Capital and Reserve (E/A) Subgroup**, a joint subgroup of the Life Risk-Based Capital (E) Working Group and the Life Actuarial (A) Task Force will:
   - A. Monitor the impact of the changes to the variable annuities reserve framework and risk-based capital (RBC) calculation, and determine if additional revisions need to be made. Develop and recommend changes to C-3 Phase II, *Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43)* and VM-21, Requirements for Principle-Based Reserves for Variable Annuities, that implement the Variable Annuities Framework. Complete by the 2019
A-B. Develop and recommend appropriate changes including those to improve accuracy and clarity of variable annuity (VA) capital and reserve requirements.

CAPITAL ADEQUACY (E) TASK FORCE (continued)

5. The Longevity Risk (A/E) Subgroup a joint subgroup of the Life Risk-Based Capital (E) Working Group and the Life Actuarial (A) Task Force will:
   A. Provide recommendations for recognizing longevity risk in statutory reserves and/or risk-based capital (RBC), as appropriate. Complete by the 2020 Spring National Meeting.

6. The Operational Risk (E) Subgroup will:
   A. Evaluate growth-related operational risk for life risk-based capital (RBC) and health RBC. Any recommendations for remaining work on growth risk will be referred to the Life Risk-Based Capital (E) Working Group and/or the Health Risk-Based Capital (E) Working Group, after which the Subgroup will be disbanded. Complete by the 2019 Spring National Meeting.

7. The Catastrophe Risk (E) Subgroup of the Property and Casualty Risk-Based Capital (E) Working Group will:
   A. Recalculate the premium risk factors on an ex-catastrophe basis, if needed.
   B. Continue to update the U.S. and non-U.S catastrophe event list.
   C. Continue to evaluate the need for exemption criteria for insurers with minimal risk.
   D. Evaluate the risk-based capital (RBC) results inclusive of a catastrophe risk charge.
   E. Refine instructions for the catastrophe risk charge.
   F. Continue to evaluate any necessary refinements to the catastrophe risk formula.
   G. Evaluate other catastrophe risks for possible inclusion in the charge.

NAIC Support Staff: Jane Barr
2020 Proposed Charges

EXAMINATION OVERSIGHT (E) TASK FORCE

The mission of the Examination Oversight (E) Task Force is to monitor, develop and implement tools for the risk-focused surveillance process. For financial examinations and analysis, this includes maintenance of the Financial Condition Examiners Handbook and the Financial Analysis Handbook to provide guidance to examiners and analysts using a risk-focused approach to solvency regulation and to encourage effective communication and coordination between examiners, analysts and other regulators. In addition, the mission of the Task Force is to: monitor and refine regulatory tools of the risk-focused surveillance process, including Financial Analysis Solvency Tools (FAST) such as company profiles and the FAST ratio scoring system; oversee the Analyst Team Project; oversee financial examiner and analyst use of electronic software tools; monitor the progress of coordination efforts among the states in conducting examinations and the sharing of information necessary to solvency monitoring; establish procedures for the flow of information between the states about troubled companies; maintain an effective approach to the review of information technology (IT) general controls; and monitor the timeliness of financial examinations.

Ongoing Support of NAIC Programs, Products or Services

1. The Examination Oversight (E) Task Force will:
   A. Accomplish its mission using the following groups:
      5. IT Examination (E) Working Group.
   B. The Electronic Workpaper (E) Working Group will:
      A. Monitor and support the state insurance departments in using electronic workpaper software tools to conduct and document solvency monitoring activities.
      B. Provide ongoing oversight to the NAIC’s Electronic Workpaper Hosting Project.
      C. Develop a framework to meet the long-term hosting and software needs of state insurance regulators in using electronic workpapers to conduct and document solvency monitoring activities. Ensure that solutions developed consider various state insurance regulator uses, as appropriate.
   C. The Financial Analysis Solvency Tools (E) Working Group will:
      A. Provide ongoing maintenance and enhancements to the Financial Analysis Handbook and related applications for changes to the NAIC annual/quarterly financial statement blanks, as well as enhancements developed to assist in the risk-focused analysis and monitoring of the financial condition of insurance companies and groups. Monitor the coordination of analysis activities of holding company groups, and coordinate and analyze input received from other state regulators.
      B. Provide ongoing development maintenance and enhancements to the automated financial solvency tools developed to assist in conducting risk-focused analysis and monitoring the financial condition of insurance companies and groups. Prioritize and perform analysis to ensure that the tools remain reliable and accurate.
      C. Coordinate with the Financial Examiners Handbook (E) Technical Group and the Risk-Focused Surveillance (E) Working Group, as appropriate, to develop and maintain guidance in order to provide effective solvency monitoring.
      D. In compliance with the framework developed by the former PBR Review (EX) Working Group.
      E. Continue to provide advice to regulators, identifying and judging risk, establishing appropriate procedures, identifying frequency of model reviews, and documenting best practices. Address all risks, financial and non-financial; e.g., enterprise risk management (ERM), board, corporate governance and the Own Risk and Solvency Assessment (ORSA).
      F. Continue to adjust the Financial Analysis Handbook and current financial analysis solvency tools for life insurance companies based on any recommendations as requested from the Life Actuarial (A) Task Force to incorporate
principle-based reserving (PBR) changes.

**EXAMINATION OVERSIGHT (E) TASK FORCE (continued)**

4. The **Financial Examiners Coordination (E) Working Group** will:
   A. Develop enhancements that encourage the coordination of examination activities with regard to holding company groups.
   B. Promote coordination by assisting and advising domiciliary regulators and exam coordinating states as to what might be the most appropriate regulatory strategies, methods and actions regarding financial examinations of holding company groups.
   C. Facilitate communication among regulators regarding common practices and issues arising from coordinating examination efforts.
   D. Provide ongoing maintenance and enhancements to the Financial Examinations Electronic Tracking System (FEETS).

5. The **Financial Examiners Handbook (E) Technical Group** will:
   A. Continually review the *Financial Condition Examiners Handbook* and revise, as appropriate.
   B. Coordinate with the Risk-Focused Surveillance (E) Working Group to monitor the implementation of the risk-assessment process by developing additional guidance and exhibits within the *Financial Condition Examiners Handbook*, including consideration of potential redundancies affected by the examination process, corporate governance and other guidance as needed to assist examiners in completing financial condition examinations.
   C. Coordinate with the Financial Analysis Handbook (E) Working Group and the Risk-Focused Surveillance (E) Working Group, as appropriate, to develop and maintain guidance in order to provide effective solvency monitoring.
   D. Coordinate with the IT Examination (E) Working Group and the Financial Examiners Coordination (E) Working Group to maintain specialized areas of guidance within the *Financial Condition Examiners Handbook* related to the charges of these specific working groups.
   E. In compliance with the framework developed by the former PBR Review (EX) Working Group:
      1. Continue to provide advice to regulators, identifying and judging risk, building repositories, evaluating controls, determining the extent of data quality testing (by actuaries and examiners), identifying frequency of model reviews and documenting best practices. Address all risks, financial and non-financial; e.g., enterprise risk management (ERM), board, corporate governance and the Own Risk and Solvency Assessment (ORSA).
      2. Continue to adjust the *Financial Condition Examiners Handbook* based upon any recommendations as requested from the Life Actuarial (A) Task Force to incorporate principle-based reserving (PBR) changes.

6. The **IT Examination (E) Working Group** will:
   A. Continually review and revise, as needed, the “General Information Technology Review” and “Exhibit C— Evaluation of Controls in Information Systems” sections of the *Financial Condition Examiners Handbook*.
   B. Coordinate with the Market Conduct Examination Standards (D) Working Group to assist in the development of regulatory oversight policy with respect to cybersecurity examination issues, as requested by the Innovation and Technology (EX) Task Force.

NAIC Support Staff: Miguel Romero
Ongoing Support of NAIC Programs, Products or Services

1. The Long-Term Care Insurance (B/E/B) Task Force of the Health Insurance and Managed Care (B) Committee and Financial Condition (E) Committee will:
   A. Coordinate all aspects of the NAIC’s work regarding the long-term care insurance (LTCI) market. In addition to coordinating all current Health Insurance and Managed Care (B) Committee and Financial Condition (E) Committee projects, the Task Force should pursue the following general objectives:
      1. Evaluate the sufficiency of actuarial valuation standards. **Complete by the 2019 Spring National Meeting.**
      2. Evaluate the sufficiency of current financial reporting. **Complete by the 2019 Fall National Meeting.**
      3. Assess state activities regarding the regulatory considerations on rate increase requests on blocks and to identify common elements for achieving greater transparency and predictability.
      4. Consider product innovations and the development of potential state and federal solutions for stabilizing the LTCI market. **Complete by the 2019 Fall National Meeting.**
      5. Provide periodic reports to the Health Insurance and Managed Care (B) Committee and the Financial Condition (E) Committee, as well as the Executive (EX) Committee, regarding key issues and progress toward the general objectives set forth above. Conduct meetings in regulator-to-regulator session, as appropriate.

NAIC Support Staff: Dan Daveline/Jolie Matthews
2020 Proposed Charges

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force shall be administrative and substantive as it relates to issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation, monitoring the effectiveness and performance of state administration of receiverships and the state guaranty fund system; coordinating cooperation and communication among regulators, receivers and guaranty funds; monitoring ongoing receiverships and reporting on such receiverships to NAIC members; developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to regulators, professionals and consumers; developing and monitoring relevant model laws, guidelines and products; and providing resources for regulators and professionals to promote efficient operations of receiverships and guaranty funds.

Ongoing Support of NAIC Programs, Products or Services

1. The Receivership and Insolvency (E) Task Force will:
   A. Monitor and promote efficient operations of insurance receiverships and guaranty associations funds.
   B. Monitor and promote state adoption of insurance receivership and guaranty association related -model acts and regulations and monitor other legislation related to insurance receiverships and guaranty associations.
   C. Provide input and comments to the International Association of Insurance Supervisors (IAIS), the Financial Stability Board (FSB) or other related groups on issues regarding international resolution authority.
   D. Monitor, review and provide input on federal rulemaking and studies related to insurance receiverships.
   E. Provide ongoing review of maintenance and enhancements to the Receiver's Handbook for Insurance Company Insolvencies (Receiver's Handbook), other related NAIC publications, and the Global Receivership Information Database (GRID), and make any necessary updates.
   F. Monitor the work of other NAIC committees, task forces and working groups to identify and address any issues that affect receivership law and/or regulatory guidance.
   G. Perform additional work as directed by the Financial Condition (E) Committee and/or received through referral by other groups.

2. Ongoing Support of NAIC Programs, Products or Services

   A. Monitor receiverships involving nationally significant insurers/groups within receivership to support, encourage, promote and coordinate multistate efforts in addressing problems.
   B. Interacting with the Financial Analysis (E) Working Group, domiciliary regulators and lead states to assist and advise as to what might be the most appropriate regulatory strategies, methods and/or action(s) with regard to potential or pending receiverships.

3. The Receivership Large Deductible Workers’ Compensation (E) Working Group will:
   A. Perform Complete work based on recommendations for possible enhancements to the U.S. receivership regime, as approved and directed by the Receivership and Insolvency (E) Task Force, resulting from a study of the states’ receivership laws and practices related to the receivership of insurers with significant books of large deductible workers’ compensation business. Complete by the 2020 FallSummer National Meeting.
   B. Discuss significant cases that may affect the administration of receiverships.

4. The Receivership Model-Law (E) Working Group will:
   A. Review and provide recommendations on any issues identified that may affect the states’ receivership and guaranty association model laws; for example, any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives or as a result of the work performed by other NAIC committees, task forces and/or working groups.
   B. Discuss significant cases that may affect the administration of receiverships.
C. Complete work, as assigned from the Task Force, to address recommendations from the Financial Stability (EX) Task Force’s Macroprudential Initiative (MPI) referral as follows:


RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE (continued)

2. Explore if bridge institutions could be implemented under regulatory oversight pre-receivership to address an early termination of qualified financial contracts (QFCs), and if appropriate, develop applicable guidance. Review the Receiver's Handbook guidance on QFCs and, if necessary, draft enhancements. Identify related pre-receivership considerations related to QFCs and, if necessary, make referrals to other relevant groups to enhance pre-receivership planning, examination and analysis guidance.

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Review and provide recommendations for remedies to ensure continuity of essential services and functions to an insurer in receivership by affiliated entities, including non-regulated entities. Consult with the Group Solvency Issues (E) Working Group as the topic relates to affiliated intercompany agreements.

3. Complete by the 2020 Fall National Meeting.

A. Monitor, and provide recommendations for possible enhancements to the U.S. receivership regime and the states' receivership laws and practices based on, international supervisory and advisory developments regarding recovery, resolution, receivership and liquidation, including, but not limited to, the Financial Stability Board’s (FSB) Key Attributes of Effective Resolution Regimes for Financial Institutions (KA) and Assessment Methodology (AM) and the International Association of Insurance Supervisors’ (IAIS) Insurance Core Principles (ICPs) and its Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) (particularly ICP 10, Preventive and Corrective Measures and ICP 12, Winding up and Exit from the Market, as well as related ComFrame materials). Complete by the 2019 Fall National Meeting.

NAIC Support Staff: Jane Koenigsman
The mission of the Reinsurance (E) Task Force is to monitor and coordinate activities and areas of interest, which overlap to some extent the charges of other NAIC groups—specifically, the International Insurance Relations (G) Committee.

**Ongoing Support of NAIC Programs, Products or Services**

1. The **Reinsurance (E) Task Force** will:
   A. Provide a forum for the consideration of reinsurance-related issues of public policy.
   C. Oversee the activities of the Qualified Jurisdiction (E) Working Group.
   D. Monitor the implementation of the 2011, and 2016 and 2019 revisions to the Credit for Reinsurance Model Law (Model #785); and the 2011 and 2019 revisions to the Credit for Reinsurance Model Regulation (Model #786); and the Term and Universal Life Insurance Reserve Financing Model Regulation (Model #787).
   E. Communicate and coordinate with the Federal Insurance Office (FIO) and other federal authorities on matters pertaining to reinsurance.
   F. Consider any other issues related to the revised Model #785, Model #786 and Model #787.
   G. Monitor the development of international principles, standards and guidance with respect to reinsurance. This includes, but is not limited to, monitoring the activities of various groups within the International Association of Insurance Supervisors (IAIS), including the Reinsurance and Other Forms of Risk Transfer Subcommittee, the Reinsurance Mutual Recognition Subgroup and the Reinsurance Transparency Group.
   H. Consider the impact of reinsurance-related federal legislation, including, but not limited to, the federal Nonadmitted and Reinsurance Reform Act (NRRA) and the Federal Insurance Office Act, and coordinate any appropriate NAIC action.
   I. Consider Continue to monitor the impact of reinsurance-related international agreements, including the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (EU Covered Agreement) and the “Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance” (UK Covered Agreement) between the U.S. and the United Kingdom.
   J. The Reinsurance (E) Task Force is directed to develop revisions to Model #785 and Model #786 to conform to the terms of the Bilateral Agreement.
   K. The Reinsurance (E) Task Force is directed to develop revisions to Model #785 and Model #786 to allow reinsurers domiciled in NAIC qualified jurisdictions other than within the European Union (EU) to realize reinsurance collateral requirements similar to those provided under the Bilateral Agreement under specified circumstances. In order for an insurer domiciled in a qualified jurisdiction outside of the EU to receive the same collateral requirement treatment as provided to EU-domiciled reinsurers, that non-EU qualified jurisdiction must agree to adhere to all other standards imposed upon the EU in the Bilateral Agreement, including the requirement that the qualified jurisdiction must agree to recognize the states’ approach to group supervision, including group capital. As part of its deliberations, the Task Force should consult with international regulators, in addition to all other interested parties.
   L. The Reinsurance (E) Task Force is directed to develop revisions to Model #785 and Model #786 to address the effect of a breach of the Bilateral Agreement (as determined pursuant to its terms) on a reinsurer’s collateral obligations and the effect of a failure of a non-EU qualified jurisdiction to meet the standards imposed by its agreement or acknowledgment to adhere to the terms of the Bilateral Agreement and/or the model law and regulation.
   M. In conjunction with any revisions to Model #785 and Model #786, the Qualified Jurisdiction (E) Working Group is directed to consider changes to the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions to require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision and group capital standards, as well as require strengthening of the information-sharing requirements between the states and qualified jurisdictions, in order for reinsurers domiciled in qualified jurisdictions to receive similar treatment to EU reinsurers under the Bilateral Agreement, and processes of removal of qualified jurisdiction status in the event of a breach.
2. The Reinsurance Financial Analysis (E) Working Group will:
   A. Operate in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings and operate in open session when discussing certified reinsurance topics and policy issues, such as amendments to the Uniform Application for Certified Reinsurers.
   B. Provide advisory support and assistance to states in the review of reinsurance collateral reduction applications. Such a process with respect to the review of applications for reinsurance collateral reduction and qualified jurisdictions should strengthen state regulation and prevent regulatory arbitrage.
   C. Provide a forum for discussion among NAIC jurisdictions of reinsurance issues related to specific companies, entities or individuals.
   D. Support, encourage, promote and coordinate multistate efforts in addressing issues related to certified reinsurers, including, but not limited to, multistate recognition of certified reinsurers.
   E. Provide analytical expertise and support to the states with respect to certified reinsurers and applicants for certification.
   F. Provide advisory support with respect to issues related to the determination of qualified jurisdictions.
   G. Ensure the public passporting website remains current.
   H. For reinsurers domiciled in Reciprocal Jurisdictions, determine the best and most effective approaches for the financial solvency surveillance to assist the states in their work to protect the interests of policyholders.

3. The Qualified Jurisdiction (E) Working Group will:
   A. Maintain the NAIC List of Qualified Jurisdictions and the NAIC List of Reciprocal Jurisdictions in accordance with the Process for Evaluating Qualified and Reciprocal Jurisdictions.
REINSURANCE (E) TASK FORCE (continued)

F. Interact with domiciliary regulators of ceding insurers and certifying states to assist and advise on the most appropriate regulatory strategies, methods and actions with respect to certified reinsurers.

G. Provide guidance and expertise on regulatory policy and practices with respect to certified reinsurers.

H. Provide advisory support with respect to issues related to the determination of qualified jurisdictions.

I. Monitor and ensure the public passporting website remains current and provide recommendations to the Task Force if amendments are required.

J. Consider changes in its current methods of monitoring certified reinsurers domiciled in qualified jurisdictions to incorporate changes to state reinsurance collateral requirements caused by the “Bilateral Agreement Between the United States of America and the European Union (EU) on Prudential Measures Regarding Insurance and Reinsurance” (Bilateral Agreement) and any changes to the Credit for Reinsurance Model Law (T85) and the Credit for Reinsurance Model Regulation (T86) to provide similar treatment to reinsurers domiciled in qualified jurisdictions. Complete by the 2019 Fall National Meeting. For reinsurers domiciled in Reciprocal Jurisdictions, determine the best and most effective approaches for the financial solvency surveillance to assist the states in their work to protect the interests of policyholders.

2. The Qualified Jurisdiction (E) Working Group will:

A. Develop and maintain the NAIC List of Qualified Jurisdictions in accordance with the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions.

B. In conjunction with any revisions to the Credit for Reinsurance Model Law (T85) and the Credit for Reinsurance Model Regulation (T86), the Working Group is directed to consider changes to the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions to require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision and group capital standards, as well as require strengthening of the information-sharing requirements between the states and qualified jurisdictions, in order for reinsurers domiciled in qualified jurisdictions to receive similar treatment to European Union (EU) reinsurers under the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Bilateral Agreement), and processes of removal of qualified jurisdiction status in the event of a breach.

C. Maintain the NAIC List of Qualified Jurisdictions and the NAIC List of Reciprocal Jurisdictions in accordance with the Process for Evaluating Qualified and Reciprocal Jurisdictions.

D. Perform a yearly due diligence review of Qualified Jurisdictions to determine whether there have been any significant changes over the prior year that might affect their status as Qualified Jurisdictions.

C. Consider evaluations of any additional jurisdictions for inclusion on the NAIC List of Qualified Jurisdictions.

NAIC Support Staff: Jake Stultz/Dan Schelp
The mission of the Risk Retention Group (E) Task Force is to stay apprised of the work of other NAIC groups as it relates to financial solvency regulation and the NAIC Financial Regulation Standards and Accreditation Program. The Task Force may make referrals to the Financial Regulation Standards and Accreditation (F) Committee and/or other NAIC groups, as deemed appropriate.

**Ongoing Support of NAIC Programs, Products or Services**

1. The Risk Retention Group (E) Task Force will:
   
   A. Monitor and evaluate the work of other NAIC committees, task forces and working groups related to risk retention groups (RRGs). Specifically, if any of these changes affect the NAIC Financial Regulation and Accreditation Standards Program, assess whether and/or how the changes should apply to RRGs and their affiliates.
   
   B. Monitor and analyze federal actions, including any U.S. Government Accountability Office (GAO) reports. Consider any action necessary as a result of federal activity.
   
   B. C. Monitor the impacts of recent tools and resources made available to domiciliary and non-domiciliary state insurance regulators pertaining to RRGs. Consider whether additional action is necessary, including educational opportunities, updating resources and further clarifications.

NAIC Support Staff: Becky Meyer
2020 Proposed Charges

VALUATION OF SECURITIES (E) TASK FORCE

The mission of the Valuation of Securities (E) Task Force is to provide regulatory leadership and expertise to establish and maintain all aspects of the NAIC’s credit assessment process for insurer-owned securities, as well as produce insightful and actionable research and analysis regarding insurer investments.

Ongoing Support of NAIC Programs, Products or Services

1. The Valuation of Securities (E) Task Force will:
   A. Review and monitor the operations of the NAIC Securities Valuation Office (SVO) and the NAIC Structured Securities Group (SSG) to ensure they continue to reflect regulatory objectives.
   B. Maintain and revise the Purposes and Procedures Manual of the NAIC Investment Analysis Office (P&P Manual) to provide solutions to investment-related regulatory issues for existing or anticipated investments.
   C. Monitor changes in accounting and reporting requirements resulting from the continuing maintenance of the Accounting Practices and Procedures Manual, as well as financial statement blanks and instructions, to ensure that the P&P Manual continues to reflect regulatory needs and objectives.
   D. Consider whether improvements should be suggested to the measurement, reporting and evaluation of invested assets by the NAIC as the result of: 1) newly identified types of invested assets; 2) newly identified investment risks within existing invested asset types; or 3) elevated concerns regarding previously identified investment risks.
   E. Identify potential improvements to the credit filing process, including formats and electronic system enhancements.
   F. Provide effective direction to the NAIC’s mortgage-backed securities modeling firms and consultants.
   G. Coordinate with other NAIC working groups and task forces—including, but not limited to, the Capital Adequacy (E) Task Force, the Investment Risk-Based Capital (E) Working Group, the Statutory Accounting Principles (E) Working Group and the Blanks (E) Working Group—to formulate recommendations and to make referrals to such other NAIC regulator groups to ensure expertise relative to investments, or the purpose and objective of guidance in the P&P Manual, is reflective in the guidance of such other groups and that the expertise of such other NAIC regulatory groups and the objectives of their guidance is reflected in the P&P Manual.
   H. Identify potential improvements to the filing exempt process (the use of credit rating provider ratings to determine an NAIC designation) to ensure greater consistency, uniformity and appropriateness to achieve the NAIC’s financial solvency objectives. Implement to the different areas of the NAIC, and to the state-based insurance regulatory structure, the modification of the existing NAIC credit assessment framework by adding NAIC designation categories. Complete by the 2019 Fall National Meeting.

NAIC Support Staff: Charles Therriault
REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC’s Executive Committee is required. The NAIC’s Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is:  [ ] New Model Law  or  [x] Amendment to Existing Model

1. Name of group to be responsible for drafting the model:
   
   Group Capital Calculation (E) Working Group

2. NAIC staff support contact information:
   
   Dan Daveline  
ddaveline@naic.org  
(816) 783-8134

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.
   
   •  Insurance Holding Company System Regulatory Act (#440)
   •  Insurance Holding Company System Regulation with Reporting Forms and Instructions (#450)

In 2015, the NAIC adopted the following charge to the Financial Condition (E) Committee who subsequently formed the Group Capital Calculation (E) Working Group to carry out such a change.

“Construct a U.S. group capital calculation using an RBC aggregation methodology; liaise as necessary with the Comframe Development and Analysis (G ) Working Group on international capital developments and consider group capital developments by the Federal Reserve Board, both of which may help inform the construction of a U.S. group capital calculation.”

The Group Capital Calculation (E) Working Group has been developing the group capital calculation (GCC) since receiving its charge and in May, with the assistance of 33 insurance groups and 15 lead states, began testing the current construction. The lead states are currently reviewing the completed templates and take aways from the testing are expected to be summarized and discussed at the Fall National Meeting in Austin. Upon completion of the field-testing, state regulators will use the results to further improve the construction of the calculation and at this junction, the Working Group is striving to adopt the calculation sometime in 2020. In order to allow states to be able to adopt the GCC, the Working Group is seeking approval to modify the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Regulation with Reporting Forms and Instructions (#450). While the Working Group has not concluded the exact construct of such changes, the Working Group expects Section 4 of #440 will need to be revised to require a new filing and #450 will need to be revised to add the new filing and a related new section (Form G).

4. Does the model law meet the Model Law Criteria?  [x] Yes  or  [ ] No  (Check one)

   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).
a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states?  
Yes or No (Check one)  

If yes, please explain why:

State insurance regulators currently perform group analysis on all U.S. insurance groups, including assessing the risks and financial position of the insurance holding company system based on currently available information. However, state regulators currently do not have the benefit of a consolidated statutory accounting system and financial statements to assist them in these efforts. The GCC is expected to fill this void since it requires an aggregation and display of the individual company’s available capital and operating figures. More specifically, the GCC and related reporting will provide more transparency to insurance regulators regarding the insurance group and make risks more identifiable and more easily quantified. In this regard, the tool will assist regulators in holistically understanding the financial condition of non-insurance entities, how capital is distributed across an entire group, and whether and to what degree insurance companies may be subsidizing the operations of non-insurance entities, potentially undermining the insurance company’s financial condition and/or placing upward pressure on premiums to the detriment of insurance policyholders. It is envisioned that this calculation will provide an additional early warning signal to regulators so they can begin working with a company to resolve any concerns in a manner that will ensure that policyholders will be protected. Importantly, the GCC will complement existing group supervisory tools already available to state insurance regulators, such as the Form F Enterprise Risk Report, the Own Risk and Solvency Assessment Summary Report and the Form B Holding Company Filings. As such, we would expect it to be a national standard.

b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law? 
Yes or No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval? 

High Likelihood Low Likelihood

Explanation, if necessary:

As previously noted, the Working Group is striving to adopt the calculation sometime in 2020 and it is expected that revisions to the model be adopted by the NAIC within that same time period so that states can begin to implement through changes to state law.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law? 

1 Insurance Holding Company System Model Act (#440) and supporting Insurance Holding Company System Model Regulation (#450) require the annual filing of an Enterprise Risk Report (Form F) which requires the disclosure on material risks within the insurance holding company system that could pose enterprise risk to the insurer.

2 Risk Management and Own Risk and Solvency Assessment (ORSA) Model Act (#505) require the annual filing of an ORSA Summary report that includes 1) Description of the Insurer’s Risk Management Framework; 2) Insurer’s Assessment of Risk Exposure; and 3) Group Assessment of Risk Capital and Prospective Solvency Assessment.

3 Insurance Holding Company System Model Act (#440) and supporting Insurance Holding Company System Model Regulation (#450) require the annual filing of an Registration Statement (Form B) which includes, among other items, the annual financial statements of the ultimate controlling person in the insurance holding company system and all of its affiliates and subsidiaries.
7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☑ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood                 Low Likelihood

Explanation, if necessary:

At this juncture, the changes to the NAIC models are expected to 1) require the filing of the GCC with the state; 2) provide important confidentiality protections; 3) provide exemptions for who is not expected to file the GCC. As such, variations by states related to these elements are not expected.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

The Group Capital Calculation (E) Working Group has not discussed whether the GCC should be an accreditation standard. However, because the GCC is expected to be required of the largest and most complex U.S. insurance group who operate in all states, a national standard is appropriate.

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

Yes. Under Title V of the Dodd-Frank Act, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative are authorized to jointly negotiate covered agreements, defined under the Dodd-Frank Act as written bilateral or multilateral agreements between the United States and one or more foreign governments, authorities or regulators regarding prudential measures with respect to insurance or reinsurance, on the condition that the prudential measures subject to a covered agreement achieve a level of protection for insurance or reinsurance consumers that is “substantially equivalent” to the level of protection achieved under U.S. state insurance laws. On Sept. 22, 2017, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative signed the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement). On December 18, 2018, a separate Covered Agreement was signed between the U.S. and the United Kingdom, which is mirrors the language from the agreement with the EU, and has the same timing requirements for implementation.

The Covered Agreement includes requirements on reinsurance collateral, group supervision and group capital. Specifically, Article 4(h) provides that the host supervisor (i.e., a supervisory authority from the territory in which an insurance group has operations but which is not the territory where the worldwide parent is domiciled or headquartered) may not impose a group capital assessment or requirement at the level of the worldwide parent, but only if the insurance group is subject to a group capital assessment imposed by the home supervisor. The group capital assessment of the home supervisor must include a worldwide group capital calculation capturing risk at the level of the entire group, and the home supervisor must have the authority to impose preventive, corrective or otherwise responsive measures on the basis of the assessment, including the authority to impose capital measures where appropriate.

Under Article 10(e) of the Covered Agreement, supervisory authorities in the European Union shall not impose a group capital requirement at the level of the worldwide parent undertaking of the insurance or reinsurance group, with regard to a U.S. insurance or reinsurance group with operations in the European Union, for 60 months after the date of provisional application of the Covered Agreement; i.e., Nov. 7, 2022. The NAIC is developing a group capital calculation intended to serve as an analytical tool for evaluating an insurer’s capital position at the group level, but which is not intended to be applied as a group-level capital requirement or standard. The Statement of the United States on the Covered Agreement with the European Union provides further clarification with respect to this group capital assessment:

The Agreement limits the worldwide application of EU prudential group insurance measures on U.S. insurers operating in the EU. 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, and reinforces that the EU system of prudential insurance supervision is not the system in the United States. The
Agreement does not require development of a group capital standard or group capital requirement in the United States. Article 4(h) contemplates that the states will develop a group-wide capital assessment. Through the National Association of Insurance Commissioners (NAIC), the states are in the process of developing a group capital calculation which is intended to serve as an analytical tool for evaluating a firm’s capital position at the group level. The United States expects that the NAIC’s group capital calculation will satisfy the “group capital assessment” condition of Article 4(h), provided that the work is completed and implemented within five years of the date on which the Agreement is signed. [Emphasis added].

Any state with U.S. groups operating in either the European Union or the United Kingdom will need to adopt these legislative changes by Nov. 7, 2022 in order to effectuate compliance with the Covered Agreement.
GUIDELINE FOR STAY ON TERMINATION OF NETTING AGREEMENTS AND QUALIFIED FINANCIAL CONTRACTS

Drafting Note: State receivership and insolvency laws may permit a contractual right to cause the termination, liquidation, acceleration or close-out obligations with respect to any netting agreement or qualified financial contract (QFC) with an insurer because of the insolvency, financial condition or default of the insurer, or the commencement of a formal delinquency proceeding. These laws are based upon similar provisions contained in the federal bankruptcy code and the Federal Deposit Insurance Act (FDIA). The FDIA also provides for a twenty-four-hour stay to allow for the transfer of QFCs by the receiver to another entity rather than permitting the immediate termination and netting of the QFC. 12 U.S.C. § 1821(e)(9)-(12). States that permit the termination and netting of QFCs may want to consider adopting a similar stay provision following the appointment of a receiver.

States that consider the enactment of a stay should take into account the relevant federal rules. In 2017 the Board of Governors of the Federal Reserve System (the Federal Reserve), the Federal Deposit Insurance Corporation (the FDIC) and the Office of the Comptroller of the Currency (the OCC) each adopted final rules and accompanying interpretive guidance (Final Rules) setting forth limitations to be placed on parties to certain financial contracts exercising insolvency-related default rights against their counterparties that have been designated as a global systemically important banking organization (GSIB). The Final Rules include the definition of master netting agreement that allows netting even though termination of the transaction in the event of an insolvency may be subject to a “stay” under several defined resolution regimes including Title II of Dodd Frank, the FDIA, as well as comparable foreign resolution regimes. Notwithstanding NAIC’s request for inclusion, stays under the state insurance receivership regime (State Receivership Stays) were not included as an exemption within the definition. Therefore, unless the Final Rules are amended to recognize State Receivership Stays, if a state implements a stay as contemplated by the Guideline, insurers would find themselves disadvantaged, potentially resulting in additional costs and/or collateral requirements given the regulatory treatment for contracts that do not meet requirements for QFCs. Therefore, if a state is considering implementation of this Guideline, consideration should be given to whether the rules of the Federal Reserve, FDIC and OCC have been amended to recognize State Receivership Stays. For example, a state could adopt a stay that would be effective if and when the Final Rules recognize State Receivership Stays.

The following statutory language is not an amendment to the NAIC receivership models, but is intended as a Guideline for use by those states seeking to require a stay with respect to the termination of a netting agreement or QFC of an insurer in insolvency:

Stay on Termination of Netting Agreements and Qualified Financial Contracts

A person who is a party to a netting agreement or qualified financial contract under [cite to applicable state law addressing qualified financial agreements] with an insurer that is the subject of an insolvency proceeding may not exercise any right that the person has to terminate, liquidate, accelerate or close-out the obligations with respect to the contract by reason of the insolvency, financial condition or default of the insurer, or by the commencement of a formal delinquency proceeding,

(1) Until 5:00 p.m. (eastern time) on the business day following the date of appointment of a receiver; or

(2) After the person has received notice that the contract has been transferred pursuant to [cite applicable state law addressing transfer of qualified financial contracts].

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

The Financial Condition (E) Committee met via conference call Aug. 29, 2019. The following Committee members participated: David Altmaier, Chair (FL); Kent Sullivan, Vice Chair, represented by Jamie Walker (TX); Ricardo Lara represented by Susan Bernard and Kim Hudson (CA); Robert H. Muriel and Kevin Fry (IL); Chlora Lindley-Myers represented by Debbie Doggett (MO); Matthew Rosendale represented by Steve Matthews (MT); Marlene Caride represented by Steve Kerner and John Sirovetz (NJ); Glen Mulready and Joel Sander (OK); Raymond G. Farmer represented by Daniel Morris (SC); James A. Dodrill represented by Jamie Taylor (WV); and Jeff Rude represented by Linda Johnson (WY). Also participating was: Rich Piazza (LA).

1. **Adopted the Report of the Accounting Practices and Procedures (E) Task Force**

Commissioner Altmaier asked that upon receiving the report of the Accounting Practices and Procedures (E) Task Force, that any motion to adopt exclude both 2019-20BWG and the 2020 proposed charges. He stated that excluding the charges was appropriate as they will be considered with other task force and working group charges in a conference call that takes place in October.

Ms. Walker provided the report of the Accounting Practices and Procedures (E) Task Force, which met Aug. 22. During this meeting, the Task Force adopted its 2020 proposed charges, including deletion of two completed charges and deletion of one charge proposed to be disposed as unnecessary. All the deleted charges of the Statutory Accounting Principles (E) Working Group related to variable annuities. She stated the report also included adoption of the Aug. 20 report of the Blanks (E) Working Group, with one minor modification to agenda item 2019-20BWG. The Task Force also adopted the July 2 and June 24 minutes of the Blanks (E) Working Group. The two blanks proposals adopted are: 1) 2019-18BWG, which adds an NAIC designation modifier to accommodate the NAIC designation category granularity framework adopted by the Valuation of Securities (E) Task Force, with an annual 2020 effective date; and 2) 2019-20BWG, which will be considered separately, but in summary it adds a “Qualification Documentation” to the property/casualty (P/C) Statement of Actuarial Opinion instructions, as requested by the Casualty Actuarial and Statistical (C) Task Force and the Executive (EX) Committee, requiring the appointed actuary to maintain workpapers explaining how the actuary meets the definition of “qualified actuary.” The minor Accounting Practices and Procedures (E) Task Force modification to the proposal changed the name of the term in the proposal from “NAIC Accepted Actuarial Designation” to “Accepted Actuarial Designation.” The proposal was adopted by the Task Force, with two no votes. Finally, Ms. Walker noted that blanks proposal 2019-19BWG on unaffiliated certificates of deposit was withdrawn to allow for further work, and the Blanks (E) Working Group also: 1) deferred revisions to its procedures to allow for further discussion; 2) exposed three proposals for a public comment period ending Oct. 8; and 3) adopted the editorial listing.

Mr. Sirovetz made a motion, seconded by Ms. Walker, to adopt the Task Force’s report, except for its 2020 proposed charges and blanks proposal 2019-20BWG. The motion passed unanimously, with Missouri voting no.

2. **Adopted Blanks Proposal 2019-20BWG**

Commissioner Altmaier asked Mr. Piazza to summarize the proposal. Mr. Piazza noted that he was the chief actuary in Louisiana. He said over the past 10 years, he served as chair of the Casualty Actuarial and Statistical (C) Task Force for seven years and as vice chair for three years. He stated that the proposal concerns the qualification definition of the appointed actuary contained in the Property/Casualty Annual Statement Instructions. He described the role of the appointed actuary and how it may be the most important role actuaries serve in the state insurance regulator’s eyes. He indicated that state insurance regulators that review reserve adequacy for company solvency in order to protect the interests of their state’s consumers rely heavily upon the accuracy of the appointed actuary’s reserve assessment and information contained in the appointed actuary’s Statement of Actuarial Opinion. To be able to provide the Statement of Actuarial Opinion, an appointed actuary must meet the qualification requirements defined in the Property/Casualty Annual Statement Instructions.

Mr. Piazza stated that the proposal has a long history at the NAIC. It began about seven years ago, when the Task Force was asked to determine if the Society of Actuaries’ (SOA) new educational track met the NAIC’s basic education requirement for the qualified actuary. After many open discussions, the Task Force realized this was a time-consuming project that needed help
Mr. Piazza provided a summary of the highlights in the proposal. The proposal sets forth a workable, objective and principle-based definition of a property/casualty (P/C) qualified actuary and recognizes the SOA’s general insurance track designation, along with the CAS designations, as meeting the minimum basic education requirement for a qualified actuary. He described how the proposal adds qualification documentation to the instructions, which effectively pulls together an actuary’s resume and continuing education documentation as a work paper so state insurance regulators can view that information if they wish and companies can use it in their governance review of the appointed actuary. The proposal has an effective date coinciding with the 2019 annual statement. Mr. Piazza stated that the 2019 effective date was agreed to by all three actuarial organizations. He noted that the proposal has little impact to any actuary currently appointed. All former appointed actuaries remain “qualified” under the new definition, with the only impact being they must document their qualifications. During the Accounting Practices and Procedures (E) Task Force’s conference call on Aug. 22, Texas offered a friendly amendment to original blanks proposal 2019-20BWG that removed “NAIC” from the label that is now called the “acceptable actuarial designations.” Mr. Piazza noted that this proposal was not performed in a vacuum as the proposed instruction changes were vetted many times since the beginning of this project. He described how in the past year-and-a-half, there were four exposures and one hearing with input considered from interested parties, the Task Force and commissioners directly. He stated that like other large, multi-faceted NAIC projects, there was a bit of compromise in the development of the proposal, and not all participants in the development process were 100% satisfied with the result. Mr. Piazza closed by stating that the proposal clearly met the Executive (EX) Committee’s objective at the start of its project by setting forth a workable, objective and principle-based “qualified actuary” definition that includes actuarial designations from both the SOA and the CAS that meet the minimum basic education standard in that definition. He asked the Committee to adopt the proposal without further revision.

Ms. Bernard made a motion, seconded by Commissioner Mulready, to adopt proposal 2019-20BWG. The motion passed, with Missouri voting no.

Having no further business, the Financial Condition (E) Committee adjourned.
The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: David Altmaier, Chair, and Ray Spudeck (FL); Kathy Belfi, Vice Chair, (CT); Philip Barlow (DC); Jim Armstrong and Mike Yanacheak (IA); Kevin Fry, Bruce Sartain and Vincent Tsang (IL); Roy Eft (IN); Christopher Joyce (MA); Judy Weaver (MI); Kathleen Orth (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Marlene Caride and Diana Sherman (NJ); James Regalbuto (NY); Dale Bruggeman and Tim Biler (OH); Joe DiMemmo (PA); Trey Hancock and Patrick Merkel (TN); Doug Slape and Jamie Walker (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. **Adopted its Oct. 30, Aug. 29 and Summer National Meeting Minutes**

Commissioner Altmaier said the Working Group met Oct. 30 and Aug. 29. During its Oct. 30 meeting, the Working Group adopted a revised memorandum on debt and a Request for NAIC Model Law Development related to the group capital calculation (GCC). During its Aug. 29 meeting, the Working Group discussed needed confidentiality protections.

Ms. Belfi made a motion, seconded by Mr. Schrader, to adopt the Working Group’s Oct. 30, Aug. 29 (Attachments Three-A and Three-B) and Aug. 3 (see NAIC Proceedings – Summer 2019, Financial Condition (E) Committee, Attachment Two) minutes. The motion passed unanimously.

2. **Received a Summary of Data Review and Initial Observations from the Field Test**

Commissioner Altmaier stated that NAIC staff would be presenting preliminary observations from the group capital calculation (GCC) field test (Attachment Three-C) and asked Lou Felice (NAIC) to begin that summary. Mr. Felice highlighted some of the more significant aspects of that summary, including how suggestions were made on how the template and instructions could be improved. He said those types of suggestions were included in the observations and that the NAIC supported many of those. He said that testing was near complete, pending only final meetings with some of the volunteers, which is driven more by the difficulty of coordinating schedules than anything else. Mr. Felice emphasized that for capital instruments, there would need to be clarifications for the reporting of foreign debt, what is meant by tracked debt and the reporting of surplus notes. Dan Daveline (NAIC) stated the with respect to XXX/AXXX assets and liabilities, several commenters suggested this information be disclosure only and not included in the actual calculation. Mr. Felice noted that in the area of materiality, some companies did use different approaches, but the test did not provide any type of clear indication of one approach to use.

Ned Tyrrell (NAIC) noted that one issue that still needs to be dealt with is scalars in regimes not considered thus far. He said another issue arises when the underlying capital calculation is fixed. Mr. Felice said that NAIC staff did use the inventory as the base GCC ratio and that the rest of the observations were based upon factors that cause that base to go up or down. Mr. Tyrrell discussed the results of the GCC base calculation based upon the trend test level. He reinforced the Mr Felice’s point that the subsequent charts in the observations show the impact from the base calculation, meaning the item is either an increase or a decrease from that base. With respect to the observations on included business, most groups had no difference when the groups included all their companies, but there were a small number of property/casualty (P/C) companies that had a larger difference. Mr. Tyrrell described how there were similar observations when it comes to the non-insurance tests where the revenue tests generally did not show a significant impact, but there were a handful of outlier groups. However, he said that the book/adjusted carrying value (BACV) test tended to have a large impact on a number of groups. Mr. Tyrrell also noted that the banking tests had little impact on the groups with such entities. Mr. Felice described the impact of using 30% for debt, noting that when the test did so, it picked up most companies. Mr. Tyrrell highlighted how the differences in the scalar testing was largely driven by the three different types of groups participating in the field-testing, including specifically that some non-U.S. groups chose to participate and were most impacted, while most groups had no or little non-U.S. business, including most of the internationally active insurance groups (IAIGs).

Bill Schwegler (Transamerica) reiterated Transamerica’s concerns with on-top adjustment that have the impact of modifying state legal entity rules. He stated Transamerica appreciated the work to assemble the results, but stated he hopes that further
information would be disclosed in the future regarding: 1) non-XXX/AXXX captives; 2) treatment of subsidiaries where the GCC amends; 3) non-admitted entities that are zeroed out; and 4) use of the trend test level versus the company act level.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) asked if clarity could be provided between the GCC and the aggregation method, noting that it was the GCC that the U.S. intends to submit. Commissioner Altmaier stated the short answer is yes, but this specific matter is more of an issue for the International Insurance Relations (G) Committee. He stated that an aggregate-based framework that is jurisdictional-agnostic is preferred to allow, for example, Hong Kong to use its own version of the aggregation method. Ms. Gomez-Vock recognized that this was also probably a more appropriate question for the International Insurance Relations (G) Committee, but she asked whether the GCC would have a trigger of intervention. Commissioner Altmaier responded nothing has changed and that the GCC does not intend to have any type of trigger for intervention. (See NAIC Proceedings – Fall 2019, International Insurance Relations (G) Committee minutes for a more accurate response to the two questions from Ms Gomez-Vock related to the aggregation method.)

Commissioner Altmaier discussed how conversations regarding the information would begin in the future weeks.

Having no further business, the Group Capital Calculation (E) Working Group adjourned.
The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met via conference call Oct. 30, 2019. The following Working Group members participated: David Altmaier, Chair, and Ray Spudeck (FL); Kathy Belfi, Vice Chair (CT); Kim Hudson (CA); Carrie Mears (IA); Susan Berry (IL); Roy Eft (IN); Judy Weaver (MI); Barbara Carey (MN); John Rehagen (MO); Justin Schrader (NE); Edward Kiffel (NY); Dale Bruggeman (OH); Kimberly Rankin (PA); Trey Hancock (TN); Mike Boerner (TX); Doug Stolte (VA); and Amy Malm (WI).

1. **Adopted a Revised Debt Memorandum**

Commissioner Altmaier stated that the issue of debt was one that had received considerable discussion by the Working Group in the past and that it was currently testing different approaches during field testing. He noted that the way the original memorandum on this topic was drafted created some confusion, and over the past several months, there had been some work to try to resolve the confusion. He stated the purpose of revisions was not to change any of the approaches being tested, but to clarify language to alleviate some of the concerns that had been presented. He stated the revisions specifically remove some of the language related to rating agencies that seem to be causing most of the confusion. Mr. Hudson stated his understanding was that the Working Group was moving forward with field testing and that after receiving additional data, the Working Group would be in a better position to make a final decision. Commissioner Altmaier agreed, noting the revisions do not change that fact. Ms. Belfi highlighted the fourth page of the memorandum where field testing is discussed and noted that none of that language had been revised outside of minor cosmetic editorial changes along with the information related to rating agencies.

Ms. Belfi made a motion, seconded by Mr. Hudson, to adopt the revised changes (Attachment Three-A1) and to have the revised memorandum posted to the website. The motion passed unanimously.

2. **Adopted a Request for NAIC Model Law Development**

Commissioner Altmaier stated the Working Group previously discussed the need for the group capital calculation (GCC) to be confidentially filed with the state insurance department and the need for legal authority for this to occur, which requires an NAIC model law. He stated that included in the materials is a document that requires adoption by the Working Group, the Financial Condition (E) Committee and the Executive (EX) Committee before a project to make such changes to an NAIC model law can begin. Commissioner Altmaier stated the document specifically requests changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). Commissioner Altmaier emphasized that the request envisions changes to the model that will not create a regulatory intervention point for the GCC. He stated this is only for the purpose of requiring the filing and its confidentiality.

Mr. Bruggeman said this does not preclude the incorporation of something that already exists within confidentiality provisions and noted, for example, the *Risk Management and Own Risk and Solvency Assessment Model Act* (#505). Mr. Hudson asked Commissioner Altmaier if he expects the work to be completed by the Group Solvency Issues (E) Working Group. Commissioner Altmaier stated the document specifically requests changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). Commissioner Altmaier emphasized that the request envisions changes to the model that will not create a regulatory intervention point for the GCC. He stated this is only for the purpose of requiring the filing and its confidentiality.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) expressed appreciation for the recognition that confidentiality needs to be addressed in the GCC. She asked for clarification that the model law amendment process deals with the confidentiality and for the regulatory authority of filing the GCC. Commissioner Altmaier responded that if the Working Group determines that authority is needed for the filing, the changes to the model can address such. He noted, however, that he is primarily focused on a very narrow change to the model since the primary purpose is the confidentiality. Ms. Gomez-Vock stated it would be good to be mindful of the process for addressing other items. Commissioner Altmaier stated they would try to be mindful of such items as they began the process and simply reiterated his desire for the changes to be very narrow and related to the GCC only.
Mr. Hudson made a motion, seconded by Mr. Bruggeman, to adopt the Request for NAIC Model Law Development. The motion passed unanimously.

3. **Discussed Other Matters**

Commissioner Altmaier asked NAIC staff to provide an update on the field testing. Lou Felice (NAIC) reminded the Working Group of the multiple levels of testing debt within the GCC like the language in the revised memorandum previously adopted by the Working Group earlier in the conference call. He discussed that the testing criteria is being applied over regulatory capital and over regulatory capital plus debt. He discussed that restacked regulatory capital is being used to include all entities, permitted and prescribed practices, but it does not include the XXX/AXXX captive information as they would be considered separately. He also discussed the ongoing openness of considering other options offered by volunteers. Mr. Felice described that they are working their way through the volunteer filings, noting one had dropped out. He stated that they have come in slower than desired. He stated that most of the filings had been reviewed by NAIC staff, with comments sent to the lead states for incorporation of the input from the lead state. He stated that once such input is added, a document would be shared with the volunteer and that companies are then allowed to have a written response and/or a final conference call. He stated the greatest difficulty has been the coordinating of schedules for conference calls between each volunteer, their lead state and NAIC staff. They hope to have all completed by the end of November. However, he stated this will not change the summarizing charts that are expected to be provided in the open meeting where public feedback is provided.

Having no further business, the Group Capital Calculation (E) Working Group adjourned.
MEMORANDUM

TO: Group Capital Calculation(E) Working Group

FROM: David Altmaier, Chair, Group Capital Calculation (E) Working Group

DATE: October 7, 2019

RE: Treatment of Senior Debt and Surplus Notes in the Group Capital Calculation

As part of the discussions related to the determination of available capital under an RBC aggregation approach to a group capital calculation (GCC), the issue of how to treat senior debt and surplus notes needs to be considered. As noted below, the treatment of Surplus Notes within the calculation is much more clearly guided by available accounting guidance. Less direction is found for the appropriate consideration of senior debt.

**Background**

Statement of Statutory Accounting Principles (SSAP) 41 establishes a strong State-based entity specific regulatory structure for surplus notes issued by insurers which is further supported by state receivership laws. SSAP 15 requires all types of debt, including senior debt to be recorded as a liability. However, SSAP 15 is based upon insurance legal entity principles that are not designed to consider the financial flexibility that senior debt issued by a non-insurer holding company can provide the insurance group. In addition, the current guidance does not consider any prohibitions / limitations on the investments of holding company debt instruments. Part of the reason for less regulatory guidance on holding company issuers of senior debt is related to the States’ focus on insurance legal entities (a bottom up approach) vs. a GAAP consolidated approach to available capital that views the group as a single economic construct and eliminates any intra-group double-counting (a top down approach). Further, current guidance does not apply an economic valuation approach which considers how such debt should be characterized when the insurance holding company receives assets that can be allocated to provide capital to the legal entity insurer(s). Surplus notes are generally issued by insurers or mutual holding companies in a holding company structure. They may be issued to insurers within the group or to outside investors. Senior debt is generally issued by non-operating holding companies and is issued to investors that are outside the group (or outside the definition of control within the group). Other issues related to these instruments include the manner in which “subordination” of debt (other than surplus notes) is established, the quality of capital generated, and what becomes of the capital generated via issuance of such debt.

**Entity vs. Consolidated view:**

In a consolidated calculation the value of intra-group surplus notes or loans are offset and eliminated (i.e. the asset held by the purchaser and the debt reported by the issuer are offset). When surplus notes (or any type of debt) are issued to entities outside the group, consolidated GAAP will treat them as a liability along with any associated accrued interest on the issuer’s balance sheet (See APB 15). Where the proceeds of other debt issued are held within the holding company structure, consolidated GAAP would offset that portion of debt issued against related capital that is held by affiliated entities or retained by the issuer. Any excess debt issues would be treated as a liability of the issuer.

By contrast, in the statutory entity-based calculation where surplus notes are issued intra-group to an affiliated insurer it creates capital value at the issuer level since such obligations are subordinated to policyholder claims, but is capital neutral to the purchaser at the entity level. In the group’s capital structure SSAP 97 eliminates the value from the purchaser’s surplus making the surplus note capital neutral at the group level. In addition, U.S. Risk-based Capital (RBC) assigns an asset risk charge (typically based on holding the note as a Schedule BA asset) to the purchaser. Therefore, the investment carried by the affiliate and any associated capital (e.g. RBC) charge to the affiliated purchaser(s) needs to be addressed in an aggregation approach. Under current SAP, senior or other debt instruments issued by a non-insurance holding company to the insurance company is
generally considered an asset if the purchase of the debt is approved by the domestic regulator and to the extent criteria demonstrating the financial strength of non-insurance holding company is met. Its value would be eliminated under GAAP consolidated statement, however, since the non-insurance holding company would treat it as a liability.

Nature of subordination
For surplus notes, the State-based regulatory framework applies “contractual subordination” in that the subordination provisions to restrict movement of funds from the licensed insurer to repay the note are contained within the language of the note itself. For senior debt issued by a holding company, the State-based regulatory system relies on what is referred to as “structural subordination”. In general, subordination ranks other creditors behind policyholders in priority of repayment. Structural subordination is achieved via regulation of movement of funds between insurers and other entities within the holding company structure. An example of how regulatory practices work under structural subordination is demonstrated in the regulatory review and oversight of stockholder dividends paid to the holding company. Dividends paid to the holding company are generally the primary source of income for holding companies which are then used to service their outside debt.

Treatment of Surplus Notes
Treatment of issuers of surplus notes and holders of surplus notes or capital notes is specified in SSAP #41 as follows:

3. Surplus notes issued by a reporting entity that are subject to strict control by the commissioner of the reporting entity’s state of domicile and have been approved as to form and content shall be reported as surplus and not as debt only if the surplus note contains the following provisions:

   a. Subordination to policyholders;
   b. Subordination to claimant and beneficiary claims;
   c. Subordination to all other classes of creditors other than surplus note holders; and
   d. Interest payments and principal repayments require prior approval of the commissioner of the state of domicile.

9. Investments in capital or surplus notes meet the definition of assets as defined in SSAP No. 4— Assets and Nonadmitted Assets and are admitted assets to the extent they conform to the requirements of this statement. Additionally, the amount admitted is specifically limited to the following two provisions:

   a. The admitted asset value of a capital or surplus note shall not exceed the amount that would be admitted if the instrument was considered an equity instrument and added to any other equity instruments in the issuer held directly or indirectly by the holder of the capital or surplus note.
   b. The surplus note shall be nonadmitted if issued by an entity that is subject to any order of liquidation, conservation, rehabilitation or any company action level event based on its risk-based capital. Subsequent to this nonadmittance, if any of the conditions described ceased to exist, the holder may admit the surplus note at the value determined under paragraph 11. If a surplus note was nonadmitted pursuant to this paragraph, and the surplus note was ultimately determined to be other-than-temporarily impaired, the reporting entity shall recognize a realized loss for the portion of the surplus note determined to be other-than-temporarily impaired, with elimination of a corresponding amount of the previously nonadmitted assets.

In addition, SSAP 97 is referenced in SSAP#41 as follows:

Holders of Capital or Surplus Notes
13. For surplus notes issued and held (directly or indirectly), between insurance reporting entities and subsidiary, controlled and affiliated entities, the guidance in SSAP No. 97 requires adjustment to prevent double-counting of surplus notes. For example, an insurance reporting entity is not permitted to report the issuance of a surplus note as an increase in surplus and have an asset representing an investment in the SCA that includes the issued surplus note (held by an SCA). Pursuant to SSAP No. 97, the “investment in the SCA” shall be adjusted to eliminate the surplus note issued by the direct or indirect parent insurance reporting entity. This treatment shall also apply for instances in which the SCA acquires any portion of outstanding surplus notes issued by the direct or indirect parent through any means (e.g., directly acquired from the parent, acquired through a third-party broker, or via the market.).

SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities
Investment in Preferred Stock or Surplus Notes of a Subsidiary, Controlled and Affiliated Entity
20. Any parent reporting entity that has issued a surplus note, which has been acquired by an SCA (held directly or indirectly), shall adjust the investment in the SCA to eliminate the issued surplus note to prevent double counting of the surplus note
at the parent reporting entity. Without adjustment, the issued surplus note would be reported both as an increase in surplus by the parent reporting entity, as well as an admitted asset of the parent through the “investment in an SCA.” The surplus note shall also be eliminated for instances in which the SCA acquires any portion of outstanding surplus notes issued by the parent through any means (e.g., directly acquired from the parent, acquired through a third-party broker, or via the market).

By operation of SSAP97 the value of the surplus note in an affiliate purchaser is eliminated in the RBC roll-up of that entity. However, in the GCC aggregation approach, the group is de-stacked and stand-alone entities are established at their specified accounting values. These stand-alone values will include an asset for the investment in surplus note(s). So in such cases that investment must be eliminated along with any regulatory capital charge where applicable. Thus, surplus notes issued to non-affiliated entities outside of the group create new capital for the group while those issued within the group do not create new capital at the group level.

Treatment of Senior Debt
While there is no specific SAP regulatory treatment (independent of GAAP treatment as a liability) for debt issued by a non-operating holding company, it is recognized that in an insurance-led holding company structure that funds needed to repay the holders of the debt may be generated and provided by the insurers in the group in the form of stockholder dividends. Therefore, it is reasonable to recognize the structural subordination described above in considering how to treat the debt for purposes of available capital. However, because the issuance of debt within a holding company structure makes assets available within the holding company system that could be used to help absorb losses originating from the insurer or another entity within the holding company structure for which the group capital calculation attempts to require capital, it may be appropriate to develop criteria within the GCC that permit some amount of subordinated senior debt to be added back to capital.

The Working Group will need to come to a consensus agreement on the most logical way to field test the impact of including structurally subordinated senior debt as additional group capital within the GCC. If this capital resource is to be included, why? If it is to be is to be constrained or capped, to what level and why?

If it can be demonstrated that higher amounts of the debt can be tied to the principle of structural subordination (e.g. a higher percentage of the proceeds were down-streamed to the insurers or entities under similar regulatory supervision as U.S. insurers), then a higher allowance could be considered consistent with the amount of proceeds that are down-streamed to insurers in the group.

It is also important to consider that the base for total available capital under the U.S. insurance regulatory structure is generally lower than what is recognized under consolidated GAAP rules. Therefore, if the addition of subordinated debt to be included as capital is deemed appropriate, a case for a slightly higher allowance, based on regulatory accounting rules combined with the strength of structural subordination may be considered.

Quality of Capital
Under SAP (or GAAP) there is no distinction in quality of capital (i.e. tiering) for assets that meet the definition of admitted assets such as surplus notes. Based on this, it seems logical that any other asset values allowed in an aggregation approach should be treated similarly. However, there is such a distinction under U.S. banking rules and there may be under other sectoral rules. So it seems logical to respect the available calculations of the regulators in those sectors.

Recommendations for an aggregation approach to a GCC:

1. Surplus Notes – In all cases, treat the assets transferred to the issuer of the surplus note as available capital. If the purchaser is an affiliate, eliminate the investment value from the affiliated purchaser of the surplus note. If the purchaser is an insurer or other regulated entity, eliminate the purchaser’s capital charge (e.g. RBC charge) on the Surplus note investment.

2. Subordinated Senior Debt issued – Recognize structurally subordinated debt as available capital to some degree and only to the extent funded (i.e. any receivables for non-paid-in amounts would not be included for purposes of calculating the allowance). For purposes of recognition both of the following criteria are required to be met:

   a. The instrument must have a fixed term (a minimum of five years at the date of issue or refinance, including any call options).
b. Supervisory approval is required for any extraordinary dividend or distribution from any insurance subsidiary to fund the repurchase or redemption of the instrument. There shall be no expectation, either implied or through the terms of the instrument, that such approval will be granted without supervisory review.

3. For initial field testing:
   a) Construct the initial field testing template so as to collect data on senior debt issued to be included as capital such that a range of caps relative to total available capital can be evaluated to assess the level. For purposes of testing a range of caps as a percentage of total available capital, the total available capital base should be defined as aggregated entity based capital (e.g. SAP available capital for U.S insurers) plus the outstanding value of the senior debt.
   b) In addition to 3a, construct the initial field testing template so as to collect data on debt that includes equity like features (so-called hybrids) and other subordinated debt issued, including the extent that the proceeds are down-streamed to the regulated entities or otherwise used for the benefit of those entities at the time of issuance of the debt instruments, such that an additional cap for these instruments can be evaluated. For purposes of testing an allowance as a percentage of total available capital, the total available capital base should be defined as aggregated entity based capital (e.g. SAP available capital for U.S insurers) plus the outstanding value of the senior debt and hybrids or other subordinated debt.
   c) As one option for field testing, a cap should be tested based on the amount of proceeds of the debt that is down-streamed to the regulated entities or otherwise used for the benefit of those entities at the time of issuance of the debt instruments.
   d) Recognize the proceeds of surplus notes and structurally subordinated senior debt as capital in line with the criteria described above, but respect quality of capital classifications defined by other U.S. sectoral regulators on their regulated entities’ available capital.

4. Other recommendations:
   a) Review and establish appropriate allowance criteria for hybrid debt that recognizes the instruments’ required equity features.
   b) Continue discussion, in consultation with NAIC international team, to maintain consistency on the boundaries of what constitutes structural subordination and how it should be measured.
The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met via conference call Aug. 29, 2019. The following Working Group members participated: David Altmaier, Chair, and Ray Spudeck (FL); Kathy Belfi, Vice Chair (CT); Susan Bernard and Kim Hudson (CA); Philip Barlow (DC); Jim Armstrong, Kim Cross, Mike Yanacehek and Carrie Mears (IA); Susan Berry (IL); John Turchi (MA); Judy Weaver (MI); Kathleen Orth (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Edward Kiffel and Mark McLeod (NY); Dale Bruggeman and Tim Biler (OH); Joe DiMemmo (PA); Trey Hancock (TN); Doug Slape and Jamie Walker (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Discussed Needed Confidentiality Protections

Commissioner Altmaier stated the purpose of the conference call is to continue discussions about the confidentiality of the group capital calculation (GCC). He stated prior to the Summer National Meeting, he had previously asked NAIC staff to draft an initial memorandum on this topic to allow the Working Group to begin its discussions. He stated during that meeting, the Working Group discussed that initial memorandum briefly, and began some discussions with interested stakeholders. He noted that since that time, additional comment letters have been received on the topic.

Commissioner Altmaier reminded members about the previous discussions as the Summer National meeting, where he reiterated that during the development of the GCC, the Working Group had been clear that once completed, confidentiality would be needed. He stated there had been some discussions about the NAIC model to place such confidentiality provisions, and the Working Group has initially identified the Risk-Based Capital (RBC) for Insurers Model Act (#312) as a logical place to insert language. He stated another issue is preventing rating agencies and other third parties’ access to the GCC. He stated that during today’s conference call, he wants to focus on some of the comments received since the Summer National Meeting.

Michael Gugig (Transamerica), representing a coalition of 10 companies, summarized the basis for some of the more significant elements of their comments on this topic (Attachment Three-B1). He stated that from their vantage point, the need for robust confidentiality protections is absolutely critical to the ultimate success of the GCC in part because of the coalition’s views about deviating from legal entity rules with certain on-top adjustments, which he said they would continue to fight for at the appropriate times. He stated that a GCC for such companies with on-top adjustments will end up with a GCC ratio lower for those companies to which the on-top adjustments would apply than the stated capital in statutory reporting. Mr. Gugig said the coalition thinks the difference between the GCC ratio and the risk-based capital (RBC) ratio would be of significant concern to many stakeholders, not the least of which would be rating agencies or other regulators, or stockholders to the extent that the company has a stock company where policyholders would be confused if they are doing research on an RBC and the GCC ratio. He stated that if the GCC ratio is public information, it is likely to lead to consumer confusion about the actual financial position of the ensure that they have either purchased a policy from or are considering purchasing a policy from. He discussed how there is precedent in the current Insurance Holding Company System Regulatory Act (#440) and said in their draft proposal, the coalition included similar provisions. He stated that their initial view is that Model #440 is the appropriate placement for such protections.

Andrew Vedder (Northwestern Mutual), and representing York Life and Travelers, summarized the basis for some of the more significant elements of their comments on the topic (Attachment Three-B2). He stated that while the confidentiality question is important, it should be viewed in the context of the other important decisions to be made about the GCC, including the regulatory filing mechanism that will be chosen. He stated that the NAIC draft memorandum suggests that Model #440 will be that mechanism and they do see merit to that, given that the #440 already addresses supervision of an insurance group, including insurance and non-insurance entities. He noted, however, that given the importance of the regulatory mechanism decision, they would recommend that there be some focus on that question and suggest that a logical next step might be for the Working Group to assess: 1) how it would serve the purposes of the GCC; 2) the relationship to existing regulatory tools; and 3) filing mechanisms under the act in the comparison of alternatives. He stated that their second point is that when it comes to defining the appropriate degree of confidentiality, the question should be viewed in the context of what the GCC is intended to be, which is a new regulatory tool to provide a group-level perspective on capital strength aggregated from legal entity RBC with the adjustments needed to make it a credible group-level measure done in a straightforward and transparent way. These considerations seem more important than how a company’s results may differ from an entity-level view. Commissioner
Altmaier asked for clarification. Mr. Vedder stated that they were operating under the expectation that there will be some regulatory attachment point for the GCC as a requirement and that where it fits in the regulatory toolkit needs to be considered before settling on the confidentiality language.

Bob Ridgeway (America’s Health Insurance Plans—AHIP) summarized AHIP’s comments on the topic (Attachment Three-B). He noted that throughout the development of this GCC, Commissioner Altmaier has stated that it is more important to get this done right than quickly, and he stated his appreciation for that point. He stated this was particularly the case regarding the confidentiality. He stated that while AHIP cannot say that Model #440 is the perfect place to put language, it cannot think of a better place for it to be. He stated AHIP would also like to give at least a preliminary agreement or support to the coalition of 10 recommended revisions to section eight of Model #440 as the confidentiality language. He discussed that during a prior NAIC project, NAIC legal staff indicated that it was important to keep the confidentiality protections consistent from each NAIC model and from state to state, and AHIP believes that is still good advice for this topic.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) said the ACLI appreciates the Working Group’s recognition of the need for confidentiality of the GCC. She stated its members just met via conference call on this topic and that it wants to provide a summary of its views. First, the GCC should be a confidential regulatory filing, and the ACLI agrees with the NAIC’s view, as espoused in the May 29 “Proposed Group Capital Calculation” memorandum, that the GCC “will be a confidential regulatory filing” and that state insurance regulators will implement the appropriate confidentiality protections. Confidentiality should also be strictly observed while the GCC is under construction and before it is finalized in a version that stakeholders believe is fit for purpose.

Second, Ms. Gomez-Vock stated that strict confidentiality of the GCC results are necessary because if the GCC results are published by the NAIC or affected companies, the potential for misuse and abuse of the GCC ratio/data is high. Non-regulators who view the numbers will not have insight into the details of the calculation to be able to interpret and understand the GCC results. As a result, there is a strong likelihood the GCC would be misused to make comparisons between companies instead of being used as a sophisticated regulatory tool that is “intended to provide comprehensive accounting and transparency to state insurance regulators and facilitate earlier engagement with company management regarding potential business operations of concern and communication with other insurance regulators.” She noted that the NAIC has historically acknowledged and recognized the potential for the misuse of certain regulatory filings like non-public RBC reports or plans by limiting the ability of companies or state insurance regulators to disclose these reports. The GCC, as contemplated by the NAIC, will be a regulatory tool that helps state insurance regulators “better understand an insurance group’s financial risk profile for the purpose of enhancing policyholder protections.” A high degree of regulatory acumen will likely be necessary to ensure that the results, and the nuances contained within them, are understood in the appropriate context.

Finally, Ms. Gomez-Vock stated that the ACLI has a question. She said they appreciate that the Working Group is giving serious thought to the need for robust confidentiality protections and is considering using the Model #440 as a vehicle to incorporate those protections, but the ACLI has a question about the timing and implementation of the confidentiality protections and the timing and implementation of the calculation. Specifically, the NAIC has said it hopes to finalize the GCC in 2019 or early 2020 and begin implementation as soon as possible. The ACLI’s question is: How does the NAIC plan to handle the potential discrepancies between the two timelines? If the goal is to finalize the GCC and begin implementation in 2020, how does that affect the placement and implementation of the necessary confidentiality protections? Are we setting up a scenario where the GCC is ready to be implemented but the confidentiality protections have not been incorporated into Model #440 yet, much less adopted into state law yet? She stated the ACLI is not opposed to including the confidentiality protections in Model #440, but it believes it would be beneficial to have a discussion on the implementation of the GCC and confidentiality protections, and what the plan is to ensure that the protections are in place if the NAIC begins implementing the GCC prior to the adoption of Model #440 amendments. It may also be appropriate to consider a vehicle other than the HCA, and just in case, the ACLI wants the confidentiality and placement discussions to proceed hand in hand.

Commissioner Altmaier responded that it was a good question and stated he believes Mr. Slape touched upon this issue at the Summer National Meeting. He stated that there probably is a little bit of misalignment between the two timelines but that he sees a duel track approach to where progress is made on both during 2020 to where they become aligned once the GCC is completed. He also talked about how state insurance regulators have done things in the past with respect to, for example, the Own Risk and Solvency Assessment (ORSA) pilot project, where examination statutes were used in the interim.

Mr. Barlow stated he was confused by the comments from Mr. Vedder from the standpoint that the NAIC is not planning to create a model law with authority for the GCC. Commissioner Altmaier responded that he does not envision a group capital law like the RBC model law, which establishes thresholds under which regulatory regulations could act. He stated he believes
Mr. Vedder was suggesting that if the intent is for state insurance regulators to require all their insurers to provide a copy of their GCC, there might need to be somewhere in a model that that is a required filing. Mr. Slape agreed with Commissioner Altmaier and noted how certain ratios were developed using data supplied by annual statement filings required by law. He said the GCC would need a specific statutory framework on which to collect data. He also agreed that the work can be dual tracked in some respects as not to distract the GCC work. Commissioner Altmaier asked Mr. Vedder if he agrees with others on the non-disclosure issue; not only should the calculation be confidential when it was given to state insurance regulators, but also to have prohibition placed upon them so that insurers are not permitted to share their calculation with someone like a rating agency. Mr. Vedder responded that when it’s taken to something like rating agencies, it does get more complicated because rating agencies are going to have their own tools, and they do receive confidential information from insurers already. He stated he agrees with the idea that it is not something that companies should be advertising. However, he said he considers the GCC a relevant tool and rating agencies ask about relevant tools and including things like the Risk Management and Own Risk and Solvency Assessment Model Act (#505).

Mr. Gugig responded that Transamerica agrees with Mr. Slape but with respect to the rating agencies, those are exactly the type of entities that Transamerica referred to when it talked about the inability to understand. He stated that there are lots of nuances that state insurance regulators would understand that he does not think even rating agencies would. He said Transamerica thinks that rating agencies might use the information to publicly create winners and losers.

Commissioner Altmaier stated that he would work with NAIC staff to update the memorandum to reflect some of the conversations and bring back for discussion on a future conference call.

Having no further business, the Group Capital Calculation (E) Working Group adjourned.
July 30, 2019

Commissioner David Altmaier  
Florida Office of Insurance Regulation  
Chairman, NAIC Group Capital Calculation (E) Working Group  
via email to ddaveline@naic.org & lfelice@naic.org

Re: August 3, 2019 Working Group Discussion of Group Capital Calculation Confidentiality  

Dear Commissioner Altmaier:

On behalf of a coalition of ten companies (Athene Holding Ltd., Brighthouse Financial, Global Atlantic Financial Group, Jackson National, Lincoln Financial, National Life Group, Pacific Life, Protective Life, Reinsurance Group of America, and Transamerica; collectively “the Coalition”), we write in advance of the August 3, 2019 Group Capital Calculation Working Group (GCCWG) meeting to provide our Coalition’s initial thoughts on the need for significant confidentiality protections once the Group Capital Calculation (GCC) becomes final. The Coalition greatly appreciates the opportunity to engage with the GCCWG and interested stakeholders regarding the confidentiality issue.

Initially, we want to make clear that the Coalition continues to strenuously urge the GCCWG to create a GCC that is faithful to the legal entity rules that NAIC has itself adopted through rigorous processes, and which state legislatures have in large part adopted in law. State regulators should avoid creating a complex and costly “dual system,” with one set of solvency measures at the legal entity level and a somewhat different set of measures at the group level. Moreover, we believe that international regulators may misunderstand the import of a GCC that disregards current capital rules (such as those for XXX/AXXX captives). Some will likely ask why the NAIC feels the need to reassess capital measures that insurers hold in accordance with state laws.

A. Broad Confidentiality Protections Are Necessary

The GCC for each group should receive the highest level of confidentiality permitted by law. The GCCWG has repeatedly made clear that the GCC is not intended to create a new capital requirement or standard. Instead, it is merely designed to be “one tool in the toolbox” for regulators to assess how capital at the group level might impact regulated insurance companies. Thus, we see no legitimate reason for regulators, the NAIC, insurers or other entities to be able to disclose any particular group’s GCC for any non-regulatory purpose.

We believe that on-top adjustments being considered by the GCCWG increase the risk of harmful disclosure. As we have previously pointed out in comment letters and conversations with GCCWG members, on-top adjustments in the GCC create “winners” and “losers.” The “winners” would benefit from an optical windfall, while the perceived financial strength of the “losers” will be undermined.
“Winners” could then attempt to use the GCC as a competitive weapon by disclosing their own results, implicitly opening non-disclosing groups to criticism and scrutiny from interested parties. For example, if a company were to disclose its GCC to rating agencies, analysts, or the general public, it would likely prompt those entities to pressure other groups to disclose their own GCC ratios. This would be unfair to insurers that have done nothing untoward, but which are nonetheless among the “losers.”

Therefore, disclosure of any group’s GCC outside the regulatory community would foster a competitive imbalance, undermining the NAIC’s stated mission of “facilitating...an effective and efficient marketplace for insurance products.” We therefore urge the GCCWG to adopt strict confidentiality protections that would preclude disclosure of any group’s GCC outside the regulatory community, whether by regulators, insurers, insurance groups or others.

B. Proposed Holding Company Act Amendments To Ensure GCC Confidentiality

We believe that the NAIC Model Insurance Holding Company System Regulatory Act (“Holding Company Act”) is likely to be the preferred place to address GCC confidentiality as well as a prohibition on disclosure of the GCC and resulting Group Capital Ratio. Our reasons include that the Holding Company Act: (1) is referenced within the NAIC’s May 29, 2019 GCC report; (2) is the only model act that addresses both an insurer and other members of an insurance group; and (3) already includes authority for a regulator to examine non-insurer members of an insurance holding company system. To this end, we are providing our preliminary thoughts regarding possible changes to Section 8 (Confidentiality) of the Holding Company Act.

Our proposed language draws from and strengthens confidentiality provisions in other NAIC models. One such model is the RBC for Insurers Model Act, which includes a specific prohibition on public disclosure/advertising of RBC ratios. Because the NAIC describes the GCC as an “RBC aggregation methodology” and incorporates the RBC throughout the calculation, incorporating confidentiality provisions from the RBC Model Act seems logical.

Another model from which we propose to borrow language is the ORSA Model Act. Given the sensitivity of ORSA information, the ORSA model includes an enhanced level of confidentiality protection. The GCC is likely to be at least as commercially sensitive as ORSA.

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In conclusion, the Coalition respectfully submits that, because the GCC may deviate from how available and required capital is calculated under legal entity rules and thus would
almost certainly lead to confusion and misunderstanding by non-regulatory stakeholders, the most robust possible confidentiality protections are warranted.

The Coalition appreciates the opportunity to provide a summary of its position on confidentiality in advance of the National Meeting. We look forward to engaging with the GCCWG on this important issue.

Sincerely,

Athene Holding Ltd.
Brighthouse Financial
Global Atlantic Financial Group
Jackson National
Lincoln Financial
National Life Group
Pacific Life
Protective Life
Reinsurance Group of America
Transamerica
Recommended Revisions

Section 8. Confidential Treatment: Prohibition on Announcements

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 shall be confidential by law and privileged, shall not be subject to inspection or records, freedom of information, sunshine or other appropriate phrase, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties, but shall seek to maintain the confidentiality of such documents during the course of any such regulatory or legal action. The commissioner shall maintain the confidentiality of the group capital calculation and Group Capital Ratio. With respect to all other documents, materials or other information covered by this paragraph, the commissioner will not otherwise make such the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.

C. In order to assist in the performance of the commissioner's duties, the commissioner:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, with any third-party consultants, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

(3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of
the document, material or information; and

(4) Shall enter into written agreements with the NAIC and any third-party consultant governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:

(i) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant pursuant to this Act, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileges status of the documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(ii) Specify that ownership of information shared with the NAIC and its affiliates and subsidiaries or a third-party consultant pursuant to this Act remains with the commissioner and the NAIC’s or a third-party consultant’s use of the information is subject to the direction of the commissioner:

(iii) Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production; and

(v) Require the NAIC and its affiliates and subsidiaries or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries or a third-party consultant pursuant to this Act; and

(vi) In the case of an agreement involving a third-party consultant, provide for the insurer’s written consent.

D. The sharing of information by the commissioner pursuant to this Act shall not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this Act.

E. No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade-secret materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

F. Documents, materials or other information in the possession or control of the NAIC or third-party consultants pursuant to this Act shall be confidential by law and privileged, shall not be subject to the insertion of open records, freedom of information, sunshine or other appropriate phrase, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

G. It is the judgment of the legislature that the group capital calculation and resulting Group Capital Ratio is a regulatory tool for assessing group risks and capital adequacy, and is not intended as a means to rank insurers or insurer groups generally. Therefore, except as otherwise may be required under the provisions of
this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the group capital calculation or Group Capital Ratio of any insurer or any insurer group, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation or resulting Group Capital Ratio or an inappropriate comparison of any other amount to an insurer’s or insurance group’s group capital calculation or resulting Group Capital Ratio is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
August 22, 2019

Via Electronic Delivery

Commissioner David Altmaier
Florida Office of Insurance Regulation
J. Edwin Larson Building
200 E. Gaines Street, Room 101A
Tallahassee, Florida 32399

Attention: Dan Daveline

Re: Confidentiality of GCC Results

Commissioner Altmaier:

The issue of confidentiality protection of the group capital calculation (“GCC”) has been presented for discussion by the Group Capital Calculation Working Group (the “Working Group”). Arriving at the appropriate answer to this question is integral to regulators receiving high quality information from insurance groups. As continued supporters of the NAIC’s development of a robust capital calculation, we appreciate the opportunity to comment on this issue. An appropriately designed GCC that promotes comparable and consistent approaches across companies will be a useful supervisory tool to assist lead states in analyzing the financial condition of insurance groups by complementing entity-based solvency requirements. While the issue of appropriate confidentiality should be considered with any new supervisory tool, a narrow or premature focus on confidentiality could distract from resolution of all the other important issues that need to be addressed to develop a credible capital standard. Confidentiality must be approached and sequenced within the broader development process, taking into consideration a variety of interdependent issues, including the supervisory purpose, the relationship to existing regulatory tools, the statute or regulation under which the filings would be made (i.e., the regulatory filing mechanism) and how confidentiality is provided within statutes or regulations.

We have reviewed the draft memorandum from the Working Group to the Group Solvency Issues Working Group (“GSIWG”), including its recommendation that the Insurance Holding Company System Regulatory Act (#440) be revised to incorporate appropriate confidentiality protections for the GCC. The memorandum alludes to other key decisions that remain with respect to the GCC, including several with respect to the filing mechanism. We believe that a determination as to the appropriate filing mechanism is a critical pre-condition that should be discussed and agreed upon before language regarding confidentiality can be developed. Different confidentiality considerations may apply depending on the regulatory framework that is ultimately chosen to facilitate filing of the GCC with regulators.
When the Working Group discusses the appropriate level of confidentiality protections, we would respectfully suggest that it consider the appropriate level of confidentiality for the results of a regulatory tool that provides insight into group-level risk, and how that should differ, if at all, from the confidentiality applied to other information provided under the Holding Company Act. One of the advantages of the GCC over consolidated group capital methods is that it aggregates existing entity-level RBC results, with appropriate adjustments, in a straightforward and transparent manner. The resulting GCC will be, as members of the Working Group have noted, another tool in the regulatory toolbox that assists with group-wide surveillance and solvency regulation. We view these considerations as more relevant to the determination of an appropriate degree of confidentiality than speculation as to whether and how the results will differ from a legal-entity view.

We understand that the Working Group may be concerned with ratings agencies seeking to access GCC results. Even if the Working Group were to draft confidentiality protections that would prevent groups from sharing their GCC results with ratings agencies, we would still expect that those agencies could conduct their own calculations that would approximate the GCC’s results or provide a similar group-level perspective on capital.

Our companies will be pleased to provide further input into this process as the Working Group completes the work necessary to establish a robust GCC, including resolving important issues such as the appropriate degree of confidentiality, as well as the related and equally important issue of the filing mechanism for GCC results.
We are grateful for your time and attention to our comments. If you would like to discuss this letter with us, please let us know.

Sincerely,

Douglas A. Wheeler
Senior Vice President
Office of Governmental Affairs
New York Life Insurance Company

Andrew T. Vedder
Vice President
Solvency Policy & Risk Management
The Northwestern Mutual Life Insurance Company

D. Keith Bell
Senior Vice President
Corporate Finance
The Travelers Companies, Inc.
September 27, 2019

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chair, Group Capital Calculation (EE) Working Group
1100 Walnut, Suite 1500
Kansas City, MO 64106-2197

Via email to ddaveline@naic.org

Re: August 3, 2019 Discussion of Group Capital Calculation Confidentiality

Dear Commissioner Altmaier;

As several companies, including some of AHIP’s members, engage in the Group Capital Calculation Field Testing, AHIP and its members appreciate the continuing cooperation displayed by you and other regulators and staff on the Working Group, and we welcome the opportunity to offer comments to the proposal concerning confidentiality which has been set out as a draft memo to Justin Schrader, Chair of the Group Solvency Issues (E) Working Group.

We have reviewed the letter of July 30, 2019, from the Coalition, and generally support the views expressed there. Although we also believe that the confidentiality language should be consistent not only from NAIC Model to NAIC Model, and also from state to state in their enactments of those Models, we are open to discussing some changes to the confidentiality language in the Holding Company Act, not only to increase the consistency between it and the confidentiality protections in the ORSA Model, but also to address any specific gaps that have come to light in recent years.

What we cannot support, however, would be any initiative which could weaken or otherwise restrict the strongest possible confidentiality protections for the GCC’s calculations or any final figures resulting from them.

We look forward to continuing the cooperative atmosphere set by you and your fellow regulators as we continue working on this issue, and we hope you will let us know if there is further assistance we can offer.
Sincerely,

Bob Ridgeway
America’s Health Insurance Plans
NAIC GROUP CAPITAL CALCULATION FIELD TESTING
INITIAL REVIEW OBSERVATIONS AND DATA SUMMARIES

December 6, 2019

Status of field Test

- 32 Submissions Reviewed by NAIC (1 Volunteer withdrew)
- 28 Review Summaries Provided to / Discussed with Lead—States
- 14 Submissions Presented and Discussed with Volunteer
- NAIC / Lead-States will Schedule Calls with Remaining Volunteers (est. completion before 1/15/2020)

Field Test Feedback (Template and Instructions)

• Comments and Observations Thus Far on:
  ➢ Template
    o Additions / deletions
    o Formula revisions
  ➢ Instructions:
    o Additions and clarifications

Schedule 1

• Instructions
  ➢ Clarify required entries in Schedule 1B, Column 16 (Treatment of Entity for RBC purposes)
  ➢ Clarify instructions or eliminate Section 1D, Column 4 (Notional Value of Contract)
  ➢ Add / delete instructions for new data columns and delete for any that are removed
  ➢ Clarify definition of regulated vs. non-regulated financial entity
  ➢ Clarify Instructions for Tests in Schedule 1E

• Template
  ➢ Add Columns in Schedule 1C to report stand-alone revenue and equity amounts for each entity (+ instructions). This will avoid double counting in the tests applied to non-insurance entities
  ➢ Remove the following data:
    o Financial strength ratings
    o Assumed and ceded premiums
  ➢ Add the following data:
    o Dividends Paid and Received
    o Capital Contributions Paid and Received
    o intra-group reinsurance assumed and ceded
    o Incomm/other data for insurers as well (for balancing/better picture of group)
Inventory Tab

- Instructions
  - Enhance instructions regarding carrying values to be reported in Columns 1 and 2 of Inventory B (Parent and Local carrying values)
  - Clarify when values should be reported in Inventory C for non-insurance / non-financial entities including holding companies
  - Clarify where and which intercompany receivables and payables should be reported in Inventory C.
  - Clarify reporting of prescribed and permitted practices of subsidiaries in Inventory B and C, columns 9 and 10.
  - Clarify handling of de-stacking of Schedule BA financial affiliates and intra-group surplus notes.
- Template
  - Add columns (+ instructions) in Section 1B for GAAP to SAP (or other regulatory) adjustments.
  - Address (+ instructions) cases where a foreign regulator does not impose an insurer entity capital requirement.
  - Add columns (+ instructions) in Section 1B and 1C for foreign currency adjustments to U.S. dollars (may be better to handle in Schedule 1).

Capital Instruments

- Instructions
  - Clarify what should be reported in Section A, column 9 ("Amount recognized or credited as capital in local regulatory regime")
  - Clarify what should be reported in Section A, column 10 ("Amount Down-streamed") and clarify criteria for "tracking"
  - Clarify instructions as relates to debt issued to affiliates (avoid double hit for captive adjustments)
- Template
  - Adjust formulas to bring the correct amount of outstanding debt into the calculation base in Section B.
  - Review allowance options for hybrid debt.
  - Cleaner separation of intra-group debt vs. debt issued to parties outside the group.
  - Include all debt and improve tie with Schedule 1C, Column 12.

XXX / AXXX Assets and Liabilities

- Instructions
  - Recommendation to delete tax affecting the calculation.
- Template
  - Very few comments on the template and instructions.
  - Most comments suggested information should not be included in ratio, but more as FYI.

Questions and Other Information

- Instructions
  - Materiality information TBD.
  - Should there be a materiality threshold for non-insurance / non-financial Schedule BA affiliates (Similar to such entities in Schedule D)?
- Template
  - Add a description of debt instruments listed in the Capital Instruments Tab that are reported as other than senior debt or hybrid debt.
  - Add question on intangible assets held by positive value Hold Co’s + instructions.
Scalars

- Instructions
  - TBD

- Template
  - Separate alternative charges for Hold Cos from other scaled values for foreign insurers

Test Options and Data Points Summary

- Base GCC Ratio
- Defining the Insurance Group
  - Materiality (include/exclude and thoughts on regulator discretion)
  - Treatment of Non-insurance/Non-financial entities
- Banks and Other Financial Entities
- Treatment of Hold Cos
- Permitted/Prescribed Practices
- Capital Instruments
- XXX/AXXX
- Scalars

Guide to Hi-Level Charts

Base GCC Ratio

- All Entities
- All Entities at Values Reported in the Inventory Tab
  - Trend test calibration for RBC filers and non-insurance/non-financial subsidiaries (300% x ACL)
  - Available capital from Inventory B, Column B (negative values included)
  - Capital calculation from Inventory C, Column B (floored at zero)
  - All permitted and prescribed practices allowed
  - All non-operating hold cos at zero capital calculation
  - All values foreign insurance values scaled at 100%
  - Captives at reported regulatory values
  - No additional allowance for senior/hybrid debt
**Defining the Insurance Group**

- **Field Test** includes the ultimate controlling party and all entities within the group.
  - Only non-insurance / non-financial entities without material risk that are outside the defined insurance group may be marked as “exclude.”
- **Current Definition of Insurance Group**
  - An Insurance Group is comprised of the head of the Insurance Group (insurer, mutual holding, or other holding company) and all entities under its direct or indirect control and includes all members of the Broader Group that exercise significant influence on the insurance entities and/or facilitate, finance, or service the insurance operations.
  - An Insurance Group may be:
    - a subsidiary or parent of the bank-led or securities-led financial conglomerate; or
    - a subset of a wider group.
- **Materiality and Excluding non-insurance / non-financial entities**
  - No single suggestion for a threshold has consensus from the volunteers.
  - 17 volunteers excluded some amount for non-material entities (Range from <1% of Available Capital to 46%)
  - Range of results is shown in Chart B
- **Treatment of non-insurance / non-financial Entities**
  - **Owned by insurers (may not be excluded) – consider not de-stacking due to convenience issues in RBC**
  - **Owned by non-insurers within defined group (may not be excluded)**
  - **Owned outside the defined insurance group (may be excluded based on materiality thresholds)**
  - **Tested using 5 alternative equity and revenue-based measures – See Chart C**

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**Range of NI Tests [Chart C Hi Level]**

- **Impact of Non-Ins / Non-Fin Tests on Capital Ratio**
  - Tests 2a is reported at 2 calibration levels (12% Scaled to RBC CAL, e Revenue and 12% Scaled to RBC Trend Test x Revenue)
  - Treatment of Non-Insurance / Non-Financial entities is material for three volunteers and not material for the rest.
  - Of these three entities, one sees sizable benefit from the revenue-based tests (i.e. 1a, 1b and 2a) and the other sees none. The average impact is positive. Tests based on carrying value (i.e. 2b and 3) have less impact on all.
Banks and Other Financial Entities

- Banks are valued at regulatory available capital and regulatory capital requirements (risk weighted assets calculation) [Chart D]
- Other Financial Entities (e.g. asset managers) were run through several equity and revenue-based tests
  - Chart E displays the range of results for the calculations that were tested

Chart D Bank

- There are 9 volunteers with banking operations. Of those, 5 have more than 1% of available capital in banking entities.
- Capital ratios for banking within these volunteers are in range of 100-300%.

Non-Bank Range of Fin Tests [Chart E Hi-Level]

- The revenue-based tests tend to lead to higher charges than the BACV and notional value-based test.

Treatment of Hold Cos

- Non-operating Hold Cos (Ungrouped)
  - Negative values included
  - Zero Capital charge
  - Alternative charge @22.5% x stand-alone value
  - Chart F indicates impact of 22.5% charge on the GCC ratio
- Operating Hold Cos
  - Treated based on operating activities (and included with data on applicable entity type)
  - Grouped Hold Cos (Excludes regulated insurance and bank entity Hold Cos)
    - Categorized based on entity type of grouped subsidiaries and included with data on applicable entity type
    - Must all conduct similar operating activities and reported under same basis of accounting

Impact on Capital Ratio of 22.5% Charge on HC (floored at 0)
Perm/ Prescribed Practices

- 23 Volunteers Issued Debt other than Surplus Notes from either Top or Downstream Hold Cos
- Tested Allowances from 20% to 100% for Senior Debt and 10% to 100% for Other Debt
- Ratio Of All Listed and Qualifying (i.e. at least 5-year term) Debt to Equity Ranges was calculated in two ways
  - The straight debt to equity ratio ranges from 1% to 95%
  - When the qualifying debt is included in the denominator of ratio, the range is 1% to 48% (7 > 3%) and 40%
- Chart 3 shows the average ratio of debt to be at least 1:1
- Chart 4 shows the average ratio of debt to be at least 1:1

Capital Instruments (1)

- Some Volunteers’ Description of Debt Listed as “Other” or “Capital Instruments” is Still Required
- Chart H shows the impact on the GCC ratio for stock groups by industry segment using (i) expanded ratio definition and applying a sample allowance of 30% for senior debt and 15% of other debt and (ii) No limit on debt

Note: Allowing Senior Debt may require reconsideration of capital calculation for hold cos.

Capital Instruments EXAMPLE (2)

- 23 Volunteers Issued Debt other than Surplus Notes from either Top or Downstream Hold Cos
- Tested Allowances from 20% to 100% for Senior Debt and 10% to 100% for Other Debt
- Ratio Of All Listed and Qualifying (i.e. at least 5-year term) Debt to Equity Ranges was calculated in two ways
  - The straight debt to equity ratio ranges from 1% to 95%
  - When the qualifying debt is included in the denominator of ratio, the range is 1% to 48% (7 > 3%) and 40%
- Chart 3 shows the average ratio of debt to be at least 1:1
- Chart 4 shows the average ratio of debt to be at least 1:1

XXX / AXXX

- Test 3 generally considered most favorable
  - Uses economic reserve approved by regulator on captives
  - Uses factor approach as proxy for companies not modeling
- Test 1 factor for XXX considered somewhat reasonable
- Test 1 factor for AXXX less desired but at least recognizes reserve likely overstated
- Test 2 not able to be completed by many companies due to lack of data (would require estimations);
- Test 4-Despite some negative feedback on Test 1 factor approach, only 5 utilized a different factor, and none pushed it as being right for rest of industry
- Test 5-Only 5 companies provided (GAAP or GAAP based)
XXX / AXXX Chart

- Due to data availability, only tests 1 and 3 are shown.

Scalars

- 22 Volunteers Reported Insurance Entities Located in Non-U.S. Jurisdictions > 1% of Available Capital. The range was from 1.9% to 83.8%
  - 13 Volunteers Reported Insurance Entities Located in Non-U.S. Jurisdictions > 10% of Available Capital (9 reported > 30%)
  - 4 scaling methods were tested – 2 at RBC Trend Test Level (300% x ACL) and 2 at RBC CAL
- Over 90% of entities (as measured by available capital) were mapped to named entity category. Remainder were mapped to Region A, B, etc.
  - Top Missing Countries (in order of AC): Barbados, Thailand, New Zealand, Indonesia, Cayman, Vietnam, Brazil
- Some of these regimes do not have req’d capital; in such cases suggestion made to set “calc capital” = “available capital”

NOTE: One suggestion to use Group Specific (Rather than U.S Industry) Average RBC Ratio and Excess Ratio compared to Jurisdiction Ratios to Scale

Scalar Chart

- Chart above shows impact of scalar options for all volunteers and the subset that are likely IAGZ's.
- Main driver of the differences is calibration level: Premise 1 and Premise 2 are at “Trend Test” level (i.e. 100% of ACL) while Premise 3 and Premise 4 are at Company Action Level (i.e. 200% of ACL)
- Likely US ‘Internationaly Active Insurance Groups’ are actually less sensitive, on average, to scalers than other volunteers. This is mostly due to inclusion of non-US domiciled insurers in the sample.

Summary of Different Options

- Chart above includes impact on Base GCC Ratio for all types of companies of different options
### Other Input Provided

- Consider Materiality Threshold for Schedule BA Non-financial Affiliates
- Do Not De-stack Non-insurance / Non-financial entities from RBC Filers
- RBC Equity Charges are Too High for Non-insurance / Non-financial Affiliates Outside the Defined Insurance Group.
- Consider Other Options for Non-RBC Filing U.S. Insurers
- Consider a capital charge on Des-stacked Hold Cos material positive values (Due to investment risk or holding of significant intangible assets)

### Template Revisions Since Version 2

- Fixes / Changes to address data quality:
  - Added separate row to 'Calc.2' to allow adjustment to calculated capital due to permitted / prescribed practices
  - Several adjustments to fill in missing data: used ‘Revenue’ as proxy for ‘Revenue during year of greatest loss’ and ‘Average 3 yr. Revenue; ‘Adj Carrying Value’ for Equity and BACV, etc.
  - Any capital instrument with blank/error in maturity date was assumed to be included
- Suggested improvements:
  - Req’d capital should be entered Company Action Level and then multiplied by 1.5 in the template
The Mortgage Guaranty Insurance (E) Working Group of the Financial Condition (E) Committee met in Austin, TX, Dec. 8, 2019. The following Working Group members participated: Kevin Conley, Chair and Rick Kohan (NC); Kurt Regner (AZ); Virginia Christy (FL); John Rehagen (MO); Joe DiMemmo and Melissa Greiner (PA); Miriam Fisk (TX); and Amy Malm (WI).

1. Exposed the Mortgage Guaranty Capital Model

Mr. Conley indicated that the goal of the mortgage guaranty capital model is to construct a counter-cyclical model similar to risk-based capital (RBC). Further, he indicated that the capital model is intended to help the state insurance regulator understand the relative capital position and strength of the mortgage insurer. He indicated that in late 2017, Milliman was brought on to audit the original work conducted by Oliver Wyman to determine if anything could be salvaged. He stated that by the summer of 2018, the Working Group moved ahead and asked Milliman to develop a new capital model. He commented that the Working Group asked Milliman to utilize the Oliver Wyman data set in order to summarize the data and drop it into an excel format so that North Carolina could follow along and build the capital model block by block, allowing for continuous state insurance regulator involvement, transparency and buy-in. He indicated that North Carolina initiated a lot of collaboration with Milliman to get to this point in the development process. He commented that he believes that the capital model predicts ultimate capital losses accurately on a book year and accurately across numerous years as determined through a testing process. He indicated that the Working Group was introduced to the concept of State Regulatory Mortgage Insurer Capital Standards (SRMICS) in September of this year. He indicated that the Working Group is implementing revisions to the capital model through the interaction with the industry trade group. Ed Hartman (Genworth Financial) commented that the original intention was to eliminate the 25:1 risk-to-capital standard and replace the contingency reserve. He stated that given the implementation of the new capital model, these two capital requirements should be evaluated to determine if they are still necessary. He stated that the industry trade group would advocate for the elimination of these two standards. He commented that there is also a request for additional blanks reporting of sensitive data from a competitive perspective and would rather not have this data available to the public but make them prescribed schedules. Mr. Conley indicated that a letter was received from the industry trade group that addresses these concerns among other observations and suggestions by the industry trade group. He stated that the Working Group has not yet had time to review the letter and discuss.

Following the update on the capital model, Mr. Regner made a motion, seconded by Mr. DiMemmo, to expose the mortgage guaranty capital model and supporting documentation for a 45-day public comment period. The motion passed unanimously.

2. Exposed Model #630 and the Mortgage Guaranty Insurance Standards Manual

Ms. Malm commented that Wisconsin has submitted revisions to both the Mortgage Guaranty Insurance Model Act (#630) and the Mortgage Guaranty Insurance Standards Manual. She stated that there are four major areas of change:

- RBC standards were removed and replaced with the SRMICS.
- Technical details, such as those related to underwriting standards, were removed from Model #630, due to the frequency of changes in best practices, and added to the Mortgage Guaranty Insurance Standards Manual.
- Reinsurance requirements were changed to make them compatible with the Credit for Reinsurance Model Act (#785).
- Dividend restrictions were rewritten to improve clarity and make them more enforceable.

Ms. Malm indicated that SRMICS establishes a capital requirement, based on a risk-modeled ultimate loss estimate, at the level of each insured mortgage loan based on the risk characteristics and economic conditions at origination. Further, she indicated that there are adjustments made at the book year level and the aggregate level of the calculation, but the foundation of the capital requirement is established at the loan level.

Ms. Malm stated that the economic factor that is applied at the individual mortgage loan level compares the rolling four-year change in state-level per capita income relative to the four-year change in state-level home prices at the time the mortgage loan was originated.
Ms. Malm stated that this is far more effective in addressing geographic concentration risk than any fixed percentage limitation on the amount of writings in any one state.

Ms. Malm commented that the SRMICS is economically countercyclical. She continued that the capital requirements rise as home prices become less affordable relative to per capita incomes, and very substantially so when there is indication of a housing market bubble. Further, she stated that this is intended to prompt mortgage insurers to become progressively more selective in their underwriting standards. Conversely, as home prices decline and become objectively more affordable relative to per capita incomes, capital requirements decline. She commented that while the viewpoints of members of this Working Group differed, a consensus was reached to maintain the 25:1 risk-to-capital ratio from the previous 1976 version of Model #630 as a floor below which the capital requirement could not go. She also stated that the reduction in capital requirements occasioned by a decline in home prices, which generally coincides with adverse economic conditions, is intended to encourage mortgage insurers to become prudently more expansive in their underwriting standards and thereby aid economic recovery.

Ms. Malm stated that the SRMICS is a capital requirement with definite consequences. Although the domiciliary commissioner is not mandated to do so, a mortgage insurer whose capital falls below its SRMICS could be placed into receivership. She stated that this would not be the first option explored in such a circumstance. She indicated that a capital plan would be prepared by the company; the domiciliary commissioner would be either conducting an examination or an intensive analysis, and there is the likelihood of a corrective order being issued by the domiciliary commissioner. She concluded that the fact of the insurer’s failure to maintain its capital above the SRMICS is by itself sufficient grounds for receivership.

Ms. Malm commented that by the time a mortgage insurer were to fail its SRMICS, the domiciliary commissioner should have assembled a team to assist insurance department staff in the assessment of the company’s financial condition, risk exposures, and remediation plans, so that the company’s financial condition is either restored or there can be an orderly run-off, whether that is with or without a receivership proceeding. She stated that given the lead times required under responsible government contracting practices, Model #630 authorizes the domiciliary commissioner to retain consultants once the ratio of total adjusted capital to SRMICS is 125% or less. She indicated that consultants could also be retained by the domiciliary commissioner if an examination or investigation has indicated material deficiencies in underwriting procedures or in the Mortgage Guaranty Quality Control Program.

Ms. Malm commented that the SRMICS Mandatory Control Level Event, which has been set at a ratio of total adjusted capital to SRMICS of 50% or less, is where the domiciliary commissioner must take actions necessary to place the company in receivership. She stated that as with the Mandatory Control Level under the RBC structure, there is provision to allow the domiciliary commissioner to forego actions for up to one year after a SRMICS Mandatory Control Level Event if there is a reasonable expectation that the capital deficiency could be eliminated in a reasonable period of time. She countered, as a practical matter, that this would effectively require broad acceptance from commissioners throughout the U.S. She stated that given the lead times required under responsible government contracting practices, Model #630 authorizes the domiciliary commissioner to retain consultants once the ratio of total adjusted capital to SRMICS is 125% or less. She indicated that consultants could also be retained by the domiciliary commissioner if an examination or investigation has indicated material deficiencies in underwriting procedures or in the Mortgage Guaranty Quality Control Program.

Ms. Malm commented that Model #630 establishes a single capital standard, the SRMICS; but it has a dual structure for an insurer to report upon its capital adequacy. She commented that a mortgage insurer must prepare and submit an SRMICS report to its domiciliary commissioner and the NAIC on or before March 31 of each year for the immediately preceding calendar year. In addition, a mortgage insurer must prepare a detailed loan level cash flow projection based on the guidance for such reports contained in the Mortgage Guaranty Insurance Standards Manual as of each calendar-quarter-end within 90 days following the end of the calendar quarter.

Ms. Malm indicated that SRMICS is based on what have historically been the most important factors indicative of mortgage loan risk. However, the risk management unit of a mortgage insurer is constantly engaged in far more granular and specialized studies of risks and opportunities. She stated that in the course of developing a capital standard for the revisions to Model #630, parameters for a 10 year sources and uses financial projection under a very adverse stress scenario of a deep recession attained consensus. She indicated that this is merely an abstract of the overall activity and considerations occurring in the risk management unit of any mortgage insurer. She indicated that the state insurance regular maintenance of such a financial projection would ensure the availability to state insurance regulators of important company-specific information in the event of serious financial reversals. She stated that this could serve as a foundation and point of reference for other financial scenarios or to assess the effect of various risk mitigation options in the event of a SRMICS Action Level Event or a SRMICS Mandatory
Control Level Event. She closed by stating that having a set of common parameters for this financial projection would allow for comparability if adverse economic circumstances were to affect all or most of the mortgage guaranty insurance industry.

Ms. Malm indicated that there are four major revisions to the reinsurance requirements within Model #630:

- Prior regulatory approval is required for all reinsurance agreements.
- There is a limit for aggregate concentration of mortgage guaranty risk in a multiline reinsurer, which is 15% of the assuming reinsurer’s gross written premium in the prior calendar year, and its aggregate maximum loss exposure to mortgage guaranty insurance risk should not exceed 30% of its capital and surplus as of the end of the immediately preceding calendar year.
- Subterfuge in reinsurance is prohibited. Under any reinsurance agreement, the unearned premium reserve, loss reserve, and contingency reserve must be established and maintained by the original insurer or by the assuming reinsurer so that the aggregate reserves of both shall be equal to or greater than the reserves required by Section 8 - Contingency Reserves of the Model Act.
- There are specific standards for a domiciliary commissioner disapproving a reinsurance agreement.

Ms. Malm stated that the section on dividend restrictions was revised to prohibit a mortgage insurer whose total adjusted capital is below its SRMICS from paying dividends. She stated that an insurer that has made releases from its contingency reserve at any time in the preceding 12 calendar months could only pay dividends if its domiciliary commissioner does not disapprove. She indicated that this rewrite presumes that contingency reserves will remain at the same level they are now, but an insurer would be allowed to make contingency reserve withdrawals, with domiciliary commissioner approval, to the extent that aggregate contingency reserves exceed the dollar equivalent of its SRMICS.

Following the update, Ms. Malm made a motion, seconded by Mr. Regner, to expose Model #630 and the Mortgage Guaranty Insurance Standards Manual for a 45-day public comment period. The motion passed unanimously.

3. Exposed the Draft Blanks Proposal Regarding a Mortgage Guaranty Insurance Exhibit

Mr. Conley commented that in order to get a better understanding of the mortgage guaranty business, better financial reporting is needed. As result, the Working Group proposes an exhibit that collects 20 years of data triangle experience and includes risk-in-force, earned premiums, paid loss and other elements.

Following the update, Mr. DiMemmo made a motion, seconded by Ms. Malm, to expose the mortgage guaranty capital model and supporting documentation for a 45-day public comment period. The motion passed unanimously.

Having no further business, the Mortgage Guaranty Insurance (E) Working Group adjourned.
The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call Nov. 6, 2019. The following Working Group members participated: Joel Sander, Co-Chair, and Cuc Nguyen (OK); Linda Johnson, Co-Chair (WY); Cindy Hathaway (CO); Maura Welch and Joan Nakano (CT); Carolyn Morgan (FL); Mike Boutwell and Stewart Guerin (LA); Debbie Doggett (MO); Ursula Almada (NM); Cameron Piatt (OH); Greg Lathrop and Ryan Keeling (OR); Robert Rudnai (TX); Jay Sueoka (UT); and Jason Carr and Susan Baker (WA). Also participating were: Cary Cook (AZ); and Michelle Scaccia (MT).

1. **Adopted its Sept. 12 Minutes**

The Working Group met Sept. 12 and took the following action: 1) adopted proposal 2019-06, Form 12 Consent Service for Service of Process, clarifying language to include “statutory” for the reference to the home address and regulated state in addition to the state where it was organized; 2) exposed two proposals—2019-07, expansion and corporate amendment instructions, and the Form 11 biographical affidavit—for a 30-day public comment period ending Oct. 11; and 3) adopted revisions to the *Company Licensing Best Practices Handbook* (Best Practices Handbook).

Mr. Piatt made a motion, seconded by Mr. Guerin, to adopt the Working Group’s Sept. 12 minutes with the modification to include Mr. Lathrop as a participating member during the conference call (Attachment Five-A). The motion passed unanimously.

2. **Adopted Proposal 2019-05**

Mr. Sander said that proposal 2019-05 was previously exposed for a 30-day public comment period for changes to the biographical affidavit (Form 11). No comments were received during the comment period. Crystal Brown (NAIC) said that addendum pages were incorporated into the proposal as a friendly amendment to be used for additional responses that will carry over from the questions on the biographical affidavit. Ms. Brown explained that these pages were added in response to formatting constraints within the fillable portable document format (PDF) version of the form. For uniformity purposes, the addendum pages were also included in the word version of the form. Ms. Brown noted that responses included on the addendum pages should be labeled and each page signed, or pages labeled as 1 of X and the last page signed.

Gina Hudson (Liberty Mutual Insurance) asked what option should be checked in the Purpose for Completion section for a new officer or director. Ms. Brown said the annual update option would be selected. Mr. Boutwell said he had a similar question and suggested removing “Annual” and having it listed just as “Update.” Ms. Brown suggested that a Frequently Asked Questions (FAQ) document could be drafted to clarify that the “Update” option would be checked for promotions, new officers/directors, changes and annual updates. Ms. Doggett said if the affiant is a new officer or director, it would be the first time they are filing a biographical affidavit, and it would not necessarily be an update. She agreed that drafting an FAQ could clarify that. Ms. Scaccia suggested changing it to “Other Updates.” Ms. Brown suggested removing “update” and include it only as “Other” as this would capture all updates and new officer/director options. Ms. Scaccia, Ms. Doggett and Ms. Johnson agreed.

Mr. Rudnai made a motion, seconded by Mr. Lathrop, to adopt proposal 2019-05 – Biographical Affidavit (Attachment Five-B) with an effective date of Jan. 1, 2020, that included a friendly amendment to include the addendum pages, modify the “Purpose for Completion” reference from “Annual Update” to “Other,” and draft an FAQ for when the “Other” option should be selected. The motion passed unanimously.

The Working Group unanimously agreed via email to an editorial change to add the word “specify” before “purpose for completion” and move “Specify Purpose for Completion” as the heading. In addition, the Uniform Certificate of Authority Application (UCAA) will include the word “type” to make it clear to the user that a check mark is not acceptable and to include a response on the blank. Examples will be provided on the FAQs.
3. **Adopted Proposal 2019-07**

Ms. Johnson said one comment was received from Montana on proposal 2019-07 for the lines of business instructions. Montana suggested clarifying the first statement of the tracked changes to include the words “to transact” to the corporate amendment instructions so that the sentence would read: “The application must identify all lines of insurance that the Applicant Company is currently authorized to transact and specify the lines of authority to add or delete from an existing Certificate of Authority, as identified in the plan of operation.”

Ms. Doggett made a motion, seconded by Mr. Sueoka, to adopt proposal 2019-07 (Attachment Five-C) with the friendly amendment to incorporate the words “to transact” into corporate amendment instructions. The motion passed unanimously.

4. **Discussed Other Matters**

Mr. Boutwell said that Louisiana requires biographical affidavits for certain new officers or directors that are appointed or elected to a company and that it is not uncommon for an officer or director to be named as an officer or director for multiple companies within a holding company group. He said that Louisiana is receiving multiple copies of biographies for the same officer because the company has been instructed to submit separate biographies for each company that the affiant is an officer of. Mr. Boutwell said that since the information contained in the biographical affidavit is about the individual, Louisiana does not require separate biographical affidavits for each company that the affiant is an officer or director of and will allow the affiant to list multiple company names on page 1 and page 7 of the biographical affidavit. Mr. Boutwell asked if a state-specific chart could be created to list which states will allow for multiple company names to be listed on the biographical affidavit and which states require a separate biographical affidavit for each company the affiant is an officer or director of.

Ms. Brown said that the UCAA FAQ instruct that the biographical affidavit should only list one company name and that the third-party vendors have been notified that only one company name should be listed on the biographical affidavit. Mr. Boutwell said he understands the concern of having multiple companies listed on a UCAA application or a Form A filing. He said Louisiana’s concern rises from its statutorily mandated filing of biographical affidavits when a new officer or director is named because it is creating a large number of unnecessary and redundant filings of the biographical affidavits, which would be under the new category of “Other.” He said he was under the impression that Louisiana was not the only state that discourages multiple filings of the biographical affidavits under those circumstances.

Mr. Boutwell said that Louisiana’s approach for the biographical affidavit is that it is for the individual, and the information contained within the biographical affidavit is about that person, even if it is filed in conjunction with a UCAA application. Mr. Piatt asked if Louisiana defined in its statute that the UCAA forms were required. Mr. Boutwell said that administratively, Louisiana always requires the UCAA form. Mr. Piatt said that the UCAA form instructions were defined more specifically for a UCAA application and not necessarily in the scenario of changes in officers. Ms. Brown said that other changes were made to the biographical affidavit under proposal 2019-05 that specifically break out the company name, address and phone number with regard to the requirement that only one company name should be listed on each biographical affidavit and in conjunction with changes in the future on the biographical database. Ms. Brown said that the NAIC has a current chart that shows what states require an updated biographical affidavit after licensure.

Mr. Boutwell said he is not suggesting a change to the biographical affidavit form, but rather a change to the FAQ to allow for multiple company names to be listed. He asked how many states will accept a “see attached” on the officer position and company name. Ms. Scaccia suggested modifying the FAQ rather than creating a state chart. Ms. Brown said that there is an FAQ that currently states that the biographical affidavit is not to have multiple companies listed. She said that the third-party vendors also verify that only one company is listed per affidavit and that if this was a change, they would need to be notified as well. Mr. Piatt suggested that the Biographical Third-Party Review (E) Subgroup review this issue further. The Working Group agreed to have the Subgroup look into this issue further.

In regard to multiple applications being submitted to various states within a short time period, Ms. Brown asked if the states had any concerns with separate applications being submitted rather than one application submitted to all the states at the same time. Liane Birchler (Westmont Associates) said that they may submit them in separate batches based on the state’s requirements. Mr. Boutwell said he has seen this before and would prefer to see them as one filing, but if they are filed separately for business reasons, the company should make them aware of the pending applications.

Having no further business, the National Treatment and Coordination (E) Working Group adjourned.
The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call Sept. 12, 2019. The following Working Group members participated: Joel Sander, Co-Chair (OK); Linda Johnson, Co-Chair (WY); Cindy Hathaway (CO); Maura Welch and Joan Nakano (CT); Alison Sterett (FL); Stewart Guerin (LA); Debbie Doggett (MO); Victoria Baca (NM); Cameron Piatt (OH); Greg Lathrop (OR); Cressinda Bybee (PA); Robert Rudnai (TX); Jay Sueoka (UT); and Ron Pastuch (WA). Also participating was: Pat Mulvihill (KS); Carol Anderson (ID); Laurelyn Cooper (ME); and James B. Ware (VA).

1. **Reviewed its July 17 Minutes**

   Mr. Sander said that the Financial Condition (E) Committee adopted the Working Group’s July 17 minutes during the Summer National Meeting. There were no questions or concerns with the July 17 minutes.

2. **Adopted Proposal 2019-04**

   Mr. Sander said that the purpose of proposal 2019-04 was to add the word “statutory” in front of the home office address listing and to add an additional requirement for the state where the company is regulated if different from the state where the company was organized. He added that this proposal was exposed for a 30-day public comment period, and no comments were received.

   Ms. Baca made a motion, seconded by Mr. Lathrop, to adopt clarification to Form 12, Uniform Consent to Service of Process (Attachment Five-A1). The motion passed unanimously.

3. **Disposed Proposal 2019-06**

   Mr. Sander explained that when Form 8, Questionnaire was modified in 2012, several questions were moved and reworded, and during this update, a question was inadvertently deleted. It was suggested during the review of the Company Licensing Best Practices Handbook (Best Practices Handbook) updates that this question be moved and renumbered as question 31 and made as an optional question for expansion applications. He added that this proposal was exposed for a 30-day public comment period specifically asking the state to respond: 1) that this question be placed back into the questionnaire and that subpart b be optional; or 2) that this question not be placed back into the questionnaire since this information is already located in the general interrogatories of the annual statement.

   Ms. Doggett reiterated that this question has not been noticed as missing by the states in the past five years and deemed it not necessary to add back to the application since this information is provided in the annual statement. She added that the application already contains so much information and that licensing should be more risk-focused. She said if the information is necessary, states can request additional information.

   Ms. Doggett made a motion, seconded by Mr. Guerin, to dispose the proposal with no action to add the question back to the questionnaire (Attachment Five-A2). The motion passed unanimously.

4. **Received Comments on Edits to the Best Practices Handbook – Appendix D**

   Ms. Johnson summarized that this proposal was exposed separately from the Best Practices Handbook. He said the additional items added to the Form A review checklist were in response to a referral from the Financial Analysis (E) Working Group regarding caution to state insurance regulators when reviewing applications to not place reliance on parental guarantees to resolve capital issues with the insurer. No comments were submitted opposing the edits.

5. **Adopted Revisions to the Best Practices Handbook**
Ms. Johnson said that the Best Practices Handbook was exposed for a public comment period and that the proposal brought before the Working Group includes suggested edits based on the comments received. She noted that page 46 will remove the reference to the questionnaire that the Working Group agreed could be eliminated.

Mr. Lathrop made a motion, seconded by Mr. Pastuch, to adopt the revised Best Practices Handbook (Attachment Five-A3). The motion passed unanimously.

6. Exposed Proposal 2019-07 (Expansion and Corporate Amendment Instructions)

Ms. Johnson summarized the purpose of this exposure was to clarify in the instructions that Form 3, Lines of Business must include all lines where the applicant company is authorized to transact business. She added that NAIC staff have recently received inquiries asking for clarification and noted that the current wording was causing confusion.

Ms. Johnson suggested, and the Working Group agreed, to expose proposal 2019-17 for a 30-day public comment period ending Oct. 11.

7. Exposed Proposal 2019-05 (Form 11, Biographical Affidavit)

Mr. Piatt said the purpose of edits to the biographical affidavit was to: 1) identify the reason for submitting a biographical affidavit; 2) include space for multiple government identification numbers and the country of origin; and 3) provide separate fields for address information and applicant name. Jane Barr (NAIC) added that this will be the last update to this form until the electronic database is available in production. Gina Hudson (Liberty Mutual Insurance) asked when the database would be available. Ms. Barr said the projected date was 2022.

Ms. Johnson suggested, and the Working Group agree, to expose proposal 2019-05 for a 30-day public comment period ending Oct. 11.

8. Discussed Other Matters

Ms. Barr summarized a concern she received from Ms. Bybee regarding state-specific requests from expansion states when the information requested is already provided on the Uniform Certificate of Authority Application (UCAA) forms. Ms. Bybee asked if the Working Group could reach out to those states regarding uniformity and the need for additional duplicative information or meet via conference call in regulator-to-regulator session to discuss state uniformity. Ms. Doggett concurred that Missouri receives additional requests for retaliatory fee information when that information is already provided on the UCAA website.

Mr. Mulvihill asked if there were any states on the conference call with a seasoning requirement that considers the length of time that management has been overseeing the company with regards to seasoning requirements and if they would consider new management as a new company with regard to seasoning or if states are only looking at the length of time the company has been writing the line, regardless of how long the management has been in place, and would that be applicable for their conditions for waiver.

Mr. Ware said that Virginia’s seasoning requirement is an administrative policy that gives the state some leeway on the interpretation of seasoning. For this example, if the applicant had new management that would void their seasoning, the next step would be to look for affiliates in the state that would serve for a waiver of the seasoning requirement.

Ms. Anderson said that Idaho would also look at this example as a new company; its seasoning looks at five years.

Ms. Welch said that Connecticut would look at new management as a red flag and would look for affiliates. She added that seasoning is on a line-by-line basis. She said that seasoning requirements are covered in the Best Practices Handbook on page 16.

Ms. Cooper said Maine would also look at the company in this example as a new company based on new leadership of the company.
Ms. Johnson said that Wyoming statute looks at the insurer and how long it has been conducting business. She added that under other areas of review, management would be looked at, but not as a seasoning requirement.

Mr. Pastuch said that Washington’s requirement is similar to Wyoming in that its statute also looks at the length of business by the insurer by line. He added that new products would not fall under the seasoning requirement and that new management would be reviewed in other areas of the application review process.

Ms. Johnson suggested that quarterly regulator-to-regulator conference calls be scheduled to discuss issues with uniformity, applications or requirements and asked if there would be any interest from the company licensing regulators. Ms. Anderson agreed that would be useful.

Ms. Barr said a state shared an issue with an expansion application that was submitted in hard copy, and there were several noted errors on the biographical affidavits, such as old forms, missing information, signature dates, etc. Their concern was whether the other applicant states would accept the application without requesting that the applicant company resubmit a corrected form. She added that uniformity is a concern and whether the states would adhere to the application instructions and requirements. Ms. Cooper said Maine was the state that was going to send the affidavits back because they were sloppy and incomplete. Ms. Johnson said Wyoming received a similar application and that was the reason that prompted the request to meet quarterly via conference call in regulator-to-regulator session. Ms. Barr asked if she would like the first call scheduled as early as October. Ms. Cooper said that she has reached out to the company and has not heard a response.

The Working Group plans to meet Nov. 6 via conference call.

Having no further business, the National Treatment and Coordination (E) Working Group adjourned.
# National Treatment and Coordination (E) Working Group

## Company Licensing Proposal Form

<table>
<thead>
<tr>
<th>DATE:</th>
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</thead>
<tbody>
<tr>
<td>CONTACT PERSON:</td>
<td>Jane Barr</td>
</tr>
<tr>
<td>TELEPHONE:</td>
<td></td>
</tr>
<tr>
<td>EMAIL ADDRESS:</td>
<td><a href="mailto:jbarr@naic.org">jbarr@naic.org</a></td>
</tr>
<tr>
<td>ON BEHALF OF:</td>
<td>National Treatment &amp; Coordination WG</td>
</tr>
<tr>
<td>NAME:</td>
<td>Linda Johnson</td>
</tr>
<tr>
<td>TITLE:</td>
<td>Chief Examiner</td>
</tr>
<tr>
<td>AFFILIATION:</td>
<td>Wyoming Insurance Department</td>
</tr>
<tr>
<td>ADDRESS:</td>
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</tr>
</tbody>
</table>

## Agenda Item # 2019-04

**IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED**

[X] UCAA Forms  [ ] UCAA Instructions  [ X ] Enhancement to the Electronic Application Process  
[ ] Company Licensing Best Practices HB

**DESCRIPTION OF CHANGE(S)**

Insert the word “Statutory” before “Home Office Address” on page 1 of the Uniform Consent to Service of Process. Include the state where the company is regulated if different than the state where it was organized.

**REASON OR JUSTIFICATION FOR CHANGE **

This change would clarify that the address to be listed is the statutory home office address. Further clarification to include the state where the company is regulated if different than the state where it was organized.

**Additional Staff Comments:**

6/12/19-jdb NAIC staff added further clarification for companies that are organized in one state and domiciled (regulated) in another.

7-17-19-cgb NTCWG exposed proposal 2019-04 for 30-day comment period.

9/12/19-cgb No comments were received. NTCWG adopted proposal 2019-04.

---

**This section must be completed on all forms.**

©2019 National Association of Insurance Commissioners
Applicant Company Name: _____________________________ NAIC No. __________________________
FEIN: __________________________

Revised 03/15/19

"2000, 2005-2019 National Association of Insurance Commissioners 1 FORM 12

Uniform Certificate of Authority Application (UCAA)
Uniform Consent to Service of Process

_____ Original Designation _____ Amended Designation
(must be submitted directly to states)

Applicant Company Name: ____________________________________________________________________________

Previous Name (if applicable): _________________________________________________________________________

| Statutory | Home Office Address: ______________________________________________________________________________ |

City, State, Zip: ______________________________________ NAIC CoCode:__________________________________

The Applicant Company named above, organized under the laws of _______________ , and regulated under the laws of
_______________for purposes of complying with the laws of the State(s) designate hereunder relating to the holding of a
certificate of authority or the conduct of an insurance business within said State(s), pursuant to a resolution adopted by its
board of directors or other governing body, hereby irrevocably appoints the officers of the State(s) and their successors
identified in Exhibit A, or where applicable appoints the required agent so designated in Exhibit A hereunder as its attorney
in such State(s) upon whom may be served any notice, process or pleading as required by law as reflected on Exhibit A in
any action or proceeding against it in the State(s) so designated; and does hereby consent that any lawful action or proceeding
against it may be commenced in any court of competent jurisdiction and proper venue within the State(s) so designated; and
agrees that any lawful process against it which is served under this appointment shall be of the same legal force and validity
as if served on the entity directly. This appointment shall be binding upon any successor to the above named entity that
acquires the entity’s assets or assumes its liabilities by merger, consolidation or otherwise; and shall be binding as long as
there is a contract in force or liability of the entity outstanding in the State. The entity hereby waives all claims of error by
reason of such service. The entity named above agrees to submit an amended designation form upon a change in any of the
information provided on this power of attorney.

Applicant Company Officers’ Certification and Attestation

One of the two Officers (listed below) of the Applicant Company must read the following very carefully and sign:

1. I acknowledge that I am authorized to execute and am executing this document on behalf of the Applicant Company.

2. I hereby certify under penalty of perjury under the laws of the applicable jurisdictions that all of the forgoing is true
and correct, executed at ___________________.

__________________________________
Date Signature of President

__________________________________
Full Legal Name of President

__________________________________
Date Signature of Secretary

__________________________________
Full Legal Name of Secretary

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### National Treatment and Coordination (E) Working Group

#### Company Licensing Proposal Form

| CONTACT PERSON: | Jane Barr |
| TELEPHONE: | 816-783-8413 |
| EMAIL ADDRESS: | jbarr@naic.org |
| ON BEHALF OF: | NTCWG |
| NAME: |
| TITLE: |
| AFFILIATION: |
| ADDRESS: |

**DATE:** 7/2/2019  
**FOR NAIC USE ONLY**

**Agenda Item # 2019-06**  
**Year** 2019  
**DISPOSITION**

[ ] ADOPTED  
[ X ] REJECTED 9-12-19  
[ ] DEFERRED TO  
[ ] REFERRED TO OTHER NAIC GROUP  
[ X ] EXPOSED Due 8/16/19  
[ ] OTHER (SPECIFY)  

### IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED

[X ] UCAA Forms  
[X ] UCAA Instructions  
[ ] Enhancement to the Electronic Application Process  
[ ] Company Licensing Best Practices HB

#### Forms:

[ ] Form 1 – Checklist  
[ ] Form 2 - Application  
[ ] Form 3 – Lines of Business  
[ ] Form 6- Certificate of Compliance  
[ ] Form 7 – Certificate of Deposit  
[ X ] Form 8 - Questionnaire  
[ ] Form 8C- Corporate Amendment Questionnaire  
[ ] Form 11-Biographical Affidavit  
[ ] Form 12-Uniform Consent to Service of Process  
[ ] Form 13- ProForma  
[ ] Form 14- Change of Address/Contact Notification  
[ ] Form 15 – Affidavit of Lost C of A  
[ ] Form 16 – Voluntary Dissolution  
[ ] Form 17 – Statement of Withdrawal

### DESCRIPTION OF CHANGE(S)

To clarify that the following question must be answered for Expansion applications and Sub-section “B” would be optional, per the state’s discretion.

**31. Does the Applicant Company use a third party (affiliated or unaffiliated) to manage the Applicant Company’s investments?**

Choose one:

- [ ] Yes  
- [ ] No

A. If yes, provide detailed information as to the compensation that will be paid for management of the Applicant Company’s investments.

B. Provide copies of the Applicant Company’s investment management agreements and any investment guidelines.

### REASON OR JUSTIFICATION FOR CHANGE **

In 2010 some Form 8 questions were revised, combined and/or reorganized. During these revisions Q23 (worded above as Q31) was inadvertently removed from the questionnaire. Discussions during the July 17 conference call clarified that this information is located in the Annual Statement Interrogatories and may not be necessary for inclusion on the Questionnaire.

### Additional Staff Comments:

5/15/19: Discussions during the May 15, 2019 conference call suggests this question would be better located after Q30, as optional for expansion (electronic) applications. Questions 1-30 are required to be completed for both Primary and Expansion applications.
7/17/2019-Discussions during the July 17, 2019 conference call suggest that this question does NOT need to be placed back on the Questionnaire or if it is placed back on the Questionnaire then sub-section “B” could be at the state’s discretion if copies are required. This proposal will be exposed for a 30-day comment period asking which option to proceed with. 9/12/19 cgb – NTCWG agreed to dispose of proposal 2019-06 with no action to add the question back to the questionnaire.

** This section must be completed on all forms.  
Revised 01-2019
Uniform Certificate of Authority Application

QUESTIONNAIRE

Directions: Each "Yes" or "No" question is to be answered by marking an "X" in the appropriate space. All questions should be answered. If the Applicant Company denotes a question as “Not Applicable” (N/A) an explanation must be provided. Other answers and additional explanations or details may be provided in writing attached to the questionnaire. Please complete this form and file it with the Applicant Company's application for a Certificate of Authority.

1. I hold the position(s) of ____________________________________________________ with the Applicant Company.

30. Does the Applicant Company pay, directly or indirectly, any commission to any officer, director, actuary, medical director or any other physician charged with the duty of examining risks or applications?
   Yes_____ No _____ Not Applicable____
   If yes, provide the details in writing and attach to the Questionnaire.

31. Does the Applicant Company use a third party (affiliated or unaffiliated) to manage the Applicant Company’s investments?
   Yes____ No____
   A. If yes, provide detailed information as to the compensation that will be paid for management of the Applicant Company’s investments.
   B. Provide copies of the Applicant Company’s investment management agreements and any investment guidelines.

The following questions are to be completed only if the Applicant Company is redomesticating to another state.

32. Does the Applicant Company have any permitted practices allowed by its current state of domicile?
   Yes_____ No _____ Not Applicable____
   If yes, provide the details in writing and attach a copy of the state of domicile’s approval to the Questionnaire.

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National Treatment and Coordination (E) Working Group
Company Licensing Proposal Form

DATE: 4/22/2019
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Agenda Item # 2019-03
Year 2019

DISPOSITION
[ ] ADOPTED
[ ] REJECTED
[ ] DEFERRED TO
[ ] REFERRED TO OTHER NAIC GROUP
[ ] EXPOSED June 14, 2019
[ ] OTHER (SPECIFY)

IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED
[ ] UCAA Forms [ ] UCAA Instructions [ ] Enhancement to the Electronic Application Process
[ X ] Company Licensing Best Practices HB

Forms:
[ ] Form 1 – Checklist [ ] Form 2 - Application [ ] Form 3 – Lines of Business
[ ] Form 6- Certificate of Compliance [ ] Form 7 – Certificate of Deposit [ ] Form 8 - Questionnaire
[ ] Form 8C- Corporate Amendment Questionnaire [ ] Form 11-Biographical Affidavit [ ] Form 12-Uniform Consent to Service of Process
[ ] Form 13- ProForma [ ] Form 14- Change of Address/Contact Notification
[ ] Form 15 – Affidavit of Lost C of A [ ] Form 16 – Voluntary Dissolution [ ] Form 17 – Statement of Withdrawal

DESCRIPTION OF CHANGE(S)
Updates to the Best Practices included changes for the Risk-Based prioritization to align with the Financial Analysis Handbook. Updates to align with recent changes to the Part D Organization Licensing Standards; Updates to include information for states that have adopted the NAIC Insurance Data Security Model Law (#668). Updates to the biographical affidavit review process, addition of corporate amendment change type Statement of Withdrawal/Complete Surrender and the addition of Appendix E – Speed to Market.

REASON OR JUSTIFICATION FOR CHANGE **
The Company Licensing Best Practices Handbook was developed in 2005 and has only been updated for changes to the UCAA without the entire handbook being evaluated for content and updates to outside sources.

Additional Staff Comments:
5/15/2019 jdb- The Working Group agreed to expose the Best Practices for a 30-day comment period.
7/15/19 jdb – The Working Group exposed Appendix D for a 30-day comment period.
9-12-19 cgb – The Working Group received comments on Appendix D and adopted the revisions to the BP Handbook.

** This section must be completed on all forms.

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NAIC Company Licensing Best Practices Handbook

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Introduction
BACKGROUND

In conjunction with the NAIC, the various states, as a part of the former Accelerated Licensing Evaluation Review Technique (ALERT) Subgroup, have worked toward the goal of streamlining and achieving uniformity in the insurer licensing process. To that end, a Uniform Certificate of Authority Application (UCAA) was developed by the former Accelerated Licensing Evaluation Review Technique (ALERT) Subgroup and is currently in use. However, the implementation of UCAA requirements and the standards and procedures involved in the reviewing of applications has not proven to be consistent among the members of the NAIC.

The objective of the *Company Licensing Best Practices Handbook* (Best Practices Handbook) is to provide a framework that, while not preempting a state’s authority, promotes consistent decisions while reviewing the standardized UCAA and improves the efficiency of the review process. This Best Practices Handbook is not intended to constitute a comprehensive company licensing procedures manual. Each state must assess its ability, within the confines of existing statutes, regulations and resource constraints, to implement the recommendations contained herein.

UCAA INSTRUCTIONS vs. BEST PRACTICES HANDBOOK

The ALERT Subgroup performed a monumental task in bringing order to the various state rules, regulations, requirements and forms facing an applicant. That work is thoroughly documented on the UCAA website. This Best Practices Handbook contains numerous references to the forms and processes described on the UCAA website.

This Best Practices Handbook deals primarily with the qualitative processes involved in reviewing an application. The concepts and recommended processes and procedures described herein were developed through interviews with various state regulatory personnel involved in the company licensing process and a compilation of the observed best practices. During those interviews several “best practices” concepts became evident. They were:

- **LICENSING PROCESSES:** The company licensing function can be viewed in light of its component processes:
  - Administrative Filings: Receipt and processing of certain corporate documents that are needed to establish a corporate existence, but are not subject to qualitative review.
  - Analysis of Current Financial Condition: Documentation of the current operating condition of the company.
  - Analysis of Business Plan: Review of the company’s explanation for the proposed expansion and/or change in its operations and how those changes will affect the company’s operating condition.
NAIC Company Licensing Best Practices Handbook

Introduction

- INTERSTATE COMMUNICATION: The licensing process in many states involved the re-determination of the current financial condition of the company. This information should already be known by the domestic state and can be conveyed to the applicant state. The effort saved by not reanalyzing company condition in the company license process can be used to communicate financial condition information to other states when requested.

- PRIORITIZATION FRAMEWORK: Several states incorporated more or less sophisticated prioritization systems as a part of the licensing function. The scope of the financial review may be adjusted based upon the prioritization of the insurer. The resources saved by reducing effort in reviewing companies on the top and bottom of the scale can be better spent performing a more thorough review of those companies where the effect of an expansion or amendment of the business plan is not so easily evident.

In addition to gathering information necessary to evaluate an applicant, the UCAA was developed to incorporate the majority of state’s rules, regulations and requirements relative to company licensing. The goals of this Best Practices Handbook are uniformity and efficiency in the review of company licensing applications. In some instances, those goals conflict with filing requirements noted in the UCAA. Therefore, it is acknowledged that there may be inconsistencies between this Best Practices Handbook and any specific state’s filing requirements.

DESCRIPTION OF THE BEST PRACTICES HANDBOOK

The Company Licensing Function
This chapter provides an overview of the role of the company licensing function as the initial step in state regulatory oversight. The goals of the company licensing function and the risk-based approach to achieving them are described.

Interstate Communication
This chapter discusses a framework for communication and cooperation between an applicant state, the state of domicile and other stakeholder states (if any).

Best Practices

Conceptual Framework
This chapter presents a risk-based framework for the processes involved in analyzing the application.

Review of Forms
This chapter presents a summation of best practices compiled as guidance relative to the analysis and decision making regarding the application.
NAIC Company Licensing Best Practices Handbook

Introduction

Appendix A – The Uniform Certificate of Authority Application (UCAA)
This appendix presents a brief overview of the UCAA and how it is referenced in the “Best Practices: Application Review” chapter.

Appendix B – Use of Electronic Documents
This appendix presents a description of UCAA contents that are available in electronic media.

Appendix C – Review of Electronic Application Coordination and Processing (REACAP)
This appendix presents the criteria for requesting the National Treatment and Coordination (E) Working Group to monitor the timing, technology and substantive issues regarding the insurers’ electronic UCAA filings.

Appendix D – Form A Review Best Practices
This appendix presents a guide for regulatory review and analysis of Form A acquisitions, recognizing that this list may not be comprehensive and not all items will apply to every acquisition.

Appendix E – Speed to Market
This appendix presents the criteria for requesting the National Treatment and Coordination (E) Working Group to monitor the timing and coordination of expansion applications for insurers in good standing with their state of domicile (lead state).
The Company Licensing Function
The company licensing function stands at the threshold of an insurance department’s oversight of an applicant’s future operations within the state. The function encompasses virtually all areas of regulatory oversight, from solvency surveillance to market conduct, to rates and forms and producers’ licensing — and not only within the applicant state insurance department, but also within the insurance department of the domiciliary state. The most difficult stages of regulatory oversight occur at the very beginning and at the very end of an insurer’s regulatory life cycle. Never is a more comprehensive understanding of an insurer and its potential for success more critical than when a regulator must grant authority to conduct business and in those even more difficult circumstances when the regulator must withdraw the authority to conduct business.

In developing this Handbook, a great deal of consideration was given to the assessment of risk in the review of a company license application. All of the current NAIC guidance provided to insurance department personnel relative to insurance company surveillance deals with the assessment of risk present in the individual insurers comprising the population to be regulated. That risk, the risk of financial failure or risk of marketplace improprieties is to be measured and graded. Current guidance defines procedures in such a manner that regulators maximize the effectiveness of the surveillance process by concentrating on the areas, or companies, of greatest risk. This approach by its nature, forgoes the idea of “zero” risk. The cost of obtaining zero risk is prohibitive and the effort expended in its pursuit is better spent in other endeavors.

Similarly, regulators involved in reviewing company licensing applications must adhere to the same goals. The review of the company licensing application should be structured so that applicants’ risks of financial failure or marketplace impropriety are identified and addressed. Procedures exist in the Financial Analysis Handbook, the Financial Condition Examiners Handbook and the Market Regulation Handbook for monitoring companies subsequent to admission. Company licensing personnel should concentrate on those issues that indicate an applicant may harm the citizens of their state, either through financial failure or marketplace improprieties, as a result of granting or amending a certificate of authority.

Therefore, the procedures described herein represent a departure from the conventional approach to the review of a company license application. In some instances, it is recommended that documents submitted with an application should be subject to minimal review. Those documents, although necessary to establish an applicant as a legal entity, do not provide significant insight into the risk profile of a company. By accepting the risk of a minor compliance violation (that, after all, will still be the subject of ongoing monitoring), the regulator will maximize the effectiveness of their department and better fulfill their responsibilities to the citizens of their state.
Interstate Communication
INITIATING INTERSTATE COMMUNICATION

The expansion and/or alteration of a company’s operations are of equal importance to the regulators in both the expansion states and the domestic state. The results of unsuccessful expansion plans cut across state boundaries — a troubled company is “troubled” in all states. It follows that the analysis of a company’s condition and business plan should be accomplished through a coordinated effort. Ultimately, each state operates under its own statutory authority and is responsible for the protection of its own policyholders. Interstate communication and cooperation is not intended to relinquish the authority of any state or to disadvantage any state; rather, it is intended to facilitate efficiencies that will be achieved when applicant states coordinate the company licensing process with all states involved, including, most importantly, the domestic state.

The NAIC Financial Regulation Standards and Accreditation Program requires states to provide for the sharing of otherwise confidential information, administrative or judicial orders, or other action, with other state regulatory officials, provided that those officials are required under their law to maintain its confidentiality. The NAIC “Master Information Sharing and Confidentiality Agreement” allows signatory states to share confidential information with other signatory states. As of this writing, 50 states and the District of Columbia have signed the agreement. Current information can be accessed through the NAIC I-SITE application under StateNet or https://i-site-state.naic.org/cgi-bin/statenet.

Prior to submitting an application in a foreign state, the insurer should inform the state of domicile of its plans in the foreign state(s). If the state of domicile holds important concerns regarding the applicant’s plans, such concerns should be communicated to the senior financial regulator in the applicant state(s). Similarly, after receipt and an initial review of an application, the applicant state may contact the senior financial regulator in the domiciliary state to open a dialogue regarding the applicant. Preferably, this communication should occur as early in the application process as possible to allow consideration of the information within an appropriate timeframe. The dialogue should include:

- Is the Applicant Company concurrently applying to additional states?
  - If so, contact other states to coordinate information available from the domiciliary state.
  - If so, and the applicant is part of a holding company structure, contact the “Lead State” to coordinate information sharing.
  - If the Applicant Company does the majority of its business in a state other than the domiciliary state, the Applicant Company and domiciliary states may consider communication with a “Key State” as discussed below. However, even if a key state is identified, the domiciliary state will remain the primary regulator.

- Domiciliary (and key) state’s analysis of current condition of the applicant.
  - Has the domiciliary state performed a risk analysis of the applicant?
  - If the risk analysis performed by the domiciliary state is understandable to the applicant state and is substantially similar to the prioritization system defined in this Handbook, the
applicant state should consider accepting the analysis in lieu of performing an additional financial analysis of the Applicant Company.

- Analysis of Business Plan by Applicant State(s)
  - Are the operations described in the business plan consistent with the demonstrated experience and expertise of the Applicant Company?
  - Does the business plan have the potential to significantly alter the condition of the Applicant Company?
  - After consideration of the Applicant Company’s condition, business plan and any other relevant information, has the domiciliary state transmitted any information having a bearing on the application?

LEAD STATE

Lead state(s) or designee assumes the role of coordinator and communication facilitator. The lead state(s) serves as the facilitator and central point of contact for purposes of gathering and distributing information to all regulators involved.

KEY STATE

In some instances other states may have information pertinent to the application. In those instances, a “Key State” may be considered for consultation in addition to the domiciliary state. The Key State may emerge based on the state with the largest premium volume, the state of domicile of the parent of the holding company, or other reasons. The “Key State” should not assume the responsibilities of either the applicant state or the domiciliary state. A “Key State” should be identified solely as an additional source of information regarding the applicant.

COMMUNICATIONS AND THE DOMICILIARY STATE

As previously stated, the Applicant Company should inform the domiciliary state of its plans to file company licensing applications in foreign states. In addition, communications between the applicant state(s) and the insurer may contain information regarding specifics of the applicant state’s marketplace that may significantly impact the insurer’s proposed business plan. The use of the electronic UCAA provides a mechanism for tracking such correspondence. This will allow the domiciliary state to remain cognizant of these communications and the relevant information, while the decision on the expansion remains with the expansion state.
CHAPTER OVERVIEW

This chapter will discuss a framework for the process flows that occur within the Company Licensing Function. The significant procedures within those process flows are discussed in detail, although guidance on the review of specific UCAA forms is contained in the “Best Practices: Application Review” chapter.

COMPONENTS OF THE COMPANY LICENSING FUNCTION

Depending on the type of application, the processing of a company license application can be broken down into one or more of the following components as shown in the graphic below.

Administrative
- Receipt of Application
- Document Completeness of Application
- Prepare Application Sections
- Distribute Application Sections
- File Administrative Documents

Analytical Review
- Receive Application
- Contact Domiciliary State
- Analyze Current Condition (incl. Manager)
- Analyze Business Plan

Make Recommendation

Prepare Amendment C of A or Letter of Denial

Coordination: This component begins with the receipt and recording of an application and its supporting documentation. The application should be reviewed to determine that a response exists for all inquiries. Supporting documents should then be reviewed to determine that they are, in fact, responsive to the UCAA requirement. The degree of the completeness and/or responsiveness of the application must be assessed to determine if processing of the application can proceed without further input from the Applicant Company. It is recommended that the state issue a letter to the Applicant Company acknowledging receipt of the application.
Timeliness: If processing can commence, an “application coordinator” should employ a spreadsheet, database, TeamMate file, or other mechanism (if the application was not received via the NAIC electronic UCAA utility) to record the assignment of application review responsibilities and the progress of the review against the Department or UCAA timelines:

- The Department should have a policy that establishes timing requirements for the review of applications for primary licensure of new companies and redomestications and Form A filings. If not, then the following guidelines are acceptable.
- Fourteen days to review an application for completeness.
- The goal is to notify the Applicant Company of supplemental information required from the Applicant Company within 30 days of applications. However, there may be situations where supplemental information provided requires clarification or a second review of the application requires requesting additional information.
- It should be noted, if additional information is needed to complete the review of an application, the review may also take longer to complete. Once a request for additional information has been made, the 60-day or 90-day goal is suspended until the requested information is received.
- Ninety days to process a primary application. Effective January 1, 2012, company licensing will be part of the accreditation program, Part D of the NAIC Policy Statement on Financial Regulation Standards, which provides that if a state does not have timing requirements in statute or regulation, the state will be expected to meet the 90-day goal for accreditation purposes.
- Sixty days to process all other types of applications.

It is recommended that the state send the company regular correspondence regarding the progress of the application.

Administrative Filing: This component consists of the review and filing of administrative documentation, which, while critical to the establishment of the Applicant Company as an operating business organization, is generally not subject to substantial qualitative analysis. This includes receipt of filing fees, articles of incorporation and bylaws, statutory deposits, membership in mandatory associations, consent to service of process, as well as other state-specific requirements. (See discussion of specific forms in “Best Practices: Application Review” chapter.)

Analytical Review

Analysis of Current Condition: The financial condition and management practices of the Applicant Company must be ascertained to determine they are of sufficient quality to permit the applicant to sell insurance products to the citizens of the state.

Except for a primary application, the analysis of the Applicant Company’s current condition should begin with contact to the domiciliary (and key) state as described in the “Interstate Communications” chapter. Company licensing analysts should confer with financial analysts in the domiciliary (and key) state to determine the overall operating condition of the Applicant Company based on a prioritization system and plan the scope of review activities accordingly.
Prioritization Framework

The utilization of a prioritization framework is the key to the efficient analysis of an Applicant Company’s current condition. The *Financial Analysis Handbook* suggests that domestic insurers be “prioritized” or ranked according to each insurer’s “relative stability.”

The *Financial Analysis Handbook* provides general guidance regarding the framework, but leaves the determination of specific prioritization metrics up to the domiciliary state. Tools currently available for use in reviewing the financial condition include: Insurance Regulatory Information System (IRIS) ratios, Analyst Team System results and Financial Analysis Solvency Tools (FAST). In addition to the financial review, any market conduct information available from the market analysis chief or collaborative action designee in the state’s market analysis department should be considered along with data available in the following market analysis tools and systems that are available on I-SITE: Complaints Database System (CDS), Examination Tracking System (ETS), Market Analysis Profile (MAP), Market Analysis Review System (MARS), Market Initiative Tracking System (MITS), Regulatory Information Retrieval System (RIRS), Market Conduct Annual Statement (MCAS), Producer Database (PDB), and 1033 State Decision Repository (SDR)-Data Entry Tool. The analyst should note any unusual items that translate into financial risks or indicate further review or communication is needed with the insurance department’s market analysis staff.

Other initiatives have been undertaken to more specifically define a broad-based system of prioritizing insurers based on operational practices as well as financial condition. During the development of this Handbook, it was noted that several states have developed such holistic models. The use of these models is clearly the best practice for determining the current overall condition of an insurer, and then assigning a prioritization that can be used to determine the appropriate scope of analytical review for a specific application. However, in each case, the specifics of the model are considered confidential.

Therefore, for the purpose of this Handbook, a prioritization framework will be discussed, and the general characteristics of each prioritization category will be described.

Use of Prioritization Framework in Application Review

The use of prioritization in the application review process carries the same risks and benefits inherent in any prioritization evaluation system. The goal of all such systems are to eschew the costly practice of reducing risk to zero, and instead to define a level of acceptable risk. The use of prioritization means that, in some instances, all the documents included with an application will not be reviewed in detail. However, the risk of not reviewing those documents in detail is mitigated by a company’s low risk of financial failure and by providing additional time to review the company’s business plan.
During the development of this Handbook, almost all company licensing personnel interviewed indicated that they were able to quickly, even if only informally, identify companies whose applications were likely to be approved. States that utilized prioritization systems were able to more formally document those applicants. Through the use of a formal prioritization system, company licensing analysts can reduce the scope of their review of strong applicants, thus conserving effort better served in the review of marginal applicants. The following guidance provides a recommended scope of review for each prioritization category.

**Priority 1**

Insurers included in Priority 1 are considered troubled and subject to comprehensive annual and quarterly analysis procedures, detailed considerations outlined with the *Troubled Insurance Company Handbook*, and a significantly elevated level of ongoing regulatory monitoring and oversight. Upon designating an insurer as a Priority 1, the domestic state should follow required procedures for troubled companies in communicating with other state insurance regulators. Insurers prioritized at this level would also be considered priority insurers for accreditation timeliness purposes and should generally be analyzed ahead of Priority 2, Priority 3, and Priority 4 insurers.

Insurers in this group generally are not capable of withstanding even moderate business fluctuations. There may be significant noncompliance with laws and regulations. Risk-management practices are generally unacceptable relative to the insurer’s size, complexity and risk profile. Corporate and group structures or framework may be of a nature that is not conductive to effective regulation. Close regulatory attention is required, which means formal action is necessary in most cases to address the problems. Insurers in this group pose a risk to the state guaranty fund. Failure of the insurer is probable if the problems and weaknesses are not satisfactorily addressed and resolved. Priority 1 companies should not be considered for expansion.

**Priority 2**

Insurers in Priority 2 are – high-priority insurers that are not yet considered troubled but may become so if recent trends or unfavorable metrics are not addressed. High-priority insurers may also include those subject to heightened monitoring for reasons other than financial solvency risks, as determined by the department. Insurers prioritized at this level may be subject to full quarterly analysis procedures and are subject to comprehensive annual analysis and an elevated level of ongoing regulatory monitoring and oversight. Insurers prioritized at this level would also be considered priority insurers for accreditation timeliness purposes and should generally be analyzed ahead of Priority 3 and Priority 4 insurers. Priority 2 companies are generally not considered good candidates for expansion. However, senior-level department personnel should contact their counterparts in the domiciliary state to determine if there is any reason to perform further analysis in consideration of approval of the application. In certain unique circumstances, based on the line of business offered and the market conditions in the expansion state, it may be appropriate to pursue licensure under heavily monitored criteria.
These insurers, or their holding company groups, have a combination of moderate to severe weaknesses that may exhibit unsafe and unsound practices or conditions. The insurer is moving toward meeting criteria indicative that it is operating in a manner that is financially hazardous to policyholders and/or the public. They have serious financial or managerial deficiencies that result in unsatisfactory performance and problems are not being satisfactorily addressed or resolved by the board of directors and management.

Priority 3

Insurers in Priority 3 are considered moderate priority insurers that indicate some need for additional monitoring. Insurers prioritized at this level should be subject to comprehensive annual analysis procedures, should generally be analyzed ahead of Priority 4 insurers, and may be subject to an enhanced level of ongoing regulatory monitoring and oversight.

Priority 3 companies present the greatest challenge to the company licensing analyst. They are neither an obvious candidate for approval nor for denial, based on their current overall condition. Insurers in Priority 3 appear fundamentally sound, but may exhibit some degree of regulatory concern in one or more areas. These insurers and their parent and other members of the holding company group are relatively stable, could withstand moderate business fluctuations, and are in substantial compliance with laws and regulations. While the overall, risk-management practices are satisfactory relative to the insurer’s size, complexity, and risk profile, these companies exhibit certain notable adverse risk characteristics. There are no current material supervisory concerns and, as a result, the regulatory response is informal and limited. The risk to policyholders and/or guaranty funds is currently viewed as remote, however significant factors exist that may result in financial stress in the longer term.

In this instance the company licensing analyst should re-analyze the financial information provided with the application in order to better understand the exact nature of the Applicant Company’s weaknesses. However, it is important that communication between senior-level department personnel in the domiciliary (and key) state remains active. The domiciliary state can provide insight into the resolution of adverse financial or market conduct examination findings and the extent to which the company has remediated the deficiencies. Once the analyst has gained comfort with his/her knowledge of the Applicant Company’s current operational condition, the business plan should be diligently reviewed in order to determine whether:

- The Applicant Company has a demonstrated history (e.g., five years) with the lines of business for which it is applying.
  - If the Applicant Company is applying for lines of business for which it has less than five years of history, the analyst should review the business plan to identify, and/or request additional information regarding, key managerial personnel responsible for administering the new lines of business.
- Key personnel have been in place for a sufficient period of time to demonstrate their insurance management expertise.
- The scope of the expanded operations is not imprudent relative to the financial strength of the Applicant Company, its parent and other members of the holding company group. If the
expanded operations are in new lines of business, more stringent standards should be applied when assessing the potential effect of expanded operations on the condition of the Applicant Company.

- The domiciliary state noted any operational or compliance deficiencies in lines of business similar to those planned for the expanded operations.

**Priority 4**

Priority 4 are lower priority insurers that do not currently indicate a need for additional monitoring. These insurers should be subject to a basic level of regulatory monitoring and oversight, including annual analysis.

For these companies, the analysts should consider foregoing an in-depth review of information relevant to the Applicant Company’s current operating condition (e.g., financial documents included with public records package or the holding company statements). Rather, the company licensing analyst should focus on the quality and assumptions of the business plan to determine whether:

- The Applicant Company has a demonstrated history (e.g., three years) with the lines of business for which it is applying.
  - If the Applicant Company is applying for lines of business for which it has less than three years of history, the analyst should review the business plan to identify, and/or request additional information regarding, key managerial personnel responsible for administering the new lines of business.
- Key personnel have been in place for a sufficient period of time to demonstrate their insurance management expertise.
- The scope of the expanded operations is not imprudent relative to the financial strength of the company and its parent and other members of the holding company group.

**Analysis of Business Plan**

The Applicant Company’s plan for conducting business in new jurisdictions must be evaluated to determine if the plan is consistent with the Applicant Company’s demonstrated capabilities and the state’s marketplace. Further guidance for the analysis of business plans is included in the “Best Practices: Application Review” chapter.

**Intradepartmental Communications**

In addition to communications with other jurisdictions, it is important that the company licensing coordinator convey information regarding pending applications to other divisions within the insurance department. The licensing of a new entity or expansion of authority will impact other divisions once the new or amended certificate of authority is issued.

Actuarial: This section should understand the business plan filed with an application in order to adequately monitor any future reserving issues or other actuarial concerns.
Financial Analysis: Once a new or amended certificate of authority has been issued the financial analysis division of the insurance department will assume monitoring responsibilities. The financial analysis section should understand the business plan filed with an application in order to monitor future results against that plan.

Market Conduct and/or Analysis (including consumer complaints and enforcement): The Market Conduct/Analysis section should understand the business plan to anticipate any issues and to monitor future results against the plan.

Policy Approval: Although policy forms are not a required component of the company license application, they are one of the most significant indicators of an Applicant Company’s actual business intentions. The financial analysis section should coordinate with the policy approval section to monitor policy filings from the newly licensed company to determine that they are consistent with the filed business plan.
Producer Licensing: Similar to policy approval, the appointment of producers must be consistent with the scope of the new company’s business plan. The financial analysis section should similarly coordinate with the producer licensing section to monitor producer appointments by the new company.

Timeliness of Review

Perhaps no issue surrounding the company licensing process creates greater interest than that of timeliness. The UCAA website contains suggested guidance for the processing of various types of applications, including interim timelines. Although regulators should not sacrifice an appropriate level of review solely in the pursuit of expediency, it is imperative that every effort be made to adhere to the processing times recommended on the UCAA website when reviewing Priority 4 companies:

- Fourteen days to review an application for completeness.
- The goal is to notify the company of supplemental information required from the applicant within 30 days of applications. However, there may be situations where supplemental information provided requires clarification or a second review of the application requires requesting additional information.
- It should be noted, if additional information is needed to complete the review of an application, the review may also take longer to complete. Once a request for additional information has been made, the 60-day or 90-day goal is suspended until the requested information is received.
- Ninety days to process a primary application.
- Sixty days to process all other types of applications.
- Complexities involved with the review of Priority 2 and Priority 3 companies may adversely affect a state’s ability to meet these timelines recommendations. Notwithstanding these complexities, the regulator should make all reasonable efforts to maintain timely communication with the applicant companies.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Introduction

In this chapter, recommendations for the review of each type of application are presented. The recommendations are based on the concepts of prioritization framework and interstate communications presented in the previous sections of this Handbook.

Within each application type, the review recommendations are presented in the following format:

- Application Type:
  - Chart Illustrating the UCAA sections of the application.
  - Recommendations for reviewing the “Administrative Filings” sections of an application.
  - Recommendations for reviewing the “Analysis of Current Condition” sections of an application.
    - Depending on the type of application, there may be subsections based on the risk profile of the Applicant Company.
  - Recommendations for reviewing the “Analysis of Business Plan” sections of an application.
    - Depending on the type of application, there may be subsections based on the risk profile of the Applicant Company.

Confidentiality and Safeguarding of Biographical Affidavit Information

The insurance department shall implement a written information security program that includes administrative, technical, and physical safeguards to protect the security and confidentiality of the biographical affidavit, fingerprint card (where applicable), independent third-party background report, and all associated notes, emails or work papers (collectively referred to hereafter as “documents or records”).

Given: (i) the size and complexity of the insurance department and the nature and scope of its activities; (ii) the variations in state laws; and (iii) the sensitive and personal information it maintains, the insurance department is referred to the NAIC Standards for Safeguarding Customer Information Model Regulation (#673) for further guidance with respect to an information security program. In addition, the insurance department should be aware that there may be other state-specific and federal laws and regulations regarding record retention and confidentiality, including the federal Fair Credit Reporting Act and the Federal Trade Commission regulations.

The following actions and procedures are recommended to the insurance department in implementing a written information security program.

Administrative Safeguards

- Identify reasonably foreseeable internal or external threats, assess the risk of harm from these threats, and develop and implement written procedures and policies that will safeguard the information and minimize the threats.

- Annually assess the sufficiency of current practices and adjust the written program as necessary to adapt to new threats and technologies.
Train employees on the policies and procedures developed to safeguard documents or records and personal information contained therein. Periodically review the training process and refresh employees on old and new processes. Provide training and training materials relevant to the safeguards to employees outside the company licensing division that may handle a public records request for the documents or records. Educate employees on any state enforcement rules and/or policies regarding their failure to abide by the training they receive.

Develop procedures to search for Social Security numbers imbedded in licensure or registration numbers provided. Licenses or registrations from prior years may have included Social Security numbers within the number.

Develop procedures and policies specific to the security of laptops and other portable devices that may contain personal information from the documents or records.

Prohibit the sale of personal information, including names and addresses of any affiant for any purpose.

Exercise appropriate due diligence in selecting service providers, and require thorough appropriate confidentiality agreements, that they implement measures to meet the relevant objectives of the security program.

Technical Safeguards

Maintain personal information in a secure manner that is appropriate to the size and complexity of the insurance department and the nature and scope of its activities.

Transmit documents or records and personal information between the third-party vendor and insurance department in a secure manner.

Physical Safeguards

Develop policies and procedures to address retention and destruction of paper and electronic documents or records.

Place access controls to the documents or records, whether in paper or electronic form, only to those individuals that need to know the information contained therein to complete a company’s review for licensure or to investigate a response to an open records or Freedom of Information Act (FOIA) request.

Keep the documents or records out of public view and secure when not being utilized.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

- Maintain and secure all electronic and paper documents or records in accordance with state laws or record retention policies. The insurance department must comply with its written information security program when responding to the public records request for biographical information that is outdated or for which the authorization has been revoked by the affiant. In addition, the Department should include a statement with the documents that notifies the individual requesting disclosure through a public records request that the information contained therein may be outdated. (According to the UCAA Instructions, a biographical affidavit is only good for 6 months after executed, and an affiant may revoke authorization at any time.)

- Destroy documents or records in a manner that renders the information unreadable and undecipherable; document and maintain those procedures for secure disposal of Nonpublic information.

- Develop standards for notifying the affiant and affiant’s employer in the event of a security breach.

- Store the electronic and hardcopies of these documents or records in a secure manner. (Examples include storage in a cabinet or room accessible only by individuals that need the information for permitted purposes.)

For the states that have enacted the NAIC Insurance Data Security Model Law (#668) refer to the guidance provided in the Financial Examiners Handbook.
Primary Application

A Primary Application is to be used for domestic insurers. See Appendix A for the Primary Application Review Checklist.

The classification of the application instruction items is illustrated in the following chart:

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<th>Application Instruction Items</th>
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<td>13. NAIC Biographical Affidavits</td>
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Administrative Filing

Application Instruction Items

Item 1. Application Form and Attachments
- Form 1P “Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application.
- Form 2P “Primary Application” – The coordinator should review the form for completeness.
- Form 3 “Lines of Insurance” – Only the applied for lines will be required for a newly formed company. The entire Form 3 will be required for a redomestication.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances, the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $5,000 and are generally retaliatory.
NAIC Company Licensing Best Practices Handbook  
Best Practices: Application Review

Item 4. Statutory Deposit Requirements
- Form 7 “Certificate of Deposit” – The coordinator should review the form and compare the amount of the deposit to the state’s requirement.
- These funds are deposited with the commissioner, generally through a safekeeping or trust receipt, to be held for the benefit and protection of, and as security for, all policyholders and, in some instances, creditors of the insurer making the deposit. Additional deposits are generally required of those insurers applying to write lines of business not covered under state insurance guaranty funds (e.g., guaranty, fidelity, surety, and bond business) or otherwise (e.g., workers’ compensation). The ultimate purpose of these funds is to ensure that liquid assets are unencumbered and available for use by the commissioner, or his/her designee, for the administration of the insurer’s estate should it become insolvent.

Item 5. Name Approval
- The coordinator should determine that a name approval request consistent with the state’s requirements has been filed. If state requirements dictate, the request should be forwarded to the appropriate area for processing.
- Typically, state insurance departments incorporate insurers, but some states require the involvement of the secretary of state or the attorney general. Names are submitted for preapproval because the public has the right to know with whom it is dealing and, therefore, someone must determine that the name is not so similar to another as to be likely to deceive or mislead. The name should be such as to show that the company is engaged in the insurance business and preferably to show the type of business. Some states provide for publication and subsequent hearing to ensure that any objections are addressed.

Item 8. Statutory Memberships
- The coordinator should compare the application to the state requirements for statutory memberships and determine that appropriate documentation supporting the membership application is included.
- Some states require a positive application and confirmation regarding membership in state-mandated risk pools or other organizations. In other words, an insurer may not automatically be a member by virtue of its certificate of authority, but may be required to join outside the jurisdiction of the insurance department.

Item 12. Public Records Package
- The coordinator should compare the contents of the public records package with state requirements. Financial documents should be forwarded to the areas expected to utilize the documents. Operational documents (other than the application form) should be filed as required.
Analysis of Current Condition

Note: Generally, the scope of the analysis of current condition would depend on the prioritization of the Applicant Company. With a primary application (not a redomestication):

i. If it is a stand-alone company, there is no information upon which to establish a prioritization and the use of that technique is inapplicable.

ii. However, if the Applicant Company is part of a holding company structure, the reviewer may want to consider the strengths, structure, ratings, etc. of the holding company.

Application Instruction Items

Item 3. Minimum Capital and Surplus Requirements

- This document should make it clear that the Applicant Company understands state law with respect to the amount of capital and surplus that must be maintained at a minimum. In some states, the minimum capital and surplus requirements are determined by the classes of insurance that the applicant is requesting authority to transact and the classes of insurance the applicant is authorized to transact in all other jurisdictions. The analyst should determine the level of surplus required after considering the Applicant Company’s plan of operation. Compliance with the statutorily prescribed minimum surplus requirement may not be sufficient for all applicants.

Item 7. Holding Company Act Filings

If the Applicant Company is a member of a holding company system, the application must include either the most recent Holding Company Act (HCA) filings, including the annual Form B registration statement and related Form F, or a statement substantially similar to the Insurance Holding Company System Regulatory Act (#440). Holding Company Act filing information should be considered to determine the role of the Applicant Company within the holding company structure, enterprise risk, the financial capacity of the parent to support an insurance operation and the existence of relevant insurance operations experience in the proposed parent or affiliates. Affiliates are identified along with a description of any transactions between the insurer and an affiliate currently outstanding or during the last calendar year. Copies of all advisory, management and service agreements and other attachments need be reviewed for fair and equitable terms. Refer to the Form A Review Best Practices located under Appendix D.

- The applicant state should bear in mind that Holding Company Act filings, including the Holding Company Form F, are highly confidential, but that state laws providing confidentiality protections may vary from those of the applicant state. A state that has not enacted language specified under HCA Item 8 in its entirety will not have the same confidentiality protections afforded in a state where the language has been enacted. State confidentiality statutes applicable to HCA filings should be reviewed by Regulators of each state before any information is exchanged and where an apparent inconsistency is noted, the state’s legal division should be contacted. Regulators should treat all such materials with the highest level of protections afforded by any relevant state, in order to preserve the confidentiality of such materials and to encourage candor and openness in company discussions and disclosures.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Item 9. SEC Filings or Consolidated GAAP Financial Statement

- If the Applicant Company, its parent or its ultimate holding company has made a filing or registration with the U.S. Securities and Exchange Commission (SEC) in connection with a public offering within the past three years, or filed an 8K, 10K or 10Q within the past 12 months, the filing, including any supplements or amendments, is available electronically from the SEC. If the applicant, its parent or its ultimate holding company is not publicly traded, the application must include a copy of the Applicant Company’s most recent consolidated generally accepted accounting principles (GAAP) financial statement.

- Similar to the Holding Company Act filings, these filings will provide insight into the financial capacity of the parent to support an insurance operation and the existence of relevant insurance operations experience in the proposed parent or affiliates, as well as information regarding control, enterprise risk, and corporate governance.

Item 10. Debt-to-Equity Ratio Statement

- The debt-to-equity ratio statement should be reviewed to determine the debt service burden that is likely to be placed upon the Applicant Company. Debt service should only be provided through earnings not needed by the insurer to service its own operations.

Item 13. NAIC Biographical Affidavits

- These documents are used to perform a background check (if required by the state) to evaluate the suitability, competency, character and integrity of those persons ultimately responsible for the operations of the insurer. Persons to be reviewed are the controlling owners, officers, directors and key managerial personnel with the ultimate authority over the financial and operational decisions of the insurer, such as the chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), secretary, chief marketing officer and treasurer.

- Independent third-party background reports are used to identify discrepancies in the biographical affidavit and evaluate the suitability of the controlling owners, officers, directors or key managerial personnel of the Applicant Company and competency to perform the responsibilities of the position held with the company. Issues regarding competency, character and integrity may be self-evident from the information provided in the affidavit or may be determined from the related background review or criminal background check.

  o Regulators will review the biographical affidavit for completeness – each question should have a response. The affiant must use the most current form available and posted on the UCAA website. Insufficient affidavits or affidavits where signature dates are more than six months from the application submit date should not be accepted.

  o Regulators will review the comparison of information provided on the biographical affidavit and the results of the independent third-party background reports.

  o Regulators will note any discrepancies found in the independent third-party background reports and follow up with the Applicant Company.

  o Any key concerns will be addressed with the Applicant Company.
Fingerprint data, if available, can be used to validate the identity of personnel and check for criminal background. Information in the biographical affidavit can then be utilized to verify employment and educational background.

Analysis of Business Plan

Note: Generally, the scope of the analysis of current condition would depend on the prioritization of the Applicant Company. With a primary application (not a redomestication):

i. If it is a stand-alone company, there is no information upon which to establish a prioritization and the use of that technique is inapplicable.

ii. However, if the Applicant Company is part of a holding company structure, the reviewer may want to consider the strengths, structure, ratings, etc. of the holding company.

Application Instruction Items

Item 6. Plan of Operation

- Business plans are written descriptions of expected market conditions, company operations, and related forecasted financial results. The plan of operation section of the UCAA refers to three components: a brief narrative, proforma financial statements/projections and a completed questionnaire (Form 8).
- Overly rapid growth in premium volume, inappropriate pricing, inappropriate underwriting, and product mix are important areas of concern when reviewing a business plan.
- The pricing of insurance products is a difficult task. The premium is established based on estimates of a number of unknown future events. The effects of a failure to accurately estimate the cost of those events or to provide a sufficient margin for adverse deviation from the estimate may not be apparent for a long time. The types of business written by an insurer affect the ability of the insurer to estimate future costs. Certain lines of business are, by their nature, more volatile than others in claim cost experience. Also, the long-tail nature of some lines of business increases the level of uncertainty in estimating future costs. Setting premium rates solely on the basis of rates charged by competitors, without consideration for possible differences in the quality of the business that the insurer and its competitors are writing, should be a concern. The description of pricing should indicate the coordination between the Applicant Company’s actuarial and underwriting and marketing departments.
- The proforma financials should be reviewed for consistency with the stated business plan and reasonableness with respect to assumptions. Projections should be based upon well-described and defensible assumptions that are attainable under the circumstances described in the business plan. The department should consider a review of the business plan and proforma financials by department actuaries and/or other experts.
- The insurance department should consider obtaining a pledge from the Applicant Company to notify the insurance department if any deviations from the filed plan of operation are initiated by the Applicant Company within three years of admission.

The depth of the review will depend on the complexity and financial strength as well as known risks of the insurer(s). Therefore, the analyst may consider a tailored set of procedures that addresses the specific risks of the insurer(s). The following best practices are presented as a guide for regulatory review and analysis of the plan of operations and financial projections related to UCAA primary and expansion applications, recognizing that this is not an all-inclusive list and not all items on this list will apply to each and every application. This list is intended to be a regulatory tool only. The analyst may find it useful to utilize the Financial Analysis Handbook in conjunction to this checklist during their financial review.

1. Background Analysis
   - Request the Applicant Company’s Insurer Profile Summary (IPS) from the lead state. Upon receipt and review of the IPS, document your findings related to the following:
     - State’s Priority Designation
     - Scoring System Result
     - IRIS Ratio Result
     - Analyst Team System Validation Level
     - RBC Ratio
     - Trend Test
     - Review any material issues or concerns of prospective risks noted in the IPS
     - Review the Applicant Company’s most recent Annual Financial Statement, General Interrogatories, Part 1:
       - #5.1 and #5.2 in order to ascertain if the insurer has been a party to a merger or consolidation; and #6.1 and #6.2 in order to ascertain if the insurer had any certificate of authority, licenses or registrations suspended or revoked by any governmental entity during the reporting period
     - Review the most recent report from a credit rating provider in order to ascertain the current financial strength and credit rating of the insurer
     - Document assessment.

2. Management Assessment
   - Review the entity’s biographical affidavits and third-party verifications
   - Note any areas of concern that would indicate further review is necessary. In conducting such review, also consider whether officers, directors and trustees are suitable (e.g. does the individual have the appropriate background and experience to perform the duties expected) for the positions within the insurer. The analyst could also reference the Best Practices for Background Investigations, Background Guidelines and Red Flags on StateNet.
   - Review of the Applicant Company’s Corporate Governance
   - Review the NAIC Form A and Market Action Tracking System (MATS) databases for related information about the primary applicant and other key persons
### 3. Capital and Surplus Assessment

- Review the proposed Financial Projections, request assumptions used if not provided.
- For HMO’s, determine the minimum capital and surplus requirements based on projections.
- Review and verify if the following are at or above the statutory minimum requirement for each of the projected years for:
  - Capital
  - Surplus
- Review and verify if the RBC ratio is adequate for each of the projected years.
- Review for indications if any surplus notes will be issued as part of the funding component.
- Review and assess the surplus note’s impact on overall capitalization.
- Review for indications if any capital contributions are contemplated as part of the projections.
- Review and assess the capital contributions’ impact on overall capitalization.
- Review for indications if any dividend distributions are contemplated as part of the projections.
- Review and assess the dividend distributions’ impact on overall capitalization.

### 4. Operations Assessment

- Review the projected Statement of Income.
- Assess if the company appears to be overleveraged based on the NPW to C&S or RBC ratios.
- Review and assess if the combined ratio exceeds 100% for any of the projected years.
- For each year projecting net losses, assess the Applicant Company’s ability to absorb and recover from such losses.
- For each year projecting negative cash flow from operations, assess the Applicant Company’s ability to absorb and recover from such negative cash flows.
- Review the Applicant Company’s most recent audited financial statement to identify any unusual items or areas that indicate additional review is required.
- Document assessment.

### 5. Ultimate Controlling Party (UCP) Financials

- Review the most recent audited financial statements or SEC reports of the UCP.
- Assess whether or not the UCP is capable of providing adequate financial support and management experience in operating the Applicant Company.
- Calculate the UCP’s total debt to equity ratio and assess the impact of this ratio on Applicant Company’s overall operations and future solvency.
- Review lead state Group Profile Summary.

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Best Practices: Application Review

- Determine if financial projections are needed for the immediate parent or UCP
- Document assessment.

6. Business Plan
- Review the Business Plan
- Review the Business Plan narrative including the types of products to be sold or lines of business and how they will be distributed
- Review the Applicant Company’s geographic service area and the marketing plan
- Review and explain the insurer’s processes for claim processing and claim payments
- Assess reasonableness of Officer/Director compensation information
- Identify if Managing General Agents (MGA) and Third-Party Administrator (TPA) are properly licensed or registered in the state
  - Review the items related to MGA’s and TPA’s as appropriate
    - Contract
    - Oversight
    - Subcontracting provisions
    - Financials
    - Control
    - Delegation
    - Fees
- Review the Applicant Company’s investment policy and investment management of the applicant
- Review custodial agreements and compliance with statutory deposit safekeeping requirements in accordance with the Financial Condition Examiners Handbook
- Review any financial guarantees involved with this transaction
- Document assessment.

7. Reinsurance
- Review and assess the Applicant Company’s reinsurance program and activities; including the impact of assumed and ceded premiums, retention and limitation levels
- Review the financial condition and AM Best ratings of reinsurers with material reinsurance arrangements
  - Consider separately affiliated and non-affiliated reinsurers, which may require separate financial review
  - Consider financial requirements for licensed, authorized or unauthorized material reinsurance arrangements
- Document assessment.

8. Market Share Report
- Review market share reports
Best Practices: Application Review

- Assess the impact of the Applicant Company’s projected premiums on the state’s market share and whether there are any areas of concern regarding market share percentages for any of the proposed lines of business
- Determine if a Form E filing is required
- Document assessment.

9. Summary
- Develop and document an overall summary of findings based on the analysis and all other factors that are relevant to evaluating the Applicant Company’s plan of operation and overall financial condition
- Itemize each issue that warrants a company inquiry or resolution
- Send correspondence to Applicant Company.

10. Follow-up
- Upon receipt of the Applicant Company’s response to the inquiry, review and assess the status of each outstanding issue
- Determine if additional company correspondence is required.

Item 11. Custody Agreements
- Custody agreements should be reviewed to determine that the proposed insurer will actually possess its proposed start-up funding. Also, because invested assets make up a significant portion of the asset side of the balance sheet, control of those assets are of utmost importance. The Financial Condition Examiners Handbook provides excellent guidance in reviewing this item.
Primary Application – Redomestication

The redomestication of an insurer presents unique challenges. It is the only licensing-related transaction in which a foreign insurer becomes a domestic insurer of the applicant state. As such, the applicant state will assume primary regulatory oversight of the applicant. Therefore, it is important that the applicant state obtain a level of understanding of the insurer’s condition and operations equivalent to that of its other domestic companies.

The department should effectively communicate with the domestic state to gain an understanding of the reason for redomestication and any concerns of the domestic state. Any concerns raised should be assessed and documented with rationale to support the conclusion.

It is recommended that both the current and proposed domiciliary states have a thorough understanding of the underlying reasons for redomestication. To that end, a meeting with company representatives should be held prior to the filing of an application. See Appendix A for the Primary Application Review Checklist.

The classification of the of the application instruction items is illustrated in the following chart.

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Application Instruction Items

The information provided in the application instruction items noted in the primary application should be viewed in conjunction with the items above. The department should assess the redomestication application and accompanying information to effectively reach the appropriate conclusions regarding whether the application is approved or denied. The department should document each assessment for the items listed above.

Item 15. Annual Statements with Attachments
- The Level 1 review as outlined in the Financial Analysis Handbook should be performed.
- Management’s Discussion and Analysis
  - The narrative should be reviewed for explanations of fluctuations in areas such as losses and premium income. Significant events such as expansion into a new line of business or territory will be explained along with other changes that will have been noticed in
the review of the annual statement. The information provided in this document should be consistent with the plan of operations.

- **Actuarial Opinion**
  - The actuarial opinion is reviewed for any qualifications or unusual comments along with any explanation of material risk factors.

**Item 16. Quarterly Statements**

- The quarterly statements are reviewed for any unexplained inconsistencies or fluctuations from the annual statement.

**Item 17. Risk-Based Capital (RBC) Report**

- The RBC report should be reviewed for significant risk components such as reserves, premium, reinsurance recoverables and investments. The support for those significant risk components should be reviewed for appropriateness. In addition to comparing the action and control levels to the total adjusted capital, the business plan and other information should be reviewed to ensure all risks are adequately addressed.

**Item 18. Independent CPA Audit Report**

- The statutory audited financial statement should be reviewed for any differences with the annual statement. The opinion should be non-qualified. The notes should be read for a better understanding of the Applicant Company along with any comments or concerns.

**Item 19. Reports of Examination**

- The financial examination report provides an understanding of the insurer, addresses the accuracy of the filed financial statements and identifies any issues noted with respect to corporate governance. Review of this document should concentrate on compliance issues, comments and recommendations. The Applicant Company should provide follow-up documentation regarding any concerns noted by the domestic state.
- The applicant state should consider contacting the domiciliary state if concerns exist regarding the insurer’s complaint levels, response times, etc.
The department should meet with the domestic regulator to obtain, discuss and conclude on, at a minimum, the items listed below. The meeting should be held via conference call; an email exchange is not considered sufficient.

- Most recent Insurer Profile Summary (IPS) and supervisory plan, including supporting analysis detail for significant risks
- Reason for redomestication
- Concerns identified with the insurer/group
- History of communication with the insurer/group
- History of regulatory actions
- Results of recent examinations (financial and market conduct), including findings and resolutions
- Status of and responsibilities for annual financial analysis and group analysis, if applicable
- Status of and responsibilities for financial examinations

The department should notify the lead state of the insurance holding company group on receipt of a redomestication application and obtain a copy of the most recent Group Profile Summary (GPS), if applicable.
Expansion Application

The classification of the application instruction items is illustrated in the following chart.

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<td>13. Consent to Service of Process</td>
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Administrative Filing

Overall Responsibilities

One person in the insurance department should be assigned as the key administrative coordinator for company licensing applications. This person will be responsible for maintaining a record of applications received, correspondence regarding the application, information received relative to an application, distribution of application materials and the monitoring of time frames regarding the processing of the application. It is recommended that the coordinator utilize a method for tracking the progress of the application; whether it is through the use of the electronic UCAA filing status updates, a database, a word processing document, a spreadsheet or even a TeamMate file.

The completeness of an application is expected prior to the official initiation of the review process and the corresponding start of the “clock.” However, the absence of certain items should not preclude the initial contact with the state of domicile and the start of the review of the significant aspects of the application. For example, the absence of corporate documents such as the current articles of incorporation or an incomplete response on a form should not preclude the contact with the domestic state and a preliminary review of the plan of operations and the biographical affidavits and background reports (if applicable).
Application Instruction Items

The prioritization of the Applicant Company has no effect on the administrative filings processes.

Item 1. Expansion Application Form
- Form 1E “Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application.
- Form 2E “Expansion Application” – The coordinator should review the form for completeness.
- Form 3 “Lines of Insurance” – The coordinator should utilize the Lines of Business Matrix to compare the lines of business authorized in the Applicant Company’s domiciliary state (per the certificate of compliance) with the applied for lines of business.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances, the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.

Item 4. Statutory Deposit Requirements
- Form 7 “Certificate of Deposit” – The coordinator should review the form and compare the amount of the deposit to the state’s requirement.
- These funds are deposited with the commissioner, generally through a safekeeping or trust receipt, to be held for the benefit and protection of, and as security for, all policyholders and, in some instances, creditors of the insurer making the deposit. Additional deposits are generally required of those insurers applying to write lines of business not covered under state insurance guaranty funds (e.g., guaranty, fidelity, surety, and bond business) or otherwise (e.g., workers’ compensation). The ultimate purpose of these funds is to ensure that liquid assets are unencumbered and available for use by the commissioner, or his/her designee, for the administration of the insurer’s estate should it become insolvent.

Item 5. Name Approval
- The coordinator should determine that a name approval request consistent with the state’s requirements has been filed. If state requirements dictate, the request should be forwarded to the appropriate area for processing.
- Typically, state insurance departments incorporate insurers, but some states require the involvement of the secretary of state or the attorney general. Names are submitted for preapproval because the public has the right to know with whom it is dealing and therefore, someone must determine that the name is not so similar to another as to be likely to deceive or mislead. The name should be such as to show that the company is engaged in the insurance business and preferably to show the type of business. Some states provide for publication and subsequent hearing to ensure that any objections are addressed.

Item 10. Statutory Memberships
The coordinator should compare the application to the state requirements for statutory memberships and determine that appropriate documentation supporting the membership application is included.

Some states require a positive application and confirmation regarding membership in state-mandated risk pools or other organizations. In other words, an insurer may not automatically be a member by virtue of its certificate of authority, but may be required to join outside the jurisdiction of the insurance department.

Item 11. Public Records Package
- The coordinator should compare the contents of the public records package with state requirements. Financial documents should be forwarded to the areas expected to utilize the documents. Operational documents (other than the application form) should be filed as required.

Item 13. Consent to Service of Process
- Form 12 “Consent to Service of Process” – The coordinator should review the form for completeness and file as appropriate.
- This document designates the commissioner or a resident of the state to receive consent to service of process on behalf of the company. Persons or entities to receive forwarded consent to service of process from the commissioner are also provided.

Analysis of Current Condition

Priority 4

The expansion state should determine the prioritization category of the Applicant Company based upon its analysis. For applicants prioritized as Priority 4, the applicant state should contact the domiciliary state if there are any questions or concerns.

Priority 3

If, after discussion with the domiciliary state it is determined the Applicant Company is a Priority 3 company, the expansion state should perform sufficient analysis to fully understand the financial condition and operating practices of the insurer in order to assess the effect of the proposed business plan.

Item 3. Minimum Capital and Surplus Requirements
- This document should make it clear that the Applicant Company understands the expansion state law with respect to the amount of capital and surplus that must be maintained at a minimum. The expansion state processor or analyst can easily determine the Applicant Company’s capital and surplus position by looking at the filed financial statement. The requirement for this document should make it clear that the insurer has read and understands the underlying surplus requirements. The amount required varies from stated capital and free surplus of specific dollar amounts based on lines of authority to a percentage of RBC.
Item 7. Holding Company Act Filings

- The current registration statement will provide the insurer’s capital structure, general financial condition, ownership and management, along with that of any person controlling the insurer. Affiliates are identified along with a description of any transactions between the Applicant Company and an affiliate that is currently outstanding or was incurred during the last calendar year. A review of this document by an expansion state provides insight into the operations of the insurer and its relationships with its affiliates. Attachments and agreements should only be requested for transactions or items material to the business plan for that state. For additional guidance refer to the Form A Review Best Practices located in Appendix D.

Item 9. Reports of Examination

- As the record of periodic on-site examinations of the Applicant Company’s compliance and accuracy of its financial statements, review of this document should concentrate on compliance issues, comments and recommendations. The Applicant Company should provide follow-up documentation regarding any concerns noted by the domestic state.
- The applicant state may consider contacting the domiciliary state if concerns exist regarding the insurer’s complaint levels, response times, etc.

Item 11. Public Records Package

- The items included in the Public Records Package are familiar to all financial analysts and can be utilized to complete the reviews described in the Financial Analysis Handbook. Unusual results should be discussed with the domiciliary state.

Item 12. NAIC Biographical Affidavits

- These documents are used to perform a background check (if required by the state) to evaluate the suitability, competency, character and integrity of those persons ultimately responsible for the operations of the insurer. Persons to be reviewed are the controlling owners, officers, directors and key managerial personnel with the ultimate authority over the financial and operational decisions of the insurer, such as the chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), secretary, chief marketing officer and treasurer.
- Independent third-party background reports are used to identify discrepancies in the biographical affidavit and evaluate the suitability of the controlling owners, officers, directors or key managerial personnel of the Applicant Company and competency to perform the responsibilities of the position held with the company. Issues regarding competency, character and integrity may be self-evident from the information provided in the affidavit or may be determined from the related background review or criminal background check.
  - Regulators will review the biographical affidavit for completeness – each question should have a response. The affiant must use the most current form available and posted on the UCAA website. Insufficient affidavits or affidavits where signature dates are more than six months from application submit date should not be accepted.
Regulators will review the comparison of information provided on the biographical affidavit and the results of the independent third-party background reports.

Regulators will note any discrepancies found in the independent third-party background reports and follow up with the Applicant Company or domestic regulator for further clarification.

Any key concerns will be addressed with the Applicant Company or domestic regulator for further clarification.

Fingerprint data, if available, can be used to validate the identity of personnel and check for criminal background. Information in the biographical affidavit can then be utilized to verify employment and educational background, if necessary.

**Priority 1 and Priority 2**

Priority 1 and 2 companies are generally not considered good candidates for expansion. There is little to be gained from the processing of the administrative filing sections of the application that is destined to be rejected once the analytical review is conducted. If, after discussion with the domiciliary state, it is determined the applicant is a Priority 1 or 2, the expansion state should determine if there is a reason to further analyze the financial condition of the company.

Based on the business plan there may be a reason to further analyze the financial condition of the company (see Analysis of Business Plan: Priority 2, below). The expansion state should communicate with the domiciliary state to understand the circumstances under which expansion may be advisable. In such situations, the expansion state must perform sufficient analysis (at least those required of a Priority 2 company) of the Applicant Company’s financial condition and operating practices to determine that the risks associated with the proposed business plan are within the Applicant Company’s expertise and financial capacity to assume.

**Analysis of Business Plan**

**Priority 4**

**Item 6. Plan of Operation**

- The plan of operation should be reviewed to ensure that the proposed business plan is consistent with the Applicant Company’s demonstrated experience. See Priority 3 Best Practices—Review of Plan of Operations (Proforma Financial Statements, Narrative/Business Plan and Questionnaire).

**Priority 3**

**Item 6. Plan of Operation**

- Business plans are written descriptions of expected market conditions, company operations, and related forecasted financial results. The plan of operation section of the UCAA refers to three components: a brief narrative, pro-forma financial statements/projections and a completed questionnaire (Form 8).
By virtue of the filing of the UCAA, the applicant is notifying the state insurance department of recent or planned changes in the insurer’s operations. One recurring factor that appears in many troubled insurance company situations is a recent change in operations, management or ownership. Therefore, overly rapid growth in premium volume, expansion into new geographic areas or new lines of business, inappropriate pricing, inappropriate underwriting, and product mix are important areas of concern when reviewing a business plan.

Geographic growth can lead to less control by the insurer over new producers, underwriting operations, and claims administration. The insurance laws and regulations in the expansion state and the nature of the various operational risks may differ from those of jurisdictions to which the business was previously limited. Similarly, rapid expansion into new lines of business can lead to difficulties if the insurer’s management and personnel lack an adequate knowledge and understanding of the characteristics and risks of the business proposed to be written. Extremely rapid geographic or product line expansion may cause the insurer’s training of new producers, underwriters, and claims personnel to trail growth of the business. A change to specialized lines of business should be accompanied by concurrently obtaining the additional specialized expertise or qualified personnel required to understand and administer that specialized business. Additionally, a rapidly growing insurer may fail to add enough experienced personnel to keep up with its expanding operations. Existing personnel may not have sufficient skills to manage the additional growth.

The pricing of insurance products is a difficult task. The premium is established based on estimates of a number of unknown future events. The effects of a failure to accurately estimate the cost of those events or to provide a sufficient margin for adverse deviation from the estimate may not be apparent for a long time. The types of business written by an insurer affect the ability of the insurer to estimate future costs. Certain lines of business are, by their nature, more volatile than others in claim cost experience. Also, the long-tail nature of some lines of business increases the level of uncertainty in estimating future costs. Setting premium rates solely on the basis of rates charged by competitors, without consideration for possible differences in the quality of the business that the insurer and its competitors are writing, should be a concern. The description of pricing should indicate coordination between the Applicant Company’s actuarial and underwriting and marketing departments.

Concern should be noted when management of the insurer has focused excessively on the agency or marketing aspects of the business. Management may have a tendency to measure success by the volume of business written and ignore the underwriting aspects. Also, while most insurers may establish production or profit goals, these goals may be deemed so important by certain management groups that producers and underwriters may be allowed to relax underwriting standards to permit the acceptance of additional business so as to meet the insurer’s production goals.

The pro forma financials should be reviewed for consistency with the stated business plan and reasonableness with respect to assumptions. Projections should be based upon well described and defensible assumptions that are attainable under the circumstances described in the business plan. The insurance department should consider a review of the business plan and pro forma financials by department actuaries and/or other experts.
The insurance department should consider obtaining a pledge from the Applicant Company to notify the insurance department if any deviations from the filed plan of operation are initiated by the entity within three years of admission.


The depth of the review will depend on the complexity and financial strength as well as known risks of the insurer(s). Therefore, the analyst may consider a tailored set of procedures that addresses the specific risks of the insurer(s). The following best practices are presented as a guide for regulatory review and analysis of the plan of operations and financial projections related to UCAA primary and expansion applications, recognizing that this is not an all-inclusive list and not all items on this list will apply to each and every application. This list is intended to be a regulatory tool only. The analyst may find it useful to utilize the Financial Analysis Handbook in conjunction to this checklist during their financial review.

1. Background Analysis
   • Request the applicant’s Insurer Profile Summary (IPS) from the lead state. Upon receipt and review of the IPS, document your findings related to the following:
     • State’s Priority Designation
     • Scoring System Result
     • IRIS Ratio Result
     • Analyst Team System Validation Level
     • RBC Ratio
     • Trend Test
     • Review any material issues or concerns of prospective risks noted in the IPS
     • Review the applicant’s most recent Annual Financial Statement, General Interrogatories, Part 1:
       o #5.1 and #5.2 in order to ascertain if the insurer has been a party to a merger or consolidation; and #6.1 and #6.2 in order to ascertain if the insurer had any certificate of authority, licenses or registrations suspended or revoked by any governmental entity during the reporting period
     • Review the most recent report from a credit rating provider in order to ascertain the current financial strength and credit rating of the insurer.

2. Management Assessment
   • Review the entity’s biographical affidavits and third-party verifications
   • Note any areas of concern that would indicate further review is necessary. In conducting such review, also consider whether officers, directors and trustees are suitable (e.g. does the individual have the appropriate background and experience to perform the duties expected) for the positions within the insurer. The analyst could also reference the Best Practices for Background Investigations, Background Guidelines and Red Flags on StateNet.
   • Review of the Applicant Company’s Corporate Governance.
3. Capital and Surplus Assessment
   - Review the proposed Financial Projections, request assumptions used if not provided
   - For HMO’s, determine the minimum capital and surplus requirements based on projections
   - Review and verify if the following are at or above the statutory minimum requirement for each of the projected years for:
     - Capital
     - Surplus
   - Review and verify if the RBC ratio is adequate for each of the projected years
   - Review for indications if any surplus notes will be issued as part of the funding component
   - Review and assess the surplus note’s impact on overall capitalization
   - Review for indications if any capital contributions are contemplated as part of the projections
   - Review and assess the capital contributions’ impact on overall capitalization
   - Review for indications if any dividend distributions are contemplated as part of the projections
   - Review and assess the dividend distributions’ impact on overall capitalization.

4. Operations Assessment
   - Review the projected Statement of Income
   - Assess if the company appears to be overleveraged based on the NPW to C&S or RBC ratios
   - Review and assess if the combined ratio exceeds 100% for any of the projected years
   - For each year projecting net losses, assess the Applicant Company’s ability to absorb and recover from such losses
   - For each year projecting negative cash flow from operations, assess the company’s ability to absorb and recover from such negative cash flows
   - Review the company’s most recent audited financial statement to identify any unusual items or areas that indicate additional review is required.

5. Ultimate Controlling Party (UCP) Financials
   - Review the most recent audited financial statements or SEC reports of the UCP
   - Assess whether or not the UCP is capable of providing adequate financial support and management experience in operating the Applicant Company
   - Calculate the UCP’s total debt to equity ratio and assess the impact of this ratio on Applicant Company’s overall operations and future solvency
   - Review lead state Group Profile Summary
   - Determine if financial projections are needed for the immediate parent or UCP.

6. Business Plan
   - Review the Business Plan
• Review the Business Plan narrative including the types of products to be sold or lines of business and how they will be distributed
• Review the applicant’s geographic service area and the marketing plan
• Review and explain the insurer’s processes for claim processing and claim payments
• Assess reasonableness of Officer/Director compensation information
• Identify if Managing General Agents (MGA) and Third-Party Administrator (TPA) are properly licensed or registered in the state
  o Review the items related to MGA’s and TPA’s as appropriate
    ▪ Contract
    ▪ Oversight
    ▪ Subcontracting provisions
    ▪ Financials
    ▪ Control
    ▪ Delegation
    ▪ Fees
• Review the Applicant Company’s investment policy and investment management of the applicant
• Review custodial agreements and compliance with statutory deposit safekeeping requirements in accordance with the Financial Condition Examiners Handbook
• Review any financial guarantees involved with this transaction.

7. Reinsurance
• Review and assess the Applicant Company’s reinsurance program and activities; including the impact of assumed and ceded premiums, retention and limitation levels
• Review the financial condition and AM Best ratings of reinsurers with material reinsurance arrangements
  o Consider separately affiliated and non-affiliated reinsurers, which may require separate financial review
  o Consider financial requirements for licensed, authorized or unauthorized material reinsurance arrangements.

8. Market Share Report
• Review market share reports
• Assess the impact of the applicant projected premiums on the state’s market share and whether there are any areas of concern regarding market share percentages for any of the proposed lines of business
• Determine if a Form E filing is required.

9. Summary
• Develop and document an overall summary of findings based on the analysis and all other factors that are relevant to evaluating the Applicant Company’s plan of operation and overall financial condition
Best Practices: Application Review

- Itemize each issue that warrants a company inquiry or resolution
- Send correspondence to Applicant Company.

10. Follow-up
   - Upon receipt of the Applicant Company’s response to the inquiry, review and assess the status of each outstanding issue
   - Determine if additional company correspondence is required.
Form 8 – Interrogatories from Form 8 that provide insight into the Applicant Company’s business plan are discussed below.

**Interrogatory 2:** Encumbered assets must be explored for propriety; Pledged capital stock is a sign of borrowing and repayment terms and conditions must be investigated; Merger or consolidation might explain significant fluctuations in a historical financial analysis.

**Interrogatory 4:** Historical information in order to do further research, if necessary. An explanation is adequate. The initial request of copies of documentation is unnecessary unless questions arise concerning the veracity of the Applicant Company’s response to this and other questions.

**Interrogatory 5:** A change in management or control may have a significant impact on operations.

**Interrogatory 6:** The most recent Holding Company Filings should suffice to explain the holding company structure and intercompany relationships. If no holding corporation, then an explanation should suffice initially.

**Interrogatory 8:** Revocation of a certificate of authority or denial of licensure should be discussed with the domiciliary state to determine if the proximate causes for such actions are still in existence.

**Interrogatory 9:** Positive responses to this interrogatory should be discussed with the domiciliary state. All responses should be compared to the results of criminal background checks.

**Interrogatory 10:** Such dispute may affect the financial condition and may be an indication of inappropriate business practices.

**Interrogatory 11:** Such legal action may affect the financial condition and may be an indication of inappropriate business practices.

**Interrogatory 12:** Conflicts of interest can detrimentally affect the operations of an insurer.

**Interrogatory 13:** Positive responses to this interrogatory may affect the manner in which the company’s products are marketed. Additionally, the Applicant Company’s parent or affiliates will be subject to regulatory restrictions.

**Interrogatory 14:** Conflicts of interest can detrimentally affect the operations of an insurer.

**Interrogatory 15:** The organizational flow chart should depict the day-to-day management and internal controls within the company. The map or narrative depicting the location(s) of the office(s) should also contain the approximate number of employees for each location. Copies of agreements should be attached.

**Interrogatories 16 and 17:** The marketing plan is the core of the applicant’s business plan narrative. The use, oversight, and compensation of producers are important aspects of product delivery. Since each state or region inherently may have unique market conditions related to products, distribution systems, or competition, serious thought must be put into these areas. Copies of agreements should initially be required with the primary application.

**Interrogatory 18:** The applicant should be able to provide benefits to the citizens that do not already exist.
Interrogatory 19: One of the state’s responsibilities is to prevent unfair trade practices. Deceptive advertising and sales are prohibited.

Interrogatories 20 and 21: Product administration should be included in the narrative of the business plan. Knowledge, experience and capacity are necessary ingredients. Service agreements and personnel oversight need only be initially provided in the primary application.

Interrogatory 22: Affiliated agreements for tax allocation, services and facilities are necessary to be reviewed with the primary application to ensure fairness and equity. Rates should be on an actual cost basis, but should be no less than market rates.

Interrogatory 24: Conflicts of interest can detrimentally affect the operations of an insurer.

Interrogatory 25: The expense of the options can affect the financial condition. The exercising of those options can affect control of the insurer. The existence of those options can affect the insurer’s ability to raise other capital.

Interrogatories 26-29: Review the responses to these interrogatories if specific state laws address these issues.

Interrogatory 30: Conflicts of interest can detrimentally affect the operations of an insurer.

The following questions apply only if the Applicant Company is filing a primary redomestication application.

Interrogatories 31 and 32c: It is important to understand the effect of prescribed or permitted practices on the reported financial condition of the company.

Interrogatories 32 and 33: It is important for both the applicant and the state of redomestication to know and address any regulatory differences.

Interrogatory 34: Interest and principal payment restrictions need to be clearly understood and agreed upon.
Priority 2

Priority 2 companies are generally not considered good candidates for expansion. There is little to be gained from the processing of the administrative filing sections of the application that is destined to be rejected once the analytical review is conducted.

However, in certain unique circumstances, based on the line of business offered and the market conditions in the expansion state, it may be appropriate to pursue licensure under heavily monitored criteria. For example, a small, specialty insurer (such as a captive insurer) may not demonstrate the qualities of a Priority 4 or Priority 3 company. Such a company may have a commercial policyholder with operations located in a state where it is not licensed. In order to continue to provide coverage to the policyholder, the insurer must seek licensure in the additional state. In this circumstance, the expansion state may grant a certificate of authority with additional restrictions that only identified risks be written.

In such situations, the expansion and domiciliary state must perform sufficient analysis (at least those required of a Priority 2 company) of the company’s financial condition and business plan to determine that such risks are within the company’s expertise and financial capacity to assume. The reasons why the proposed expansion would be tolerable should then be delineated.

Priority 1

Insurers included in Priority 1 are considered troubled and subject to comprehensive annual and quarterly analysis procedures, detailed considerations outlined with the Troubled Insurance Company Handbook, and a significantly elevated level of ongoing regulatory monitoring and oversight.

Insurers in this group generally are not capable of withstanding even moderate business fluctuations. There may be significant noncompliance with laws and regulations. Risk-management practices are generally unacceptable relative to the insurer’s size, complexity and risk profile. Corporate and group structures or framework may be of a nature that is not conductive to effective regulation. Close regulatory attention is required, which means formal action is necessary in most cases to address the problems. Insurers in this group pose a risk to the state guaranty fund. Priority 1 companies should not be considered for expansion.
Corporate Amendment Application – Adding and Deleting Lines of Business

The classification of the application instruction items is illustrated in the following chart.

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Administrative Items

Item 1. Application Form and Attachments
- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the applicant.
- Form 2C “Corporate Amendments Application” – The coordinator should review the form for completeness. This form contains minimum required information.
- Form 3 “Lines of Insurance” – The coordinator should utilize the Lines of Business Matrix to compare the lines of business authorized in the company’s domiciliary state (per the certificate of compliance) with the applied for lines of business.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances, the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $500 and are generally retaliatory.
Item 3. Articles of Incorporation

- In some instances, the articles of incorporation contain specific references to the lines of business the entity is authorized to engage. Such language should be consistent with the proposed changes to the certificate of authority.

Item 4. Bylaws

- The bylaws generally should not have to be reviewed in connection with the addition or deletion of a line of business.

Item 6. Statutory Deposit Requirements

- These funds are deposited with the commissioner, generally through a safekeeping or trust receipt, to be held for the benefit and protection of, and as security for, all policyholders and, in some instances, creditors of the insurer making the deposit. Additional deposits are generally required of those insurers applying to write lines of business not covered under state insurance guaranty funds (e.g., guaranty, fidelity, surety, and bond business) or otherwise (e.g., workers’ compensation). The ultimate purpose of these funds is to ensure that liquid assets are unencumbered and available for use by the commissioner, or his/her designee, for the administration of the insurer’s estate should it become insolvent. Unless a line of business is being applied for that is not protected by a guaranty fund, the domestic state should hold the deposit in an aggregate amount of no less than the minimum required capital.

Item 8. Statutory Memberships

- May be required, dependent upon line of business requested.
- Some states require a positive application and confirmation regarding membership in state-mandated risk pools or other organizations. In other words, an insurer may not automatically be a member by virtue of its certificate of authority, but may be required to join outside the jurisdiction of the insurance department.

Analysis of Current Condition

Priority 4

If the company is prioritized as 4, then typically only the certificate of compliance need be reviewed by the applicant state. However, some circumstances may exist that would warrant additional analysis by the applicant state. For example, differing capital and surplus requirements in the states may require some consideration by a particular applicant state. In addition, permitted practices granted to an applicant insurer by its domiciliary state may account for a significant amount of the insurer’s surplus, in which case the applicant state may need to perform a bit more analysis than just reviewing the comment.
Priority 3

If the company is prioritized as 3, then the following review of application documents is suggested:

Item 5. Minimum Capital and Surplus Requirements
- This document should make it clear that the Applicant Company understands the state law with respect to the amount of capital and surplus that must be maintained at a minimum with respect to the line of business to be added. The analyst can easily determine the Applicant Company’s capital and surplus position by looking at the filed financial statement. The requirement for this document should make it clear that the insurer has read and understands the underlying surplus requirements. The amount required varies from stated capital and of specific dollar amounts based on lines of authority to a percentage of risk-based capital.

Priority 2

If the company is prioritized as Priority 2, then the Applicant Company state should discuss with the domiciliary state whether there exists any extraordinary circumstance that might outweigh the Applicant Company’s operating condition.

Analysis of Business Plan

Priority 4

If the Applicant Company is prioritized as Priority 4, then Item 7, Plan of Operation, should be reviewed to determine that the company has experience with the requested new line of business. Regardless of risk category, a line of business should not be deleted unless all liabilities in that line are extinguished. See Corporate Amendment – Adding and Deleting Lines of Business, Priority 3. Plan of Operation for Best Practices – Review of Plan of Operations (Proforma Financial Statements, Narrative/Business Plan and Questionnaire).

Priority 3

If the Applicant Company is prioritized as 3, then the following review of application documents is suggested.

Item 7. Plan of Operation
- The narrative business plan including the rationale for adding lines of business and the sales and administration of that business along with the accompanying pro-forma financial statements/projections should provide the information initially required in this section. Dependent upon the prioritization of the Applicant Company and the specific line of business requested, along with the experience in that line of the insurer, Form 8C may be required.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review


The depth of the review will depend on the complexity and financial strength as well as known risks of the insurer(s). Therefore, the analyst may consider a tailored set of procedures that addresses the specific risks of the insurer(s). The following best practices are presented as a guide for regulatory review and analysis of the plan of operations and financial projections related to UCAA primary and expansion applications, recognizing that this is not an all-inclusive list and not all items on this list will apply to each and every application. This list is intended to be a regulatory tool only. The analyst may find it useful to utilize the Financial Analysis Handbook in conjunction to this checklist during their financial review.

1. Background Analysis
   - Request the applicant’s Insurer Profile Summary (IPS) from the lead state. Upon receipt and review of the IPS, document your findings related to the following:
     - State’s Priority Designation
     - Scoring System Result
     - IRIS Ratio Result
     - Analyst Team System Validation Level
     - RBC Ratio
     - Trend Test
     - Review any material issues or concerns of prospective risks noted in the IPS
     - Review the applicant’s most recent Annual Financial Statement, General Interrogatories, Part 1:
       - #5.1 and #5.2 in order to ascertain if the insurer has been a party to a merger or consolidation; and #6.1 and #6.2 in order to ascertain if the insurer had any certificate of authority, licenses or registrations suspended or revoked by any governmental entity during the reporting period
     - Review the most recent report from a credit rating provider in order to ascertain the current financial strength and credit rating of the insurer.

2. Management Assessment
   - Review the entity’s biographical affidavits and third-party verifications
   - Note any areas of concern that would indicate further review is necessary. In conducting such review, also consider whether officers, directors and trustees are suitable (e.g. does the individual have the appropriate background and experience to perform the duties expected) for the positions within the insurer. The analyst could also reference the Best Practices for Background Investigations, Background Guidelines and Red Flags on StateNet.
   - Review of the Applicant Company’s Corporate Governance.

3. Capital and Surplus Assessment
   - Review the proposed Financial Projections, request assumptions used if not provided
For HMO’s, determine the minimum capital and surplus requirements based on projections.

Review and verify if the following are at or above the statutory minimum requirement for each of the projected years for:
- Capital
- Surplus

Review and verify if the RBC ratio is adequate for each of the projected years.

Review for indications if any surplus notes will be issued as part of the funding component.

Review and assess the surplus note’s impact on overall capitalization.

Review for indications if any capital contributions are contemplated as part of the projections.

Review and assess the capital contributions’ impact on overall capitalization.

Review for indications if any dividend distributions are contemplated as part of the projections.

Review and assess the dividend distributions’ impact on overall capitalization.

4. Operations Assessment

- Review the projected Statement of Income.
- Assess if the Applicant Company appears to be overleveraged based on the NPW to C&S or RBC ratios.
- Review and assess if the combined ratio exceeds 100% for any of the projected years.
- For each year projecting net losses, assess the Applicant Company’s ability to absorb and recover from such losses.
- For each year projecting negative cash flow from operations, assess the company’s ability to absorb and recover from such negative cash flows.
- Review the Applicant Company’s most recent audited financial statement to identify any unusual items or areas that indicate additional review is required.

5. Ultimate Controlling Party (UCP) Financials

- Review the most recent audited financial statements or SEC reports of the UCP.
- Assess whether or not the UCP is capable of providing adequate financial support and management experience in operating the Applicant Company.
- Calculate the UCP’s total debt to equity ratio and assess the impact of this ratio on Applicant Company’s overall operations and future solvency.
- Review lead state Group Profile Summary.
- Determine if financial projections are needed for the immediate parent or UCP.

6. Business Plan

- Review the Business Plan.
- Review the Business Plan narrative including the types of products to be sold or lines of business and how they will be distributed.
- Review the insurer’s geographic service area and the marketing plan.
Review and explain the insurer’s processes for claim processing and claim payments

Assess reasonableness of Officer/Director compensation information

Identify if Managing General Agents (MGA) and Third-Party Administrator (TPA) are properly licensed or registered in the state
  - Review the items related to MGA’s and TPA’s as appropriate
    - Contract
    - Oversight
    - Subcontracting provisions
    - Financials
    - Control
    - Delegation
    - Fees

Review the Applicant Company’s investment policy and investment management of the insurer

Review custodial agreements and compliance with statutory deposit safekeeping requirements in accordance with the Financial Condition Examiners Handbook

Review any financial guarantees involved with this transaction.

7. **Reinsurance**
   - Review and assess the Applicant Company’s reinsurance program and activities; including the impact of assumed and ceded premiums, retention and limitation levels
   - Review the financial condition and AM Best ratings of reinsurers with material reinsurance arrangements
     - Consider separately affiliated and non-affiliated reinsurers, which may require separate financial review
     - Consider financial requirements for licensed, authorized or unauthorized material reinsurance arrangements.

8. **Market Share Report**
   - Review market share reports
   - Assess the impact of the Applicant Company’s projected premiums on the state’s market share and whether there are any areas of concern regarding market share percentages for any of the proposed lines of business
   - Determine if a Form E filing is required.

9. **Summary**
   - Develop and document an overall summary of findings based on the analysis and all other factors that are relevant to evaluating the Applicant Company’s plan of operation and overall financial condition
   - Itemize each issue that warrants a company inquiry or resolution
   - Send correspondence to Applicant Company.
10. Follow-up

- Upon receipt of the Applicant Company’s response to the inquiry, review and assess the status of each outstanding issue
- Determine if additional company correspondence is required.

Item 11. Deleting Lines of Business

- Deletion of a line of business requires notification and adequate establishment or extinguishment of liabilities. A line of business should not be deleted unless all liabilities in that line are extinguished.

Priority 2

If the company is prioritized as 2, then the applicant state should discuss with the domiciliary state whether there exists any extraordinary circumstance that might outweigh the Applicant Company’s operating condition. In certain instances the proposed plan of operation might provide for a limited expansion of authority in order to maintain its current policyholder base. Should approval be granted, the business plan should be carefully reviewed and closely monitored. See Corporate Amendment – Adding and Deleting Lines of Business, Priority 2. Plan of Operation for Best Practices – Review of Plan of Operations (Proforma Financial Statements, Narrative/Business Plan and Questionnaire).
Corporate Amendment Application – Name Change – For Filing with Non-Domiciliary States

Corporate amendment applications involving a change of name or location of the insurer are often accompanied by related policy form approval filings reflecting the change in name or location. In some instances, the company license application process is held in abeyance until a complete review of policy forms has been completed. It is recommended that in such instances a policy form endorsement be approved for only the change in name or location, in lieu of a complete policy form review.

The classification of the application instruction items is illustrated in the following chart.

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Administrative Filing

Application Instruction Items

Item 1. Application Form and Attachments
- Form 1C “Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application.
- Form 2C “Corporate Amendment Application” – The coordinator should review the form for completeness.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Articles of Incorporation
- The amended articles of incorporation should be reviewed to determine that the new name is reflected.
Item 4. Bylaws
   • The amended bylaws should be reviewed to determine that the new name is reflected.

Item 5. Consent to Service of Process
   • The amended consent to service of process should be reviewed to determine that the new name is reflected.

Item 6. State of Domicile Approval
   • The domiciliary state should have already approved the name change.

Item 8. Name Approval
   • Typically state insurance departments incorporate insurers, but some states require the involvement of the secretary of state or the attorney general. Names are submitted for preapproval because the public has the right to know with whom it is dealing and therefore, someone must determine that the name is not so similar to another as to be likely to deceive or mislead. The name should be such as to show that the company is engaged in the insurance business and preferably to show the type of business. Some states provide for publication and subsequent hearing to ensure that any objections are addressed.
   • The coordinator should determine that a name approval request consistent with the state’s requirements has been filed. If state requirements dictate, the request should be forwarded to the appropriate area for processing.
Corporate Amendment Application – Redomestication of a Foreign Insurer

The classification of the application instruction items is illustrated in the following chart.

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<td>5. Statutory Deposit Requirements</td>
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<td>7. State of Domicile Approval</td>
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Administrative Filing

Application Instruction Items

Item 1. Application Form and Attachments
- Form 1P “Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application.
- Form 2C “Corporate Amendment Application” – The coordinator should review the form for completeness.
- The coordinator should utilize the Lines of Business Matrix to compare the lines of business in the Applicant Company’s new domicile state with the authorized lines of business in the applicant state.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Articles of Incorporation
- The amended articles of incorporation should be reviewed to determine that the new state of domicile is reflected.

Item 4. Bylaws
- The amended bylaws should be reviewed to determine that the new state of domicile is reflected.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Item 5. Statutory Deposit Requirements
   • Form 7 – The Certificate of Deposit should be reviewed to determine that the new state of domicile is reflected and compare the amount of the deposit of the new state of domicile to the state’s requirement.

Item 6. Consent to Service of Process
   • The amended consent to service of process should be reviewed to determine that the new state of domicile is reflected.

Item 7. State of Domicile Approval
   • The domiciliary state should have already approved the redomestication.
Corporate Amendment Application – Change of Statutory Home Office Address

The classification of the application instruction items is illustrated in the following chart.

<table>
<thead>
<tr>
<th>Application Instruction Items</th>
<th>Administrative Filing</th>
<th>Analysis of Current Condition</th>
<th>Analysis of Business Plan</th>
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<td>6. State of Domicile Approval</td>
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Administrative Filing

Application Instruction Items

Item 1. Application Form and Attachments
- Form 1C “Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application.
- Form 2C “Corporate Amendment Application” – The coordinator should review the form for completeness.
- Old Certificate of Authority – The Applicant Company should have surrendered the old certificate of authority or filed an affidavit of a lost certificate of authority.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance Department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Articles of Incorporation
- The amended articles of incorporation or other documentation required or permitted by the domiciliary state should be reviewed to determine that the new location is reflected.

Item 4. Bylaws
- The amended bylaws should be reviewed to determine that if a location for the insurer is stated, the bylaws have been updated to reflect the new location.
Item 5. Consent to Service of Process
  • The amended consent to service of process should be reviewed to determine that the new location is reflected.

Item 6. State of Domicile Approval
  • The domiciliary state (if the applicant is a foreign company) should have already approved the location change.
Corporate Amendment Application – Merger of Two or More Foreign Insurers – For Filing with Non-Domiciliary States

Prior to a corporate amendment filing, the Form A should be approved. Refer to Appendix D for detailed information regarding the review of a Form A filing.

The classification of the application instruction items is illustrated in the following chart.

<table>
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<td>5. Minimum Capital and Surplus Requirements</td>
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<td>6. Statutory Deposit Requirements</td>
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<td>8. Statutory Memberships</td>
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<td>9. NAIC Biographical Affidavits</td>
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<td>10. Consent to Service of Process</td>
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<td>11. State of Domicile Approval</td>
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</table>

Administrative Items

A merger requires notification to all states in which the Applicant Company is licensed. Corporate documents must be amended to incorporate the new address along with other requirements that may be state-specific.

Item 1. Application Form and Attachments

- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive, but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the applicant.
- Form 2C “Corporate Amendments Application” – The coordinator should review the form for completeness. This form contains minimum required information.
- Form 3 “Lines of Insurance” – The coordinator should verify if the Applicant Company is authorized to write all lines of business, including variable products in the state. If the Applicant Company is not authorized to write all lines of business in the state, then the Applicant Company should also complete Section I (Adding and Deleting Lines of Business) in the UCAA Corporate Amendment Application.
Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Articles of Incorporation/Articles of Merger
- The certificate of merger from the domestic state of the surviving entity serves as the “marriage license” and denotes the approval of that state. The articles of merger serve as the “marriage contract” and specify the terms of the merger. These documents should be retained as permanent corporate records as part of the articles of incorporation.

Item 4. Bylaws
- The bylaws need only be reviewed if they have been amended.

Item 6. Statutory Deposit Requirements
- Form 7 “Certificate of Deposit” – The coordinator should review the form and compare the amount of the deposit to the state’s requirement.
- These funds are deposited with the commissioner, generally through a safekeeping or trust receipt, to be held for the benefit and protection of, and as security for, all policyholders and, in some instances, creditors of the insurer making the deposit. Additional deposits are generally required of those insurers applying to write lines of business not covered under state insurance guaranty funds (such as guaranty, fidelity, surety, and bond business) or otherwise (e.g., workers’ compensation). The ultimate purpose of these funds is to ensure that liquid assets are unencumbered and available for use by the commissioner, or his/her designee, for the administration of the insurer’s estate should it become insolvent.

Item 8. Statutory Memberships
- This item may be applicable depending on any new lines of business added.
- Some states require a positive application and confirmation regarding membership in state-mandated risk pools or other organizations. In other words, an insurer may not automatically be a member by virtue of its certificate of authority, but may be required to join outside the jurisdiction of the insurance department.

Item 10. Consent to Service of Process
- This document designates the commissioner or a resident of the state to receive consent to service of process on behalf of the entity. Persons or entities to receive forwarded consent to service of process from the commissioner are also provided.

Item 11. State of Domicile Approval
- The certificate of merger is the approval of the domestic state of the surviving entity. It should be accompanied by a certificate of compliance from the other state involved, if applicable.
Analysis of Current Condition

Item 5. Minimum Capital and Surplus Requirements
- This item may be applicable depending on any new lines of business added.

Item 9. NAIC Biographical Affidavits
- A review of biographical affidavits is only necessary if there is a change in officers, directors or ownership.
- These documents are used to perform a background check (if required by the state) to evaluate the suitability, competency, character and integrity of those persons ultimately responsible for the operations of the insurer. Persons to be reviewed are the controlling owners, officers, directors and key managerial personnel with the ultimate authority over the financial and operational decisions of the insurer, such as the chief executive officer (CEO), chief operating officer (COO), chief financial officer (CFO), secretary, chief marketing officer and treasurer.
- Independent third-party background reports are used to identify discrepancies in the biographical affidavit and evaluate the suitability of the controlling owners, officers, directors or key managerial personnel of the applicant and competency to perform the responsibilities of the position held with the company. Issues regarding competency, character and integrity may be self-evident from the information provided in the affidavit or may be determined from the related background review or criminal background check.
  - Regulators will review the biographical affidavit for completeness- each question should have a response. The affiant must use the most current form available and posted on the UCAA website. Insufficient affidavits or affidavits where signature dates are more than six months from application submit date should not be accepted.
  - Regulators will review the comparison of information provided on the biographical affidavit and the results of the independent third-party background reports.
  - Regulators will note any discrepancies found in the independent third-party background reports and follow up with the Applicant Company or domestic regulator for further clarification.
  - Any key concerns will be addressed with the Applicant Company or domestic regulator for further clarification.

Analysis of Business Plan

Item 7. Plan of Operation
- The articles of merger and/or the accompanying business plan of the surviving entity should be reviewed for informational purposes. See Corporate Amendment – Adding and Deleting Lines of Business. Plan of Operation for Best Practices – Review of Plan of Operations (Proforma Financial Statements, Narrative/Business Plan and Questionnaire).
Corporate Amendment Application – Proposed/Completed Change of Control of Foreign Insurers

The classification of the of the application instruction items is illustrated in the following chart.

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<td>9. State-Specific Information</td>
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Administrative Items

Proposed change of control transaction information (proposed transaction) and a second filing of actual information after the change of control are complete (completed transaction). This application is not applicable for filing in a state if the insurer is a domestic insurer in that state.

Item 1. Application Form and Attachments
- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive, but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the Applicant Company.
- Form 2C “Corporate Amendments Application” – The coordinator should review the form for completeness. This form contains minimum required information.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Item 3. Articles of Incorporation
- If the Articles of Incorporation have changed as a result of the change of control, file the amended Articles. If the most recently filed (in the state for which you are applying) Articles of Incorporation have not changed, do not file the Articles of Incorporation. Simply state that the current articles are already on file with the state to which this application relates. If it is expected that revised Articles of Incorporation will be submitted in the completed transaction filing, indicate that in the proposed transaction filing.

Item 4. Bylaws
- The bylaws need only be submitted if they have been amended. If it is expected that revised bylaws will be submitted in the completed transaction filing, indicate that in the proposed transaction filing.

Item 7. Consent to Service of Process
- This document designates the commissioner or a resident of the state to receive consent to service of process on behalf of the company. Persons or entities to receive forwarded consent to service of process from the commissioner are also provided.

Item 8. State of Domicile Approval
- Verify that the domiciliary state approved the change of control.
- Refer to Appendix D, Form A Review Best Practices for additional guidance.

Item 9. State-Specific Information
- Some jurisdictions may have additional requirements that must be met before a proposed change of control can be completed. For example, some states require the filing of a Form E (Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer) at least 30 days before the completion of a change of control transaction. In addition, some states may require a Form B amended statement, in accordance with the Insurance Holding Company System Regulatory Act (#440), after completion of the change of control transaction. Before completing a UCAA Corporate Amendments Application the applicant should review a listing of requirements for the state to which you are applying. State-specific information is listed on the state-specific chart.

Analysis of Current Condition

Item 6. NAIC Biographical Affidavits
- A review of biographical affidavits is only necessary if there is a change in officers, directors or ownership.
- These documents are used to perform a background check (if required by the state) to evaluate the suitability, competency, character and integrity of those persons ultimately responsible for the operations of the insurer. Persons to be reviewed are the controlling owners, officers, directors and key managerial personnel with the ultimate authority over the financial and operational decisions of the insurer, such as the chief executive officer.
(CEO), chief operating officer (COO), chief financial officer (CFO), secretary, chief marketing officer and treasurer.

- Independent third-party background reports are used to identify discrepancies in the biographical affidavit and evaluate the suitability of the controlling owners, officers, directors or key managerial personnel of the Applicant Company and competency to perform the responsibilities of the position held with the entity. Issues regarding competency, character and integrity may be self-evident from the information provided in the affidavit or may be determined from the related background review or criminal background check.
  - Regulators will review the biographical affidavit for completeness—each question should have a response. The affiant must use the most current form available and posted on the UCAA website. Insufficient affidavits or affidavits where signature dates are more than six months from application submit date should not be accepted.
  - Regulators will review the comparison of information provided on the biographical affidavit and the results of the independent third-party background reports.
  - Regulators will note any discrepancies found in the independent third-party background reports and follow up with the Applicant Company or domestic regulator for further clarification.
  - Any key concerns will be addressed with the Applicant Company or domestic regulator for further clarification.

Analysis of Business Plan

Item 5. Plan of Operation

- If the business plan of the insurer will change as a result of the change of control transaction, a plan of operation must be submitted; otherwise, a statement that the business plan will not change will suffice and should be submitted. The plan of operation is made up of two components: a brief narrative and proforma financial statements/projections (Form 13). The narrative should include significant information in support of the application. Projections must support all aspects of the proposed plan of operation, including reinsurance arrangements and any delegated function agreements. Include the assumptions used to arrive at these projections. See Corporate Amendment – Adding and Deleting Lines of Business. Plan of Operation for Best Practices – Review of Plan of Operations (Proforma Financial Statements, Narrative/Business Plan and Questionnaire).
Corporate Amendment Application – Amended Articles of Incorporation

The classification of the of the application instruction items is illustrated in the following chart.

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<td>6. State-Specific Information</td>
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Administrative Items

Amended articles of incorporation require notification to all states in which the Applicant Company is licensed. This application is not applicable for filing in a state if the insurer is a domestic insurer in that state.

Item 1. Application Form and Attachments
- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the Checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive, but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the applicant.
- Form 2C “Corporate Amendments Application” – The coordinator should review the form for completeness. This form contains minimum required information.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Articles of Incorporation
- Indicate the location of the language within the articles of incorporation that reflects the change. (Page number, section number, etc., of the articles of incorporation).
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Item 4. Bylaws
- The bylaws need only be submitted if they have been amended.

Item 5. State of Domicile Approval
- Provide a copy of the amended articles of incorporation approval from the Applicant Company’s state of domicile.

Item 6. State-Specific Information
- Some jurisdictions may have additional requirements that must be met before articles of incorporation can be amended. Before completing a UCAA Corporate Amendments Application the Applicant Company should review a listing of requirements for the state to which you are applying.
NAIC Company Licensing Best Practices Handbook
Best Practices: Application Review

Corporate Amendment Application – Amended Bylaws

The classification of the of the application instruction items is illustrated in the following chart.

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<td>5. State-Specific Information</td>
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Administrative Items

Amended bylaws that are not a result of changes addressed in other areas of the corporate amendment application require notification to all states in which the Applicant Company is licensed. This application is not applicable for filing in a state if the insurer is a domestic insurer in that state.

Item 1. Application Form and Attachments
- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive, but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the Applicant Company.
- Form 2C “Corporate Amendments Application” – The coordinator should review the form for completeness. This form contains minimum required information.

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees range from $0 to in excess of $200 and are generally retaliatory.

Item 3. Bylaws
- Indicate the location of the language within the bylaws that reflects the change (page number, section number, etc., of the bylaws).

Item 4. State of Domicile Approval
- Provide a copy of the amended bylaws approval from the Applicant Company’s state of domicile.
Item 5. State-Specific Information

- Some jurisdictions may have additional requirements that must be met before the bylaws can be amended. Before completing a UCAA Corporate Amendments Application, the applicant should review a listing of requirements for the state to which you are applying.
Corporate Amendment Application – Change of Mailing Address/Contact Notification

The classification of the application instruction items is illustrated in the following chart.

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Administrative Items

Item 1. Application Form and Attachments

- Change of mailing address that do not involve corporate record amendments, such as moving from one building to another or contact person changes, are filed on Form14 – Change of Mailing Address/Contact Notification Form.
## Corporate Amendment Application – Consent to Service of Process

The classification of the application instruction items is illustrated in the following chart.

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<td>2. Filing Fee</td>
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### Administrative Items

**Item 1. Consent to Service of Process**
- The amended consent to service of process should be reviewed to determine that the resident agent or forwarding address is reflected.
- If the application was submitted electronically, the state may utilize the UCAA email system to contact or notify the company if there are questions regarding the resident agent or forwarding address. Refer to the Corporate Amendment User Guide for additional instructions.

**Item 2. Filing Fee**
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.
- Filing fees vary from state to state. Refer to the State Retaliatory Information link on the UCAA website for additional state information.
- If the application was submitted electronically, the state may utilize the UCAA email system to contact or notify the Applicant Company of filing fee requirements. Refer to the Corporate Amendment User Guide for additional instructions.
Corporate Amendment Application - Statement of Withdrawal, Complete Surrender of Certificate of Authority

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<td>3. Statement of Withdrawal and Attachments</td>
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</table>

Item 1. Application Form and Attachments
- Form 1C “Corporate Amendments Application Checklist” – The coordinator should review the checklist for completeness and that all described documents are included in the application. As stated on the checklist form, this document is simply a guide. It is a reminder of what should initially be included in the application package in order for it to be considered complete. This form is all-inclusive, but should be completed with due consideration to the specific amendment(s) requested. Items required are dependent upon the request of the applicant. If the Applicant Company cannot return its original certificate of authority, they must complete and attach an Affidavit of Lost Certificate of Authority (Form 15).

Item 2. Filing Fee
- Review check submitted in payment of fees for correct amount. In some instances the check may be held by another section of the insurance department. In that case, review the description of the check received.
- Forward check for deposit or provide information for proper processing of check.

Item 3. Statement of Withdrawal and Attachments
- The statement for withdrawal must include a thorough explanation for the surrender of its certificate of authority.
- The Applicant Company must provide sufficient explanations for outstanding claims, contingent liabilities, or lawsuits currently existing.
- The Applicant Company must also state whether any business will be transferred to another insurer and attach any reinsurance agreements.

Item 4. State-Specific Information
- Some jurisdictions may have additional requirements that the Applicant Company must meet before the state can cancel a Certificate of Authority. Before completing a UCAA Corporate Amendment Application, the Applicant Company should review the listing of State-Specific Requirements for the application state.
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The Uniform Certificate of Authority Application (UCAA)
THE UCAA

In conjunction with the NAIC, the various states have worked toward the goal of streamlining and achieving uniformity in the insurer licensing process. The insurer licensing process encompasses the initial licensing of an insurer, as well as licensing in additional states and filings that modify or expand an existing certificate of authority. It was the intent of the former Accelerated Licensing Evaluation Review Technique (ALERT) Subgroup that each of the adopted application packages contains a complete listing of the requirements for licensing in a state. The Uniform Certificate of Authority Application (UCAA) website that provides a consistent frame of reference for all participants in the licensing process. There are three types of applications: primary, expansion and corporate amendments. Those application types and their component items are described below.

Primary Application

The UCAA primary application is for use in the formation of a new insurer, or for an existing insurer to use in making application to redomesticate to another state. It contains the following items:
1. Application Form and Attachments
2. Filing Fee
3. Minimum Capital and Surplus Requirements
4. Statutory Deposit Requirements
5. Name Approval
6. Plan of Operation
7. Holding Company Act Filings
8. Statutory Membership(s)
9. SEC Filings or Consolidated GAAP Financial Statement
10. Debt-to-Equity Ratio Statement
11. Custody Agreements
12. Public Records Package
13. NAIC Biographical Affidavits
14. State-Specific Information

Primary Application – Redomestications Only

The requirements of this section are only for those insurers seeking to redomesticate from one state to another and are in addition to the requirements of Section I, Item #1 through Item #14 of the primary checklist. A redomestication is the process where any insurer organized under the laws of any state may become a domestic insurer that transfers its domicile to another state by merger or consolidation or any other lawful method.
The Applicant Company files the primary application with the insurer’s new state of domicile when used for a redomestication. In addition to the items included with the primary application, the redomestication application will include the following items:

15. Annual Statements with Attachments
16. Quarterly Financial Statements
17. Risk-Based Capital Report
18. Independent CPA Audit Report
19. Reports of Examination
20. Certificate of Compliance
Uniform Certificate of Authority Application (UCAA)
Primary Application Review Checklist
(Regulator Use Only)

1. Company and Structure
   a. Identify if the Applicant Company is a stock, mutual, etc.
      i. Identify the type of business the Applicant Company will be
         providing (life, property & casualty, title, etc.).
   b. Articles (for compliance and/or approval in accordance with state
      law).
      i. Committee Structure
      ii. Par Value
      iii. Capitalization
      iv. Audit Committee – Were independence requirements met?
   c. Bylaws (for compliance and/or approval in accordance with state
      law) (if applicable).
      i. Committee Structure.
      ii. Audit Committee – Were independence requirements met?
   d. Board of Directors and Designated Committees.
      i. Minimum/maximum number of directors.
      ii. Number of directors.
      iii. Residency requirements.
      iv. Independence requirements.

2. Review Quality and Expertise, including Biographical Affidavits
   a. Review the biographical affidavits for fitness and propriety (the
      biographical affidavit should be completed on the most current
      revision date of the form and no more than six months (6 months)).
   b. Review third party verifications and fingerprint (where required).
   c. Review Form A database for other transactions and outcomes.
   d. Review SAD database for regulatory actions against the officer or
      director
   e. Review biographical sketches (Form B).
   f. Review the quality and expertise of the ultimate controlling person,
      officers and directors and actuary.
   g. Review appointment letters for appointed actuary and appointed CPA.
   h. Verify Licenses.
NAIC Company Licensing Best Practices Handbook
Appendix A – The Uniform Certificate of Authority Application (UCAA)

3. Holding Company (if applicable)
   a. Organizational Chart.
   b. Affiliated Organizations (affiliated agreements will be reviewed for licensing purposes, however, affiliated agreements are not being approved, a Form D filing is required for approval).
      i. Identify the type’s organizations (affiliated and unaffiliated).
      ii. List of services provided by affiliates.
      iii. Reimbursement terms fair & reasonable to the Applicant Company.
      iv. Financial condition.
   c. Review Holding Company Registration Statement (Form B), including amendments (if applicable); and Holding Company Filings.
   d. Review Ultimate Controlling Party (UCP) Financials - Verify if UCP is capable of providing support and experience level in operating the type of company proposed.
   e. Review Debt-to-Equity statement.
   f. Review lead state holding company system analysis and reports.
   g. Review Applicant Company contemplated and/or existing agreements with affiliates.
   h. Review and identify any concerns:
      i. five years of audited financial statements;
      ii. current financial statements (as of date within 90 days of filing); and
      iii. SEC reports, if applicable.
   i. Determine if financial projections are needed for the immediate parent or UCP. If obtained, are the financial projections for the Applicant Company and/or UCP consistent with business plan.

4. Business Plan and Operations
   a. Review the Applicant Company’s business plan.
   b. Review the Applicant Company’s business narrative including the types of products to be sold and how they will be distributed.
   c. Review Form 8 Questionnaire for the Applicant Company.
   d. Consider Officers/Directors compensation information as reported in annual statement.
   e. Identify if any Managing General Agents (MGA) and Third Party Administrator (TPA) will be used. If so, are they properly licensed or registered in the state?
   f. Determine if the Applicant Company will use any Professional Employer Organizations (PEO). If so, are they properly licensed or registered?
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Appendix A – The Uniform Certificate of Authority Application (UCAA)

5. Reasonableness of Projections

   a. Identify if the projections appear to be reasonable, in relation to the business plan as provided.

   b. What assumptions did the Applicant Company use in their projections, include feasibility study of projections if available.

   c. Review the financial statement and exhibits and consider reasonableness of projections provided.

   d. Does the Applicant Company appear to be aggressive or realistic in their growth projections?

   e. Determine if the GWP and NWP ratios are within industry standards.

   f. Review the projected RBC. Is it within the norms and does it make sense based on projections.

   g. Review the capitalization of the Applicant Company.

      i. Where is it coming from?
NAIC Company Licensing Best Practices Handbook
Appendix A – The Uniform Certificate of Authority Application (UCAA)

ii. Will there be any Parental Guarantees, etc.?

iii. Are there any short or long-term financing arrangements contemplated?

iv. Consider quality of capitalization.

h. Did the Applicant Company project any growth? If so:
   i. What will be the source and type (cash, surplus notes) of any such contributions?
   ii. Are there any capital contributions that are being contemplated?

i. For HMO’s, determine the minimum capital, surplus and deposit requirements based on the Applicant Company’s projections.

6. Company Financials (if redomesticating)

   b. Request and review a copy of the Applicant Company’s Insurer Profile Summary from the domestic state.
   c. Request and review a copy of the latest holding company system analysis from the lead state.
   d. Review the Applicant Company’s FAST and Financial Profile
   e. Review AM Best and other rating agency ratings.
   f. Identify if the company was redomesticating, was the company formed by the Secretary of State or under the business laws or insurance laws of the state.
   g. Verify the date the last financial examination was completed and determine if it met all state requirements.

7. Other

   a. Determine if Network Adequacy requirements are met, if HMO.
   b. Determine if a pre-licensing examination needs to occur.
   c. Designation of Registered Agent.
   d. Review applications filed in other states in the prior 12 months.
   e. Review the terms of any agreements with a broker-dealer.
   f. Review the market share impact.
Expansion Application

The UCAA expansion application is for use by an insurer that wishes to expand into one or more states. An insurer may file expansion applications simultaneously in as many states as desired. The expansion application is an abbreviated version of the UCAA designed to allow solidly performing companies that are in good standing in all admitted states to gain admission into new states quickly and easily. It is the goal to complete the review of expansion applications within 60 calendar days of receipt. The 60-day review process includes two weeks to determine if the application is complete and acceptable. During the remaining 45–60 day time span, the application will receive a financial and operational review. Based on the circumstances of a particular application, it may be necessary for the reviewing state to request additional information.

The UCAA expansion application has the following items:

1. Expansion Application Form
2. Filing Fee
3. Minimum Capital and Surplus Requirements
4. Statutory Deposit Requirements
5. Name Approval
6. Plan of Operation
7. Holding Company Act Filings
8. Certificate of Compliance
9. Report of Examination
10. Statutory Memberships
11. Public Records Package
12. NAIC Biographical Affidavits
13. Consent to Service of Process
14. State-Specific Information
Corporate Amendments Application

An existing insurer uses the UCAA corporate amendments application for requesting amendments to its certificate of authority. The Applicant Company can use the corporate amendments application to file more than one change in the same submission. The Applicant Company should mark all changes it files on the application form and submit all items required for those changes. This UCAA corporate amendments application has the following items:

1. Application Form and Attachments
2. Filing Fee
3. Articles of Incorporation
4. Bylaws
5. Minimum Capital and Surplus Requirements
6. Statutory Deposit Requirements
7. Plan of Operation
8. Statutory Membership(s)
9. Certificate of Compliance
10. State-Specific Information
11. Deleting Lines of Business

There are slightly different filing requirements for corporate amendments applications involving name changes, redomestication of foreign insurers, change of city within the state of domicile, change of mailing address/contact information and mergers of two or more foreign insurers.

UCAA Forms

In order to facilitate the uniform submission of information pertinent to each of the items of the various applications, a variety of forms were promulgated by the ALERT Subgroup. There is a matrix of the forms and the items to which they apply on the UCAA website.
REVIEW OF THE UCAA

The “Best Practices: Application Review” chapter of the Best Practices Handbook describes the recommended best practices for the review of the items and forms associated with the various types of UCAA applications.

Review of UCAA State Charts

In order to maintain accurate and current state requirements, the UCAA state charts should be reviewed by the insurance department at least on an annual basis. In addition, whenever the state is aware of a change, notify the company licensing coordinator as soon as practicable. Each chart listed should be reviewed for:

- State requirements
- Statutory references
- Department website links
- Contact information, including email, telephone number and extension.

All updates should be sent to the company licensing coordinator listed on the NAIC website.
Use of Electronic Documents
Many of the documents filed in the UCAA process are currently housed in electronic format at the NAIC or lend themselves easily to electronic storage and viewing.

The items included in the public records package that are already stored in either data tables or PDF file format, or both, at the NAIC are:

- Annual Financial Statements (in data tables and PDF files) with Attachments, Including the Actuarial Opinion and Management’s Discussion and Analysis (in PDF file format)
- Quarterly Financial Statements (in data tables and PDF files)
- Risk-Based Capital Reports (in data tables and PDF files)
- CPA Audit Reports (in PDF files)
- Examination Reports (in PDF files and in I-SITE in the Financial Exam Electronic Tracking System on a voluntary basis)
- SEC Filings (can be found at [www.sec.gov/edgar.shtml](http://www.sec.gov/edgar.shtml))

The following documents are not currently stored in an explicit location in an NAIC database, but should at least be stored and made available in electronic format:

- Form B Registration Statement
- Consolidated GAAP Financial Statements
- Articles of Incorporation
- Bylaws

A concerted effort should be made to reduce the amount of paperwork created and stored with respect to the review of UCAA applications.
Review of Electronic Application Coordination and Processing (REACAP)
Companies may file an NAIC Uniform Certificate of Authority Application (UCAA) under the REACAP program upon application to and acceptance by the National Treatment and Coordination (E) Working Group (Working Group). Applications that are accepted into the REACAP program will have the timing, technology and substantive processing monitored, issues encountered will be reported to the Working Group and the applicant will provide feedback to the Working Group about the process. UCAA electronic applications are encouraged, and acceptance into the REACAP program is an option, not a requirement, when submitting an electronic application.

To apply for REACAP, companies should send to the co-chairs of the Working Group and the NAIC coordinator (www.naic.org/industry_ucaa.htm) an explanatory letter setting forth the basis for their application that meets the criteria for acceptance into the REACAP program. Companies should be aware that other factors, such as regulatory workload, may impact acceptance into the REACAP program.

For an expansion application, the explanatory letter must include all of the following for consideration for acceptance into the REACAP program:

1. A commitment to file application electronically and to work with the Working Group.
2. A commitment letter (attached) from the domestic regulator indicating their willingness to work with the Working Group should the REACAP application be accepted.
3. Whether the application will serve a national or regional market need and quantification of that need.
4. The number and name of states to which the expansion application will be submitted.
5. A description of the current affiliations with insurers licensed in one or more states.
6. The basic financial condition of the applicant (e.g., capital, surplus, RBC) and the “as-of” date of the most recent financial exam.
7. Whether the company is a start-up company.
8. The nature and extent of any parental guarantees.
9. Experience of the management team with the lines of business being applied for.
10. A brief description of all regulatory compliance enforcement actions by state for the past five years.
For a corporate amendment application, the explanatory letter must include all of the following for consideration for acceptance into the REACAP program:

1. A commitment to file application electronically and to work with the Working Group.
2. A commitment letter (attached) from the domestic regulator indicating their willingness to work with the Working Group should the REACAP application be accepted.
3. The number and name of states to which the corporate amendment application will be submitted.
4. If adding line(s) of business or merger:
   a. Whether the application will serve a national or regional market need and quantification of that need.
   b. A description of the current affiliations with insurers licensed in one or more states.
   c. The basic financial condition of the applicant (e.g., capital, surplus, RBC) and the “as-of” date of the most recent financial exam.
   d. Experience of the management team with the lines of business being applied for.
   e. Indicate if the transaction is date-specific.
5. If a name change, merger, redomestication, etc.:
   a. Indicate national or regional impact, including marketing and quantification of that impact.
   b. Provide a description of the affiliations with already licensed insurers involved in the transaction.
   c. Indicate if the transaction is date-specific.
6. Provide a brief description of all regulatory compliance enforcement actions by state for the past five years.

**REACAP Expedited Review Guidelines**

Some companies may request expedited review of a REACAP application. If so, the Applicant Company will need to clearly state, in writing, that request and the basis for it. The National Treatment and Coordination (E) Working Group will consider the request for expedited review with the request for acceptance into the REACAP program, including substantiation of market need, urgent circumstances, as well as the regulators’ other workload. Requests for expedited treatment may result in a REACAP request being denied. Further, applicants should be aware that state regulators cannot be compelled by the Working Group to complete an expedited review.
Form A Review Best Practices
Every Form A review should be tailored to the risks associated with the proposed acquisition, including the target company, acquiring entity, and the complexity of the transaction. The following best practices are presented as a guide for regulatory review and analysis of Form A acquisitions, recognizing that this list may not be comprehensive and not all items will apply to every acquisition. This list is intended to be a regulatory tool. **The NAIC Form A database should be updated as applicable throughout the Form A review process.**

1. **Initial Review**
   a) Determine if the filing is complete, note the missing items and promptly send a deficiency letter to the Applicant.
   b) Identify attorneys, party contacts, and the other insurance regulator reviewing the Form A, including the lead regulator.
   c) The lead regulator should obtain key contact information from each state reviewing the Form A and consider organizing a regulator to regulator call to discuss concerns with the filing.
   d) Assign appropriate analyst, legal and other professional staff to conduct regulatory review.
   e) Carefully consider whether regulatory review can be completed by Applicant’s target close date, including any interim deadlines and obtain deemer extension or waiver if appropriate, and
   f) Schedule and notice hearing/consolidated hearing, if applicable, within statutory timeframes.

2. **Background, Identity and Risk Profile of Acquiring Persons**
   a) Identify and review all relevant parties to the proposed acquisition.
   b) Assess the feasibility of the acquiring persons holding company structure including location and control (direct/indirect) of the target company post acquisition.
   c) Review the lead state’s assessment of the acquiring persons most recent ORSA Summary Report and Form F ERM, if applicable, to better understand the related risks.
   d) Determine Ultimate Controlling Person and/or Parent (UCP), cross check with source of funds and consider debt funding sources.
   e) Review NAIC and other external sources to gain a better understanding of the acquiring persons, its affiliates, and the UCP.
   f) Carefully scrutinize and understand complex organization and ownership structures.
   g) Review Audited Financial Statements (or CPA reviewed financial statements for individuals) of the acquiring persons, its holding company, and the UCP, 10K and 10Qs, and other current financial information for enterprise condition, potential debt service by the UCP and its ability to service such debt. Understand the level of reliance on cash flow/dividends from the target company to service debt and other obligations of the holding company and UCP.
   h) Based upon nature of acquiring party, review detailed audited financial statement of all individuals who are source of funds.
NAIC *Company Licensing Best Practices Handbook*
Appendix D – Form A Review Best Practices

a. If not available, consider acceptability of unaudited financial statements, compiled personal financial or net worth statements and/or tax returns.

i) Consider suitability of UCP through background review and regulatory review of the prospective new owners, using UCAA biographical affidavits and third-party background reviews by NAIC listed independent third-party reviewing companies or fingerprinting criminal checks if applicable, and

j) Consider acceptability of SEC disclosures by board members of publicly traded UCPs in suitability review.

3. **Communication and Record Maintenance**
   a) Communicate response to any confidentiality requests in writing as soon as possible
   b) Create a contact list of relevant persons and representatives
   c) Separate confidential and public documents, information, and communications and maintain as appropriate
   d) Contact and collaborate with other reviewing regulators involved in the review process, as appropriate, including the lead state regulator regarding ORSA and ERM reviews
   e) As applicable, contact other regulators of noninsurance entities of the acquiring party or target
   f) Respond as appropriate to questions from third parties and interested regulators
   g) Keep the acquiring party representatives informed as to status of review
   h) Receive and consider any information provided by external sources, including possible financial or other incentives or motivation of those commenting on a particular transaction
   i) Summarize review, findings, conclusions and action taken on Form A review in final action document, including stipulations, and conditions subsequent, and
   j) File and maintain documents under state procedures.

4. **Transaction Review**
   a) Determine how acquisition will be achieved by carefully reviewing transactional documents, e.g. merger, stock purchase, stock exchange
   b) Consider disposition of all classes of target shares, including addressment of any beneficial owners
   c) Ascertain propriety of disposition of minority interests and concerns, if applicable
   d) Consider any affiliate or employee benefit as appropriate
   e) Determine how any ancillary regulatory reviews or other interim procedural steps will be completed, including Form E-Pre-Acquisition Notification Form, for other licensed states
   f) Obtain copies of shareholder communications or sole shareholder consent
   g) Consider obtaining copies of fairness and other contractually required opinions if available
   h) Review relevant portions of board resolutions, power points and related board minutes pertinent to the Form A transaction, use care to keep documents confidential, and
   i) Determine whether additional professional transaction review is warranted.
5. **Purchase Consideration**
   a) Determine fairness (equivalency) of total amount to be paid to total value to be received, including derivation of price and value of target under standard valuation methodologies or to book value.
   b) Consider quality of consideration, giving careful scrutiny to payments other than cash or cash equivalents which are disfavored particularly when any funds are being transferred to the target.
   c) Consider fairness opinions and actuarial appraisals, if provided.
   d) Consider source, type and valuation basis of funds to be used for consideration.
      i. If funds are from a regulated entity, confirm the existence and valuation of such assets with that entity’s regulator.
   e) If applicable, consider implications of any debt financing including
      i. The mechanics of any debt financing to be used to fund the transaction, whether funds are being borrowed in the ordinary course of business or on terms that are less favorable than generally commercial loans.
      ii. The percentage of debt versus non-debt funds to be used.
      iii. The source of funds or stream of income to be used by parent for repayment and the ability of the acquiring party to repay the debt from sources other than the target.
      iv. Identity of the creditor(s) and creditors’ financial condition.
      v. How will debt be secured; consider prohibiting securing of debt on shares of target or target’s assets if not already prohibited by state statute.
      vi. Compare time period of loan commitment with parent’s income stream over the same time period, including the ability of the acquiring party to repay the debt from sources other than the target until loan is repaid/retired, and
      vii. Consider the long term impact of parent’s debt service on operations of the target company and group.
      viii. Follow-up on Parent’s financial commitment to underlying insurer.

6. **Target License Qualification /Insurer Operations**
   a) Determine whether target insurer meets license qualifications upon change of control.
   b) Consider operational changes post-acquisition, including business plans and projections.
   c) Review required statutory deposits and authorized lines of business.
   d) Consider changes to target management and key employees.
   e) Consider suitability of changes to target management and key employees through background review and regulatory review of new owners, using UCAA biographical affidavits and third-party background reviews or fingerprinting criminal checks, if applicable.
   f) Consider plans for technological interfacing with new affiliates and any potential adverse impact on operations including claims.
g) Consider suitability of any new affiliated and non-affiliated material agreements, including managing general agents, third party administrators, any professional organizations and reinsurance arrangements.

h) Review any ERM analysis of the transaction performed by the acquiring entity, including impacts on risk assessment, risk appetite and tolerances, and prospective solvency (capital and liquidity).

i) Require Form D filings for any affiliated material transactions, post-acquisition; consider including language in the approval order.

j) Determine target’s estimated financial condition and stability, post-acquisition, and

k) Consider with disfavor any plans to liquidate the target or sell its assets, consolidate or merge, that may be unfair, unreasonable, or hazardous to policyholders.

l) Consider impact of U.S. insurer merging into an international insurer and/or alerting the legal entity structure and regulatory oversight performed by domestic state(s).

7. Market Impact
   a) Consider anticompetitive impact of acquisition on lines or products, including whether transaction will create a monopoly or lessen competition in insurance in the state; Disapprove transaction if completion will create a monopoly.
   b) Consider Form E information and market concentration for combined lines and other appropriate information to assess market impact if warranted by nature of transaction, including coordination with other states where the target is admitted, and
   c) Consider imposing tailored conditions subsequent or undertakings as necessary to address competitive market concerns.

8. Post-Approval Considerations, if applicable
   a) Receive notification of changes to effective closing date.
   b) Confirm compliance with conditions precedent.
   c) Receive waivers for market conduct or financial examination, and
   d) Receive notification if transaction does not close and consider withdrawal of approval.

9. Post-Acquisition Considerations
   a) Receive confirmation of the transaction following the closing, per your state’s statutory requirement timeframe.
   b) Request written details of the final purchase price after all adjustments are complete on the transaction.
   c) Request confirmation of any capital contribution contemplated in the transaction.
   d) Request the names and titles of those individuals whom will be responsible for the filing of the amended Insurance Holding Company System Annual Registration Statement.
   e) Request an amended Insurance Holding Company System Registration statement per your state’s statutory timeframe within each applicable state’s statutory required timeframe after the close of the proposed transaction.
   f) Consider requesting for a period of two years, commencing six months from closing, a semiannual report under oath of its business operations in your state, including but not
limited to, integration process; any changes to the business of the Domestic Insurers; changes to employment levels; changes in offices of the Domestic Insurers; any changes in location of its operations in your state; and notice of any statutory compliance or regulatory actions taken by other state regulatory authorities against the acquiring parties or the Domestic Insurers.

g) Consider prior approval of all dividends for a two-year period from the close date.

h) Consider undergoing a target financial and/or market conduct examination following the closing or

i) In lieu of an examination a meeting, conference call or receipt of certain information can be requested.

j) Confirm compliance or satisfaction with any other conditions subsequent or undertakings, and

k) Monitor target’s market performance to projections two years after transaction close date.

l) Consider proactive communication with state(s) where the insurer conducts business if changes to the insurer’s corporate structure occurs post-acquisition.
NAIC Company Licensing Best Practices Handbook
Appendix E – Speed to Market

Speed to Market – Insurance company working in conjunction with state of domicile (lead state), where seeking expansion (target) states and facilitated by the National Treatment and Coordination (E) Working Group (NTCWG) to expand operations into multiple States.

(1) Applicant Company must work in concert with lead state to ensure baseline compliance:
   - Applicant Company is in good standing with its lead State. It is not presently under or pending any regulatory actions, unless regulators have agreed upon a strategic plan to address such regulatory actions and a speed to market approach is needed.
   - Applicant company meets the minimum cap, surplus or net worth requirements of the target States.
   - Applicant Company meets or has approval to waive seasoning requirements of the target States.
   - Applicant Company has the appropriate or like kind licensing authority in its state of domicile as to what it is seeking in the target States.
   - Applicant Company has identified all state specific issues related to the target states and is willing to meet them.

(2) Applicant Company and Lead State will request from NTCWG the speed to market process:
   - Applicant Company must have ownership commitment, managerial competence and financial wherewithal to ensure it can successfully operate in all target states.
   - Applicant Company will ensure compliance and management commitment to the UCAA electronic expansion application process.
   - Lead State will assist target states by sharing of information (IPS, etc.) and regulatory thought processes (addressing any RBC, funding, reinsurance issues and how the Applicant company addressed the issues raised by lead state)
   - Outline timelines and expectations.
   - Establish both universal points of contact for the Applicant Company, lead state, and target states.
   - Note any regulatory issues that might arise.

If NTCWG approves and 2 weeks after the Applicant Company has filed an expansion application:
   - NTCWG will initiate a “kick off meeting” with Applicant Company, lead state, target states, NTCWG co-chairs and NAIC staff noting the following:
     - General background of the Applicant Company.
     - Address timelines/expectations.
     - Note any potential regulatory concerns.

Lead State will work in concert with NTCWG (via staff support) to set up Regulator to Regulator only call (Lead State, target States, NTCWG co-chairs):
   - Discuss lead state IPS.
   - Get initial consideration as to status of application and proposed timeline for licensing:
     - target states still have deficiencies and concerns.
     - What target states are ready to recommend approval.
     - If needed, schedule call to include Applicant Company.
Schedule date and time for next conference call to continue discussion.

As needed, all stakeholders follow up calls to address deficiencies and status of application.
National Treatment and Coordination (E) Working Group  
Company Licensing Proposal Form

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IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED

[ x ] UCAA Forms  [ ] UCAA Instructions  [ ] Enhancement to the Electronic Application Process
[ ] Company Licensing Best Practices HB
Forms:
[ ] Form 1 – Checklist  [ ] Form 2 - Application  [ ] Form 3 – Lines of Business
[ ] Form 6 - Certificate of Compliance  [ ] Form 7 – Certificate of Deposit  [ ] Form 8 - Questionnaire
[ ] Form 8C- Corporate Amendment Questionnaire  [ x ] Form 11-Biographical Affidavit  [ ] Form 12-Uniform Consent to Service of Process
[ ] Form 13- ProForma  [ ] Form 14- Change of Address/Contact Notification
[ ] Form 15 – Affidavit of Lost C of A  [ ] Form 16 – Voluntary Dissolution  [ ] Form 17 – Statement of Withdrawal

DESCRIPTION OF CHANGE(S)
Add a Purpose for Completion Section and added new lines for company name, address and phone number as well as a table for govt. id numbers.

REASON OR JUSTIFICATION FOR CHANGE **
The purpose of completion section will allow users to clearly define the purpose of why the biographical affidavit is being completed.
The company name, address and phone number were required previously, but by clearly defining them it will allow for greater ease of complete and clarity that each bio should be completed for only the Applicant Company.
The table for government id’s was added because some countries have more than one government id or the affiant may have more than one government id. The table allows for the affiant to list multiple id’s and to identify the country in which that id is associated.

Additional Staff Comments:
9-12-19 cgb – exposed proposal for 30-day comment period
11-6-19 cgb – no comments received and the Working Group adopted with an effective date of 1/1/20 with a friendly amendment to include the addendum pages, modify the “Purpose for Completion” reference from “Annual Update” to “Other,” and draft an FAQ for when the “Other” option should be selected.
11-19-19 jdb – email sent to regulators regarding the following clarifications: add “Specify” and move “Specify Purpose for Completion” as the heading above and centered over the following:
Form A:___________ UCAA Type:__________________ Other:_____________
And include in the FAQs that the three options include one or more of the options listed and not a check mark.

Form A: Acquisition, Change of Control, Merger
UCAA: Primary, Expansion or Corporate Amendment
Other: New or Change Officer, Director, Annual Update, etc.

The Working Group Members agreed that this should be an editorial change to the original adoption.

** This section must be completed on all forms. Revised 01-2019
Uniform Certificate of Authority Application (UCAA)  

BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority. The affiant may be required to provide additional information during the third-party verification process if they have attended a foreign school or lived and worked internationally.

Specify Purpose for Completion (Print or Type)

Form A: _________________________ UCAA Type: _________________________ Other: _________________________

Full name, address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

Applicant Company Name: ______________________________________________________________________________

Address: ____________________________________________City: ____________________________________________

State/Province:___________________Postal Code: _______________Phone:______________________________________

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS “NO” OR “NONE,” SO STATE. ALL FIELDS MUST HAVE A RESPONSE. INCOMPLETE FORMS COULD DELAY THE APPLICATION PROCESS or RESULT IN REJECTION OF THE APPLICATION.

1. Affiant’s Full Name (Initials Not Acceptable): First:___________Middle:____________Last:________________

2. a. Are you a citizen of the United States?

   Yes [ ]  No [ ]

   b. Are you a citizen of any other country?

   Yes [ ]  No [ ]

   If yes, what country? _____________________________________

3. Affiant’s occupation or profession: ________________________________

4. Affiant’s business address: __________________________________________

   Business telephone: ________________  Business Email: _____________________________________

5. Education and training:

<table>
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<tr>
<th>College/University</th>
<th>City/State</th>
<th>Dates Attended (MM/YY)</th>
<th>Degree Obtained</th>
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<table>
<thead>
<tr>
<th>Other Training: Name</th>
<th>City/State</th>
<th>Dates Attended (MM/YY)</th>
<th>Degree/Certification Obtained</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable, provide the foreign student Identification Number and/or attach foreign diploma or certificate of attendance to the Biographical Affidavit Personal Supplemental Information.
Applicant Company Name: _____________________________ NAIC No. __________________________
FEIN: __________________________

Revised 12/09/19

2019 National Association of Insurance Commissioners 2 FORM 11

BIOGRAPHICAL AFFIDAVIT

Supplemental Personal Information

(Print or Type)

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority. The affiant may be required to provide additional information during the third-party verification process if they have attended a foreign school or lived and worked internationally.

Specify Purpose for Completion

Form A: ______________________ UCAA Type: _________________________ Other: ____________________________

Full name, address, and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

Applicant Company Name:

Address: __________________________

City: __________________________

State/Province: __________________________ Postal Code: _______________ Phone: __________________________

1. Affiant’s Full Name (Initials Not Acceptable): First:_________ Middle:______________ Last:_______________

IF ANSWER IS “NO” OR “NONE,” SO STATE. ALL FIELDS MUST HAVE A RESPONSE. INCOMPLETE FORMS COULD DELAY THE APPLICATION PROCESS OR RESULT IN REJECTION OF THE APPLICATION.

2. Have you ever used any other name, including first, middle or last name, nickname, maiden name or aliases?

   Yes [ ] No [ ]

If yes, give the reason if any, if NONE indicate such, and provide the full name(s) and date(s) used.

<table>
<thead>
<tr>
<th>Beginning/Ending Name(s)</th>
<th>Reason (If NONE, indicate such)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date(s) Used (MM/YY)</td>
<td>Specify: First, Middle or Last Name</td>
</tr>
</tbody>
</table>

Note: Dates provided in response to this question may be approximate. Parties using this form understand that there could be an overlap of dates when transitioning from one name to another. If applicable, provide the foreign student Identification Number and/or attach foreign diploma or certificate of attendance to the Biographical Affidavit Personal Supplemental Information.

3. Affiant’s Social Security Number: __________________________

4. Government Identification Number if not a U.S. Citizen:

   Government ID Number: __________________________

   Country of Issuance: __________________________

5. Foreign Student ID# (if applicable): __________________________

6. Date of Birth: (MM/DD/YY) : __________________________ Place of Birth, City: __________________________

   State/Province: __________________________ Country: __________________________

7. Name of Affiant’s Spouse (if applicable): __________________________

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© 2019 National Association of Insurance Commissioners
<table>
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<th>Applicant Company Name: _____________________________</th>
<th>NAIC No. __________________________</th>
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<tr>
<td>FEIN: __________________________</td>
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Addendum pages are used for additional responses carried over from the biographical affidavit questions. Responses must be labeled and signed by the affiant. Attachments included as addendum's must also be signed by the affiant. Refer to the FAQ's on the UCAA webpage for additional questions.
National Treatment and Coordination (E) Working Group

Company Licensing Proposal Form

<table>
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<tr>
<td>CONTACT PERSON:</td>
<td>Jane Barr</td>
<td>Agenda Item # 2019-07</td>
</tr>
<tr>
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<td>816-783-8413</td>
<td>Year</td>
</tr>
<tr>
<td>EMAIL ADDRESS:</td>
<td><a href="mailto:jbarr@naic.org">jbarr@naic.org</a></td>
<td>DISPOSITION</td>
</tr>
<tr>
<td>ON BEHALF OF:</td>
<td>NTCWG</td>
<td>[ ] ADOPTED</td>
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<td>[ ] REFERRED TO OTHER NAIC GROUP</td>
</tr>
<tr>
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<td></td>
<td>[ ] EXPOSED</td>
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<tr>
<td></td>
<td></td>
<td>[ ] OTHER (SPECIFY)</td>
</tr>
</tbody>
</table>

IDENTIFICATION OF SOURCE AND FORM(S)/INSTRUCTIONS TO BE CHANGED

[ ] UCAA Forms  [ X ] UCAA Instructions  [ ] Enhancement to the Electronic Application Process
[ ] Company Licensing Best Practices HB

Forms:
[ ] Form 1 – Checklist  [ ] Form 2 - Application  [ ] Form 3 – Lines of Business
[ ] Form 6- Certificate of Compliance  [ ] Form 7 – Certificate of Deposit  [ ] Form 8 - Questionnaire
[ ] Form 8C- Corporate Amendment Questionnaire  [ ] Form 11-Biographical Affidavit  [ ] Form 12-Uniform Consent to
Service of Process  [ ] Form 13- ProForma  [ ] Form 14- Change of Address/Contact Notification
[ ] Form 15 – Affidavit of Lost C of A  [ ] Form 16 – Voluntary Dissolution  [ ] Form 17 – Statement of Withdrawal

DESCRIPTION OF CHANGE(S)

To clarify that all lines of business the Applicant Company is currently transacting must be included on Form 3, and for the
lines requested the Applicant Company must currently be authorized in their domiciliary state.

REASON OR JUSTIFICATION FOR CHANGE **

The current wording was confusing, whereas the Applicant Company thought they only need to provide the authorized lines
for their domiciliary state.

Additional Staff Comments:

9-12-19 cgb – The Working Group exposed the proposal for a 30-day comment period.
10-11-19 cgb – One comment received.
11-6-19 cgb – The Working Group adopted the proposal with the amendment to include the reference “to transact” in the
corporate amendment instructions.

** This section must be completed on all forms.  Revised 01-2019
Corporate Amendments Application Section I

Filing Requirements (Adding and/or Deleting Lines of Business)

This section provides a guide to understanding the focus of each document of the Corporate Amendment Application. However, there typically are multiple purposes for documents. Therefore, it is important that applications be complete.

All documents submitted in support of the application must be current. However, in certain instances, some states have limited latitude to accept older documents. Please review the state specific requirements in the state charts and state-specific requirements prior to contacting the states individually if there are questions about a specific document.

All forms required for the Corporate Amendment Application are located under the Corporate Amendment Application tab in the UCAA Forms Section. For electronic application submissions, required forms are provided for the application change type selected, therefore it is important to read the instructions prior to starting an electronic filing to ensure the necessary corporate amendment change type is selected and the appropriate forms are provided.

Table of Contents/ Application Requirements

1. Application Form and Attachments
2. Filing Fee
3. Articles of Incorporation
4. Bylaws
5. Minimum Capital and Surplus Requirements
6. Statutory Deposit Requirements
7. Plan of Operation
8. Statutory Membership(s)
9. Certificate of Compliance
10. State-Specific Information
11. Deleting Lines of Business

1. Application Form and Attachments - Item 1 of the application

The application must identify all lines of insurance that the Applicant Company is currently authorized to transact and specify the requesting lines of authority to add or delete from an existing Certificate of Authority, as identified by the Applicant Company’s in the plan of operation. The Applicant Company must be authorized in their domiciliary state for the lines of business requested to add in the application. The Applicant Company should review the Seasoning Requirements chart for each submission state. For hard-copy filings submit a completed Checklist (Form 1C), and an original executed Application Form (Form 2C), completed Lines of Business (Form 3) and a copy of the Applicant Company’s original Certificate of Authority or an affidavit of lost Certificate of Authority (Form 15) as Item 1 of the application. A cover letter may be included. The Checklist is automatically created in the electronic application and cannot be edited.
Expansion Application Section II
Filing Requirements

This section provides a guide to understanding the focus of each document of the Expansion Application. However, there typically are multiple purposes for the documents. Therefore, it is important that applications be complete.

All documents submitted in support of the application must be current. However, in certain instances, some states have limited latitude to accept older documents, although generally no more than five (5) years old. Please contact the states individually if there are questions about a specific document.

All forms required for the Expansion Application are located under the Expansion Application tab in the UCAA Forms Section.

Table of Contents

1. Expansion Application Form
2. Filing Fee
3. Minimum Capital and Surplus Requirements
4. Statutory Deposit Requirements
5. Name Approval
6. Plan of Operation
7. Holding Company Act Filings
8. Certificate of Compliance
9. Reports of Examination
10. Statutory Memberships
11. Public Records Package
12. NAIC Biographical Affidavits
13. Uniform Consent to Service of Process
14. State-Specific Information

1. Application Form and Attachments

The application must identify all lines of insurance (Form 3) the Applicant Company is currently licensed to transact in its state of domicile and all lines of insurance the Applicant Company is requesting authority to transact, as identified by the Applicant Company’s plan of operation. The Applicant Company must be authorized in their domiciliary state for the lines of business requested in the application. Submit a completed checklist (Form 1E) and original executed application form (Form 2E) as Item 1 of the application. A cover letter may be included as a component of Item 1 of the application. The Applicant Company should review the Seasoning Requirements chart for each state where the company plans to expand.
Restructuring Mechanisms (E) Working Group
Austin, Texas
December 8, 2019

The Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met in Austin, TX, Dec. 8, 2019. The following Working Group members participated: Elizabeth Kelleher Dwyer, Co-Chair, Matt Gendron and Jack Broccoli (RI); Buddy Combs, Co-Chair (OK); Mel Anderson (AR); Rolf Kaumann (CO); Kathy Belfi and Jared Kosky (CT); Kevin Fry (IL); Judy Weaver (MI); Fred Andersen (MN); John Rehagen (MO); Matt Holman (NE); John Sirovetz (NJ); Marshal Bozzo (NY); Joe DiMemmo (PA); Joe Cregan (SC); Jamie Walker and Amy Garcia (TX); Doug Stolte and David Smith (VA); David Provost (VT); Melanie Anderson (WA); and Amy Malm (WI). Also participating was: Bob Wake (ME).

1. Adopted its Oct. 1 and Summer National Meeting Minutes

The Working Group met Oct. 1 and Aug. 4. During its Oct. 1 meeting, the Working Group asked follow-up questions and heard answers from Enstar Group and Aon Service Corporation on their respective views on different restructuring mechanisms.

Ms. Malm made a motion, seconded by Mr. Kaumann, to adopt the Working Group’s Oct. 1 (Attachment Six-A) and Aug. 4 (see NAIC Proceedings – Summer 2019, Financial Condition (E) Committee, Attachment Five) minutes. The motion passed unanimously.

2. Discussed Plans for Drafting a White Paper

Superintendent Dwyer reminded the Working Group that its key charge is drafting a white paper that will consist largely of the information gathered to date by the Working Group. She stated that most of the information-gathering process should now be completed, but as the Working Group starts drafting the white paper, the co-chairs would like to hear views from Working Group members on the general organization for such a white paper. She stated that the 1997 Liability-Based Restructuring White Paper seems to provide an excellent jumping off point.

Mr. Rehagen asked if the Working Group could get a copy of all the issues that have been presented and discussed, emphasizing that Missouri is concerned about any conflict with its assumption reinsurance law, for which the transactions requires certain approvals. He stated another example is the guaranty fund issue.

Superintendent Dwyer discussed how the minutes would reflect discussions on each of these items, and suggested the Working Group could ask NAIC staff to review prior minutes, including discussion of the United Kingdom’s Part VII Control of Business (UK Part VII) requirements, and pull together a list of the issues discussed and circulate something to the Working Group.

Mr. Kaumann agreed, noting that that list, in combination with a copy of the 1997 Liability-Based Restructuring White Paper, might be a good start.

Mr. Gendron suggested more specifically that the table of contents from that 1997 Liability-Based Restructuring White Paper be used as a starting point for such a list, then with additions into that document where the minutes reflect other specific areas of discussion.

Superintendent Dwyer agreed, and suggested that listing also consider the table of contents from the 2009 Alternative Mechanisms for Troubled Insurance Companies. It was further recommended that the white paper focus on non-troubled companies, or at least note that at the outset of the paper; however, that was rejected on the basis that ignoring such seemed to be problematic. Therefore, it was agreed that some initial scoping in the paper should discuss both, but have an emphasis on the non-troubled company situations.
3. **Heard an Update from the ACLI on its Restructuring Transaction Principles**

Wayne Mehlman (American Council of Life Insurers—ACLI) and Rich Bowman (New York Life) discussed the finalized principles developed by the ACLI on restructuring techniques. Mr. Mehlman noted that, as presented to the Working Group during its July 8 conference call, the ACLI’s board of directors approved insurance business transfer (IBT) and corporate division principles and guidelines in June after many months of member deliberation.

Mr. Mehlman stated that the five main principles addressed are the following: 1) policyholders and other impacted stakeholders must have access to the process; 2) the regulatory review process must be robust; 3) independent experts must be utilized as part of the process; 4) court approval is required for IBT transactions but not necessarily for corporate division transactions; and 5) policyholders and state-based guaranty associations should be protected. He stated that the ACLI will not oppose legislation that substantially contains those principles; however, the ACLI will oppose legislation that does not substantially contain those principles. He stated that the ACLI will support corrective legislation that makes existing state legislation substantially adhere toward the ACLI principles, so long as the ACLI steering committee concurs.

Mr. Mehlman stated that the National Council of Insurance Legislators (NCOIL) is currently drafting a model act on this issue, noting that the ACLI is working with state legislators to incorporate the ACLI principles into that model. He stated that the ACLI will be glad to continue aiding this Working Group as it addresses its charges, including involvement in the white paper and related discussions, as well as those related to guaranty fund protection and protected cell companies and potential changes to NAIC models.

Mr. Bowman discussed the ACLI’s views on the National Conference of Insurance Guaranty Funds (NCIGF) position paper. He noted that the NCIGF will be discussing its views on restructuring and stated that while the ACLI appreciate the work the NCIGF is completing, the ACLI will talk about the significant differences in property/casualty (P/C) products and life insurance, annuity, disability and long-term care (LTC) products, which make it imperative that ACLI’s broader principles and guidelines also be considered.

Mr. Bowman discussed that IBT and corporate division transactions involving life, annuity, LTC or disability policies typically represent long-term obligations and a longer commitment by an insurer to its policyholders. In other words, consumers who buy life insurance and annuity contracts are relying on the insurer that they chose to be there for them for decades—in many cases, for the balance of their lives. Additionally, P/C insurance is generally yearly renewable and does not rely on an individual’s physical health for underwriting purposes. He stated that with the passage of time, it becomes increasingly difficult for a life, annuity, LTC or disability policyholder to obtain replacement coverage on comparable terms to be provided by insurance company. As such, it is difficult to have the flexibility to replace coverage. Given these considerations, is important from a consumer standpoint that, for IBT and corporate division transactions involving life annuity business, the successor company be licensed and regulated in a similar fashion to that of the original insurer.

Mr. Bowman stated that the *Life and Health Insurance Guaranty Association Act* (#520) requires an insurer to be licensed or formerly licensed in a state and be considered a member of that state’s guaranty fund association. He stated that the ACLI understands that the *Property and Casualty Insurance Guaranty Association Act* (#540) may not have the same strict licensing and requirements for companies to have eligible coverage, unlike the life industry. This difference in approach might be attributed to the fact that P/C funds have different coverage obligations than life and health guaranty associations. For example, P/C guaranty funds are obligated to retrospectively cover outstanding claims that were in existence at the time of liquidation. On the other hand, life and health guaranty associations are typically principally responsible for prospectively continuing coverage from long-term obligations under life and annuity LTC disability contracts. So, in order to mitigate the financial risk, the life and health guaranty association must cover those long-term obligations, and it is critical that insurers be subject to the relevant state licensing regulatory requirements to be eligible for guaranty association coverage. Mr. Bowman stated that the ACLI believes the ACLI principles and guidelines will help ensure the liability of those long-term obligations in the context of IBT or corporate division transactions.

Ms. Belfi asked Mr. Mehlman to clarify the ACLI’s position on independent experts, which, as he stated, the ACLI would oppose any legislation without this provision. Mr. Mehlman responded the ACLI would oppose legislation that does not substantially include the ACLI principles and guidelines.
Ms. Belfi asked if there had been any discussion about putting those principles somewhere else, such as in the Financial Analysis Handbook or Financial Condition Examiners Handbook, or something to that nature. Mr. Mehlman responded that the ACLI members prefer that the principles and guidelines be included in legislation to the extent possible.

Ms. Belfi stated that while she appreciates the need to utilize an independent expert in some cases, she could think of several examples where the regulator would want to utilize in-house personnel. She stated specifically that when a state has a potential transaction where a state insurance regulator is familiar with both companies, using in-house actuaries that understand the companies and the plans, there is no need for an independent expert to perform additional analysis. Ms. Belfi stated that for that reason, Connecticut’s corporate division bill uses the word “may.” She noted that she believes it is appropriate that there be regulator discretion when analyzing these transactions.

Mr. Mehlman thanked Ms. Belfi for her question and clarified the ACLI’s position, noting that the Connecticut position is certainly understandable. He stated that the ACLI members discussed this thoroughly for many months and noted that they were able to reach consensus on almost all of the elements that are imbedded in the principles and guidelines, and one of those relates to having not just an expert but an independent expert that is outside of the department. He noted that no one is an expert at everything, so it is the idea that if there should be an external party that is objective to look at these types of transactions. He stated it provides two things: 1) coverage protection for policyholders that an objective outside party has looked at this; and 2) protection for regulators from lawsuits.

Ms. Belfi stated that she respectfully disagrees. She said Connecticut believes it should be the regulator’s discretion as to whether it is appropriate to hire an outside expert. She noted that the applicant will be paying for the transaction and it is costly to hire outside experts. If it is a case where the department has actuaries who fully understand the transaction, then the department should be given discretion over whether to hire an outside expert.

Mr. Mehlman responded that he completely understands Ms. Belfi’s position, but said the ACLI members, after a long iteration, concluded that an expert outside the department—no matter how qualified experts may be within the department—should be required, not optional.

Mr. Bowman responded to a question dealing with whether existing state laws conform to the ACLI principles by stating the ACLI has not reviewed each one of those laws and performed that type of analysis. He stated that the ACLI has looked at Oklahoma’s statute and a proposed NCOIL model law that was drafted based on Oklahoma’s law. He stated that those laws lack many of the ACLI principles and guidelines, noting that the ACLI is currently trying to get changes incorporated into the NCOIL model.

Mr. Bowman stated that the ACLI prepared its principles by looking at all the state laws that are on the books, noting particular concern with corporate division laws that seem to have low regulation or little guidelines on how the process should occur. He stated that the IBT laws of many of the states try to cover at least some of the requirements included in the UK Part VII requirements, but not all the protections. He stated that the concern of the ACLI is that if there is an insurance company failure, the member companies end up paying for that failure.

Superintendent Dwyer asked if the ACLI principles could be included in regulation, because those have the same enforcement as law in most states. Mr. Mehlman responded that the ACLI certainly prefers the principles to be included in legislation and, to the extent they are not, the ACLI would be willing to have them included in regulation. The only problem is there is no guarantee that a particular state is going to follow up with regulations. He noted that the ACLI has heard presentations already through this Working Group where the states have indicated that they plan to proceed without any regulation, and the ACLI has concerns that if the principles are not embedded in statute, the ACLI will lose the opportunity for change upfront.

Superintendent Dwyer agreed with Ms. Belfi, noting that the Rhode Island statute provides an independent expert that reports to the department. She stated that she finds it troubling to completely skip the opinion of state, as a third-party does not have any requirements of a government official to look out for the consumer interest, and it is assumed this person has the consumer interest at heart because he or she has not worked for an insurance company in a couple of years. She stated that it makes no sense, as the department has a requirement to do an analysis for the consumer’s best interest and the state can use a disinterested consultant, but she does not believe that the requirement to use a disinterested consultant is getting any better results; it depends on the case.
Mr. Fry stated that Illinois has a division law, but it has not yet developed a regulation yet. He said the department is interested in developing a regulation someday, but he would like the flexibility to look at some of these deals before developing any kind of regulation. He echoed the comments from Ms. Belfi, noting that Illinois has been looking at these deals and they already consider similar issues in proposed Form As. He stated that while the bias of Illinois is going to be using outside experts, the reality is if you have seen one division transaction, then you have seen one division transaction. So, in talking about division transactions, he questioned whether an expert would be needed. Mr. Fry noted that Illinois has the same views as most of what has already been mentioned, and noted specifically that Illinois does know their companies better than anyone.

Mr. Bowman noted that some of the ACLI’s positions are because ACLI members have transactions that affect policyholders across the country, not just in the state where the transaction is occurring.

Ms. Weaver stated that she would agree with the ACLI principle from the standpoint that while she may have expertise in-house, she may choose to use an outside expert when dealing with states that do not always exercise the discretion other regulators would like. She stated that a state might think it has expertise or it might get political pressure to do something, and noted that having an outside expert opinion could add some value to the process. She stated that where she thinks a regulator needs to have discretion is once the regulator has the outside expert opinion. At that point, the commissioner or superintendent needs discretion on whether they agree with that opinion or whether they want to factor in other consumer concerns that need to be considered.

Mr. Combs said he completely agrees, noting that the way the Oklahoma process works is the independent expert works for the commissioner. He stated that he likes that idea, at least in terms for an IBT but not so much for a division, which is a different type of transaction. Mr. Combs stated that for an IBT, there needs to be a requirement for an independent expert who answers to the commissioner. He stated Oklahoma really sees it as a three-part transaction: 1) independent expert; 2) commissioner; and 3) the court. He discussed, however, that the way Oklahoma’s first transaction worked, department staff would have regular conference calls with the independent expert and then they would provide the department with information, which in turn would lead to back-and-forth on requests for deeper work in particular areas. At the completion of the work, the department was provided with a report and then the department did its own analysis of the transaction and a review of the report before moving to the next stage. Mr. Combs said Oklahoma sees it as a highly cooperative process.

Mr. Wake stated that he believes leaving corporate divisions out of the need for court approval and treating that as somehow fundamentally different is probably one of those points that was debated and stated that he is skeptical that divisions really deserve any less thorough or independent process. He stated there are many situations where specialized expertise is needed, noting that the department is going to try to find the best outside expert they can to at least assist the in-house staff. He stated he accepts the point that some departments will handle in-house review better than others, but said the departments that do a less than perfect job with deciding when they can do it themselves are also the ones that are going to do a less than perfect job in hiring an outside expert. He stated he does not think the fact that outside experts are in business for themselves makes them a better decision-maker or a more reliable decision-maker than a public servant.

4. **Heard from the NCIGF Regarding its Adopted Position on Restructuring.**

Barbara Cox (Barbara F. Cox LLC), representing the National Conference of Insurance Guaranty Funds (NCIGF), provided a summary of the NCIGF’s adopted position on restructuring (Attachment Six-B).

Ms. Cox described that the NCIGF recently adopted the statement and noted that essentially what it requires is guaranty fund coverage before the transaction. Conversely, if there was no guaranty fund coverage before the transaction, there should not be coverage after the transaction. She stated that the NCIGF is working on template language, but it likely will not be completed for about 30 days. She stated that because most of the states’ P/C guaranty fund laws would not provide for that result, it will take nationwide amendments.

Ms. Cox noted how the ACLI spoke about the licensing issue and said the NCIGF grappled with that issue for a long time in its Legal Committee and its Public Policy Committee. She stated that ultimately what NCIGF developed was just the broad carve-out in the guaranty fund that—notwithstanding the plain definition of “insolvent insurer” which does have licensing requirements—these transactions would be covered. She stated that not all NCIGF members will agree, but she believes most will. She stated that it has been vetted with the industry members and the guaranty fund members on the NCIGF’s Public Policy Committee and its board of directors, so it is widely supported.
Ms. Cox noted that on the topic of protected cells, some of the top guaranty fund lawyers in the country could not wrap their heads around protected cells and the impact the guaranty funds covered line of business placed into one of those cells by virtue of a transaction. She stated they had not yet solved that problem, noting that she is eager to hear from NAIC staff on that issue. She reiterated her request for support from the state insurance commissioners.

Mr. Wake noted that language in Model #540 might be helpful on this topic. Ms. Cox noted there is assumed business language in that model, but only eight or nine states have enacted that language. She noted, therefore, a wide solution is necessary because there are variances among the states.

Mr. Combs agreed with the point by Ms. Cox regarding policyholders retaining guaranty fund protection, noting that Oklahoma fully agrees with this position. He noted, however, Oklahoma had not spent much time considering a policyholder gaining guaranty fund protection and asked Ms. Cox how the mechanics could be completed on that. She noted that things such as surplus lines are clearly excluded, and discussed how the history of why coverages exist or do not exist should be retained.

5. Discussed Segregated Accounts, Protected Cells and Guaranty Fund Protection

Dan Schelp (NAIC) stated that his remarks would focus on the use of segregated accounts and protected cells, noting that it is from the perspective of the Financial Regulation Standards and Accreditation (F) Committee, for which he provides staff support related to the Part A standards. He stated that while he has not followed the Working Group closely, the use of segregated accounts and protected cells is being used in a different way from that which is contemplated in the Part A standards. Specifically, what is generally considered in NAIC standards is the use for securitizations. He stated he was not going to address specific state laws or specific situations, and that with respect to Part A standards, they do not directly address the use of segregated asset plans because they do not specifically protect or prohibit the use of these.

Mr. Schelp stated that, in the context of guaranty funds, there is some concern that if the segregated asset plan was to become insolvent, guaranty fund coverage may not be triggered unless the parent insurer was itself insolvent. He noted that he had several conversations with members of National Organization of Life and Health Insurance Guaranty Associations (NOLHGA), who have expressed concerns this might be the case. He stated this was not just a Part A Accreditation issue, but rather a concern of all states impacted.

Mr. Schelp stated that he does not have a legal opinion on this issue but did want to report on this concern. He stated that without a change to Model #520, we may not know the answer to this question, and even then, it is possible some of the guaranty funds would take one view while other guaranty funds may take the opposite view. He stated that several questions arise, including how the assets are considered, either with the general account and segregated assets together or separate, and whether each is required to meet risk-based capital (RBC) requirements or both combined. He stated similar questions exist with respect to annual financial statement reporting or use of the Accounting Practices and Procedures Manual. He stated there are potentially several other issues but that this identifies some of them.

Mr. Wake discussed the use of separate account for variable annuities and how that issue was easier because in that case the amount retained in the separate account provides that the policyholder is at risk. He noted that the Protected Cell Company Model Act (#290) is opaquely worded but is to be used for securitizations and, therefore, it does not address the underlying issues being considered. He discussed how, in those cases, Model #290 is related to the investor who is funding the transaction and, therefore, would not be provided guaranty fund coverage. He stated that policyholder liabilities should always be liabilities of the insurance company, and the NAIC should treat them as subsidiaries and they should be subject to all the same NAIC requirements as the insurance company. However, if a state does not conform, it is possible they have broader powers, so some modification may be necessary, but, at the end of the day, prevention of issues ought to be the focus.

Superintendent Dwyer discussed how what was contemplated was modifying the protected cell model to address these situations and at the same time make sure the policyholder has guaranty fund coverage.

Mr. Wake noted that the most logical solution is that these things ought to be treated as subsidiary insurance companies and be subject to the same accounting and RBC requirements of an insurance company.
Ms. Malm discussed a situation that occurred in Wisconsin through rehabilitation years ago and how in that situation they realized quickly that the segregated account needed to be merged with the general account to make sure everyone had guaranty fund coverage.

6. **Received the Report of the Restructuring Mechanisms (E) Subgroup**

Mr. Smith reminded the Working Group of the Subgroup’s three primary charges, highlighting that their current focus will be on developing best practices. He stated that while the Subgroup has not met since the Summer National Meeting, he noted that in the past the Subgroup had previously distributed the *Liability-Based Restructuring White Paper*, which was drafted by the Liability-Based Restructuring Working Group of the Financial Condition (EX4) Subcommittee and was adopted in June 1997. He noted how this white paper noted key legal concerns, policyholder protections needed, guaranty fund concerns and the need for more stringent ongoing oversight.

Mr. Smith provided a summary of the activity that occurred prior to the Summer National Meeting, when the Subgroup heard from 12 commenters who provided letters. He stated that Subgroup members have also participated on Working Group calls to understand the core issues and noted how some of the comment letters referred to some of this specific information.

Mr. Smith noted that the Subgroup directed NAIC staff to develop a survey to send to the states to gain more insight into these transactions and what the states have been doing or plan to do to review, approve and monitor IBT and other restructuring transactions, including companies in run-off. He stated that the survey information has been compiled and most of the state-specific identifying information was removed to allow for public discussion on an upcoming call, which is planned for early January 2020.

Mr. Smith also discussed that there had been some discussions at the Statutory Accounting Principles (E) Working Group but that no guidance has been developed by that group. The Subgroup will continue to focus on the initial charge of developing best practices by utilizing: 1) best practices from the *Liability-Based Restructuring White Paper*; 2) best practices from the states; and 3) aspects of the United Kingdom (UK) Prudential Regulatory Authority (PRA) used in the UK Part VII requirements.

7. **Discussed the Prudential and Rothesay Life Decision and Various Viewpoints**

Casey McGraw (NAIC) discussed how the NAIC made this case available on the Working Group’s web page and described how it would be helpful to have a discussion on the topic.

Carey Child (Norton Rose Fulbright US LLP) presented a summary of the decision and related issues by providing a presentation (Attachment Six-C) based on his consultation with his firm’s London office, as they are involved in a number of these types of transactions. He emphasized certain aspects of the presentation, including a timeline of the key events for which he noted in particular how the transaction by Prudential was driven by their desire to separate the high growth Asian business from the slower growth business in other parts of the world. He also discussed how there have since been two UK Part VII decisions since the Rothesay decision, but neither of which were annuities. He also highlighted the standards that must be met under any proposed transaction, including both security and service. He noted the requirement of meeting reasonable expectations of policyholders.

Mr. Child also highlighted an important aspect of the requirements includes a communication plan, noting the PRA standards in the area. He emphasized how during the court approval stage, they court had received 7,300 responses to the notices and of those, 1,300, or 15% were characterized as objections. He stated that the court determined that was a significant level of objections for a Part VII transfer. Mr. Child noted how the reason for the rejection of the transaction was not one of capitalization or financial strength, as it was considered equal or better under the new party. He stated it was also not a service standard issue, nor was it an issue of independence or one related to the underlying business being annuities where the judge believed those type of annuities could be transferred.

Mr. Child stated that the primary issue was more related to how pensions operate in the UK, where all citizens are required to purchase pensions. He stated the court emphasized the nature of these liabilities and how these were marketed upon a well-known brand. He stated the court recognized created a reasonable expectation on the policyholders for the policyholders and
how the real difference came down to a different opinion on support. He stated the independent expert noted this more as a remote risk.

Mr. Child stated that, in closing, reading through the ruling, the judge seemed to have a concern that seemed to be related to private contracted rights being changed and how the judge noted that policyholders were getting nothing out of the transaction. Mr. Child described how the legal press had written on the topic after the ruling and one press outlet questioned if populism had come to Part VII transfers. Mr. Child stated that he believes the U.S. will have a different setup, because the U.S. constitution does have explicit provisions on state powers on contract rights including the contract clause and the due process clause, both of which have been litigated in the GTE Reinsurance Company Limited case.

Superintendent Dwyer asked about the two UK Part VII transactions approved since the decision and asked if he knew the specific types of each. Mr. Child indicated that one of the two was life protection, but he did not recall the other and would have to get back to the Working Group.

Superintendent Dwyer asked if the court in those situations referred to the Prudential Rothesay decision. Mr. Child stated his understanding is that it was referred to in one of the two cases.

Mr. Cregan asked if those objecting to the transaction had counsel and whether perhaps their lack of counsel may have led to the decision. Mr. Child responded that while he did not know if they had counsel, it did not appear part of the basis for the decision and noted several individuals appeared directly before the court. Mr. Child stated he would find out more from his colleagues.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that he believes the independent expert in the case discussed was not an appropriate representative for policyholders. He also described how while the UK Part VII transfer process does allow objections to be made by policyholders, those policyholders are not privy to the same confidential information that is provided to the independent expert. He stated that the CEJ’s view is that the independent expert does not do justice, noting that there should be a policyholder advocate who not only represents the policyholders but also has access to confidential information that can be used to represent the policyholders’ interest.

Mr. Birnbaum summarized that, with respect to this case, the summary of the expert (Attachment Six-D) describes how the conclusion reached in terms of service was based on the policies and procedures of the two companies. He stated that this was inadequate in his view, noting that his proposed use of a policyholder advocate is needed to look at the actual outcome on the policyholders.

Mr. Combs emphasized that Oklahoma’s view is that the specific purpose of the independent expert is to look out for the protection of policyholders. He stated that, on this point, he disagrees that there is not an advocate of the policyholders with access to confidential information.

Mr. Birnbaum noted that presumably that is also the standard in the UK, but what he noticed was that the expert is focused on the financial condition of the companies and not the service to the policyholders. He described that there are certain skills that are needed to look at financial condition, noting that those differ from the skills needed to look at customer treatment. He described how this is like the difference between a financial regulator and a market conduct regulator.

Superintendent Dwyer said this discussion will continue in the future.

8. Discussed the APCIA’s Principles Regarding Restructuring Mechanism Transactions

Steven Broadie (American Property Casualty Insurance Association—APCIA) summarized the APCIA principles as it relates to restructuring mechanism transactions (Attachment Six-E) and stated the APCIA’s support for the NCIGF principles.

Mr. Broadie stated that the APCIA’s principles focus on: 1) robust due process to all stakeholders; 2) no impacted policyholders should lose or gain coverage as the result of a transaction; 3) robust regulatory review process; 4) an independent expert who is an advocate for policyholders and advise the department of insurance; and 5) court approval required for IBTs but not for corporate divisions.
Dennis Burke (Reinsurance Association of America—RAA) stated that the RAA does not believe there is a difference between IBTs and corporate divisions and should be treated as such, including court approval should be required on all such transactions.

With respect to this issue, Mr. Broadie noted that he was not part of the conversation when the APCIA made a distinction between IBTs and corporate divisions.

Mr. Combs asked about the position of a public hearing and the stage it should be conducted. Mr. Broadie noted that the APCIA had not addressed that point thus far.

9. **Heard an Announcement from Oklahoma Regarding Approval of its First IBT**

Mr. Combs noted that on Nov. 26, Commissioner Glen Mulready (OK) approved the first IBT between Providence Washington Insurance Company, a Rhode Island-based company, and Yosemite Insurance Company, an Oklahoma-based insurance company, both of which are Enstar companies. He noted that it involves all P/C liabilities, including asbestos and environment, workers’ compensation, other liability and a small amount of personal lines. He noted that the same day it was approved by the commissioner, the company filed it with the court and noted that the communication plan will begin later in December after the judge determines his position on that communication. He stated that the Oklahoma Insurance Department has spent a considerable amount of time on the transaction, including the greatest amount on the communication plan to policyholders. He noted that it is posted on the Oklahoma Insurance Department website.

Having no further business, the Restructuring Mechanisms (E) Working Group adjourned.
The Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met via conference call Oct. 1, 2019. The following Working Group members participated: Elizabeth Kelleher Dwyer, Co-Chair, Matt Gendron and Jack Broccoli (RI); Buddy Combs, Co-Chair (OK); Jon Arsenault (CT); Shannon Whalen (IL); Steve Mayhew (MI); Barb Carey (MN); John Rehagen (MO); Matt Holman and Justin Schrader (NE); John Sirovetz and Diane Sherman (NJ); Joe DiMemmo (PA); Daniel Morris and Lee Hill (SC); Amy Garcia (TX); David Smith (VA); and Amy Malm and Richard Wicka (WI).

1. **Heard Opening Comments from Co-Chair**

Superintendent Dwyer reminded members of the Working Group that at the Summer National Meeting, the Working Group did not have enough time during its meeting to ask the speakers all the questions that they may have had. She said the purpose of today’s conference call is to give members an opportunity to ask questions of Paul Brockman (Enstar), whose presentation focused on the industry need for restructuring mechanisms, and Kelly Superczynski (Aon), whose presentation focused on the benefits of restructuring mechanisms.

2. **Asked Enstar Questions**

Superintendent Dwyer asked Mr. Brockman if he was aware that there are guaranty fund issues that arise with restructuring arrangements for personal lines, and whether Enstar had completed such a transaction with personal lines. Mr. Brockman responded Enstar had with a personal lines transaction in the United Kingdom (UK). Superintendent Dwyer asked if there was a difference in the guaranty funds in the U.S. and the UK. Robert Redpath (Enstar) responded that there really is nothing equivalent to the concept of guaranty funds in the UK. Superintendent Dwyer asked what would occur when a company is restructured and in a state where it was not domiciled at the time the business was written, how would the guaranty funds respond in the event of an insolvency. Mr. Brockman said there would be several areas where the laws would be affected, including guaranty funds, and that each transaction must be analyzed for the blocks of business being transferred and the existing licenses possessed by the company. He added that it was difficult to provide a general answer and noted that the state insurance regulator, the independent expert and the guaranty fund of the affected states would have to look at the transaction closely. Mr. Redpath stated Enstar intended to have licenses in each of the states in which the issuing company had conducted business. Superintendent Dwyer asked if Enstar had completed one of these transactions where these guaranty funds have been at issue. Mr. Brockman stated that they had not yet completed such a transaction and the issue would be more relevant to a U.S. transaction. Mr. Combs asked if a company should aim to have licenses in each of the states for which they are going to assume business. He asked if there are other ways to deal with a situation where they do not have such licenses, such as an agreement where the transfer for the policies does not take place until licenses are obtained in that state. Mr. Redpath agreed, noting the business transfer should wait until a license is obtained. There is an issue with getting a license when an entity is not actively writing business, and this might be something the states could investigate.

Birny Birnbaum (Center for Economic Justice—CEJ) asked if the Enstar representatives were familiar with the Prudential Rosebay transaction that the UK high court rejected in August. Mr. Redpath responded “yes.” Mr. Birnbaum asked if they could describe the reasons for the rejection. Mr. Redpath responded that it is his understanding the Court had some concerns with a transfer from of an old established insurance company compared to the assuming insurer, which was a new company. He stated he believes these were factors and noted that the various levels of review show that the process works, with a different view by the court than the prudential insurance regulator and the independent expert. Mr. Birnbaum asked if it was a capitalization issue. Mr. Redpath said he is not sure, noting that these were annuities and that the history of the companies may have been a larger factor. Mr. Birnbaum asked if there was a public hearing, if the policyholders had an advocate and if the expert recommended approval of the transaction. Mr. Brockman stated that it might be better if the company came back to the discussion later with a write-up of the facts. Mr. Birnbaum asked if the high court opinion could be distributed. Casey McGraw (NAIC) stated he would work to have the opinion distributed. Superintendent Dwyer asked that the issue be discussed at the Fall National Meeting. Mr. Birnbaum shared information from a news article noting that the judge rejected the transaction. He referenced comments from consumers in the article that each highlighted the policyholder concerns. He noted more specifically that there appears to be a need for different consumer rights for personal versus commercial business. Those transactions that do not require policyholder approval and that are confidential are concerning. He referenced the expert report in the UK.
transaction, which was brief in terms of consumer considerations. He stated he is concerned about the presentations at the Summer National Meeting where the ceding companies may be weaker capitalized companies and were ceding from strongly capitalized companies. He noted that while that might be the case for commercial run-off business, that would not be the case with personal lines business. He noted that the expert report described policyholder benefits in terms of the capital base of the acquiring company. He stated for personal lines consumers, there should be more consumer considerations. He noted that at the Summer National Meeting, the idea of freeing up capital for innovation was also noted, which was concerning given companies that provide such will certainly have access to capital due to demand. He noted concerns about consultants’ profiting off such transactions. He emphasized concerns with transfers of these business for personal lines, and if that does take place, there needs to be a consumer advocate for the transactions just as there is an independent expert. There were some questions about the specific independent report Mr. Birnbaum was referring to where the discussion was not completed given all the parties were not privy to the information. However, that does not change Mr. Birnbaum’s views. This also does not change Mr. Brockman’s view that the process works as Enstar has seen transactions stopped at different stages.

Mr. Rehagen asked how this issue would correspond with the assumption reinsurance law that exists in their state, and more specifically how that state requirement would be complied with such a transaction. Mr. Brockman stated that in Oklahoma, the independent expert acts on behalf of the department of insurance (DOI) and would reach a recommendation and would consider the notice requirements of Oklahoma. Mr. Rehagen responded the answer sounded to be “no.” Mr. Brockman stated they have a right to show up at the hearing, but that it is correct there is no standard to essentially veto the decision. Mr. Rehagen asked if his director and Missouri policyholders would need to travel and appeal to the Oklahoma court. Mr. Redpath responded “yes.” Superintendent Dwyer asked if any of the assumption reinsurance laws have any impact on the insurance business transfer laws. Mr. Redpath responded he is not aware. Albert Miller (ProTucket Insurance) stated that with respect to assumption reinsurance law, in Missouri, like many states, there is an exception for reinsurance transactions where the ceding company remains liable to the original policyholders. Therefore, in the case of an insurance business transfer for a reinsurance transaction, the assumption reinsurance law will not apply. Superintendent Dwyer asked if any court had addressed whether the assumption reinsurance law applies in an insurance business transfer and did not receive an affirmative response.

3. **Asked Aon Questions**

Superintendent Dwyer asked Ms. Superczynski if she is aware of any completed transactions that contained the guaranty fund issue that was asked of Mr. Brockman. Ms. Superczynski responded she is not aware of any completed transactions that had personal lines. She said she recognizes the guaranty fund issue is one the industry will need to overcome. However, assuming that the subject is a runoff book of business, the companies had already paid into the guaranty fund, and the scenario was that they had already contributed their fair share, then in theory coverage should be provided. She stated there were issues in terms of moving the policyholders and the logistics of payment, but funding had taken place from an economics basis. Therefore, the issues were more about how to address in a fair and equitable manner. Ken Selzer (Aon) stated he agrees and Aon sees the market first developing on commercial lines, excess workers compensation and assumed reinsurance transactions. Therefore, there may be time for the identified issues to be addressed that will require some focused attention. Superintendent Dwyer stated that she agrees that economically, consumers should receive guaranty fund coverage if they would have received it with the original company and the Working Group is most concerned about consumers losing that protection. Peter Gallanis (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) noted that different people use different definitions for closed blocks of business. It would encompass businesses that were no longer premium pay, such as structured settlements. However, he stated he would consider closed blocks, but they would be premium paying and very important, such as long-term disability and long-term care insurance (LTCI). He stated his comment was not germane to the presentations made but rather things that would need to be understood by the Working Group members. Superintendent Dwyer stated Rhode Island’s law is limited to property/casualty (P/C) commercial business. Superintendent Dwyer asked Ms. Superczynski if Aon had any views on the assumption reinsurance issue previously discussed. Ms. Superczynski asked Mr. Selzer to respond, who indicated Aon would give the issue more thought.

Having no further business, the Restructuring Mechanisms (E) Working Group adjourned.
NCIGF Position Statement on Restructuring
Adopted by NCIGF Board October 1, 2019

Background. Efforts in states to enact restructuring statutes are progressing quickly. To date, eight states have enacted a restructuring statute in some form. These statutes permit an ongoing insurance company to divest itself of certain liabilities, along with a calculated amount of corresponding assets, and relinquish any ongoing responsibility for the divested business. This can be accomplished by a division, in which the dividing entity may or may not survive, and in which resulting companies are created, or an IBT, described in Oklahoma as a transaction that would “transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer.”

IBT’s (like Oklahoma) and division statutes (like Illinois) are very different types of transactions. An IBT is intended to accomplish an assumption transaction by a “statutory” novation effectuated by operation of law (e.g., by court order), rather than by a novation that requires individual policyholder consent. (We believe that a number of guaranty fund laws already have language that may cover certain assumptions, but a complete analysis of guaranty fund laws as they will be applied to an IBT is still needed.)

In either case, the business divested would be put into a different insurance company or companies. In some states the business could be put into a protected cell. The statutes proposed typically call for a divestment plan to be filed with and approved by the state’s commissioner of insurance. Sometimes review and approval by the court is also required. Requirements for notice to policyholders and public hearings on the proposals vary from state to state. The most recent proposals do not limit the lines of business that can be subject to divisions. Hence, all types of insurance such as personal lines, workers compensation and long-term care insurance could be involved.

The NCIGF supports member guaranty funds in meeting immediate and future obligations to policyholders. The NCIGF does not take a position on any current or contemplated industry business practice.

NCIGF public policy is focused on preserving guaranty fund (GF) coverage for policies and claimants where there has been a division or an IBT:

- Where there was guaranty fund coverage before the division or IBT, state regulators should ensure that there is coverage after the division or IBT. A division or IBT should not reduce, eliminate or in any way impact GF coverage.
• Where there was no coverage before the division or IBT, there should be no coverage after the transactions are completed. A division or IBT should not create, expand, or in any way impact GF coverage.
• Guaranty fund representatives are a good resource for any guaranty fund coverage issues that arise in evaluating these transactions.

**NCIGF observes that insurance company divisions and IBTs that are reviewed and approved by state regulators may impact potential guaranty fund coverage for policyholders.** Existing P & C guaranty fund laws were generally not drafted with the division or IBT concepts in mind. Because of how some of the definitions in the guaranty fund laws were drafted, and because of how the division and IBT legislation operates, it is quite possible that some policyholders that now have guaranty fund coverage might no longer have that coverage if their policies are moved as a result of a division or IBT.

Possible technical gaps may be created if a state has adopted the NAIC P&C Guaranty Association Model Law. These gaps could include the definitions of Covered Claim, Member Insurer, Insolvent Insurer, and the Assumed Claims Transaction found in Section 5 of the P&C Guaranty Association Model Law.

Again, where the original company was a member of one or more guaranty funds and potential claimants and policyholders had been covered by a guaranty fund prior to the transaction, care should be taken to make sure that those same claimants and policyholders are covered by a guaranty fund after the transaction. This may require guaranty fund laws and/or other insurance laws to be amended in each of the states where the original company was a member of a guaranty fund before the transaction becomes final.

Although this is a developing issue, restructuring statutes as described above are part of the existing insurance landscape. Currently, the best course of action is for the guaranty fund system to work with industry, state and national trades, and regulators to resolve the guaranty fund coverage issues in a tailored fashion, taking account of variances in state laws and restructuring statutes that may come in to play.

In order to facilitate the needed amendments of the guaranty fund laws and or other insurance laws across the country that will be required to implement this policy, the NCIGF Board directs the Public Policy Committee to appoint a subcommittee to work with NCIGF members, industry, trade associations (national and local) regulators and other interested stakeholders to oversee a coordinated, national effort to enact the necessary changes in each state. This subcommittee will also assist in developing the requisite language needed in each state to accomplish this goal as it is recognized that
each state’s law may vary in terms of what amendments may be necessary. It is also recognized that the changes needed to be made to guaranty fund laws to address divisions may be different from those changes that are needed to address IBTs. The Public Policy Committee Chair will provide updates on the progress of this effort to the Board at each NCIGF Board meeting. NCIGF staff is instructed to provide the necessary support to the subcommittee.
Assessment of UK Part VII Decision:
Prudential and Rothesay

Casey G. Child
For NAIC Restructuring Mechanisms Working Group

Background to Decision

What The Court Did / Did Not Decide

Some U.S. Context

Key Events

Regulatory Review Stage

Attachment Six-C
Financial Condition (E) Committee
12/9/19

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Independent Experts Consider Policyholder Welfare

Selection

Approved (or nominated) by the Prudential Regulatory Authority ("PRA") after consulting with Financial Conduct Authority ("FCA")

Standards (in PRA's Policy Statement)

"The regulators expect the independent expert making the scheme report to be a neutral person, who:
(1) is independent, that is any direct or indirect interest or connection he, or his employer, has or has had in either the transferor or transferee should not be such as to prejudice his status in the eyes of the court; and
(2) has relevant knowledge, both practical and theoretical, and experience of the types of insurance business transacted by the transferor and transferee." (Policy Stmt at 2.17.)

Analysis

Must Include (among other things)

"(a) the effect of the scheme on the security of policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the insurer;
(b) the likely effects of the scheme on matters such as investment management, new business strategy, administration, claims handling, expense levels and valuation bases in relation to how they may affect:
(i) the security of policyholders' contractual rights;
(ii) levels of service provided to policyholders; or
(iii) for long-term insurance business, the reasonable expectations of policyholders;" (Policy Stmt at 2.20(a)(ii)).

Regulators Consider Policyholder Welfare

"The assessment is a continuing process, starting when the scheme promoters first approach the regulators about a proposed scheme. Among the considerations that the regulators may consider when reviewing the scheme are:
... (3) how the security of policyholders’ (who include persons with certain rights and contingent rights under the policies) contractual rights appears to be affected;
... (5) how policyholders' rights and reasonable expectations appear to be affected;
... (6) the compensation offered to policyholders for any loss of rights or expectations;
... (9) the opportunity given to policyholders and other persons affected by the scheme to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;" (Policy Stmt at 2.06.)

Regulators Consider Policyholder Welfare

"Our approach to assessing Part VII Transfers is based on the application of our statutory objectives, which are to:
- secure an appropriate degree of protection for consumers
- protect and enhance the integrity of the UK financial system
- promote effective competition in the interests of consumers" (4.2)

"Applicants should clearly explain the reasons why they are proposing a transfer. We want to ensure that the transfer is not motivated by a desire to benefit either Applicant to the material detriment of Policyholders, or to unfairly bring benefit to one class of Policyholder to the detriment of another class." (Guidance at 4.3.)
Regulators Consider Policyholder Welfare


“Both the PRA and the FCA are entitled to be heard in the proceedings... Both the PRA and the FCA may provide the court with written representations setting out their views on the proposed transfer scheme, for example, by way of a report to the court. The PRA will decide in relation to each insurance business transfer whether it is necessary or appropriate to prepare a report, bearing in mind its objectives and other relevant matters.” (PRA Policy Stmt at 2.8.)

In the Prudential and Rothesay case, the FCA made two submissions to the court, and the PRA made three submissions to the court. (Decision at 81.)

Policyholders Opportunity To Be Heard

Development of an agreed communications plan is a key step in the process.

Absent court approval, “notice of the application must be sent to all policyholders of the parties,” among others. (Policy Stmt at 2.46)

The PRA must “approve in advance the notices sent to policyholders and published in the press.” (Id at 2.51)

“Ideally every recipient should understand in broad terms from the summary how the scheme is likely to affect them. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose.” (Id at 2.55.)

Approximately 268,000 notice packets, with a PRA-approved policyholder letter, summary of the scheme and the Independent Expert's own summary of his report, were sent out. (Decision at 81; NY Report at 1.21.)

Court found: requirement is “that policyholders were given sufficient time to consider and respond to the finalised Scheme proposal and to participate fully at the hearings before me if they chose to do so. The FCA was satisfied that sufficient time was given to policyholders in that regard, and I am also satisfied that this was the case.” (Decision at 81.)
Policyholders Opportunity To Be Heard

Proceeding were before The Hon. Mr. Justice Snowden, a Justice of the High Court of England and Wales, with hearings over four days.

PAC received “in the region of 7,300 communications from policyholders” in response to the policyholder communications. “Of those responses, about 1,000 (i.e. about 15% of the responses or 0.4% of the total communications) could be characterized as an objection,” which was considered a significant level of objection. (Decision at 60.)

The court “also received a number of objections directly from holders of Transferring Policies, both in writing and through submissions made in person at the hearing.” (Decision at 66.)

Policyholders Opportunity To Be Heard

Mr. Justice Snowden confirmed that policyholder welfare was the focus of his inquiry, which was not a “rubber stamp.”

The “court’s inquiry will focus on the questions of whether policyholders’ security of benefits and reasonable expectations of service standards will be adversely affected by the proposed scheme. As the authorities also indicate, the court will regard the first of those issues as ‘primarily’ a matter of actuarial judgment, and in that respect will give close attention to the views of the independent expert and the regulators.” (Decision at 83.)

But, the "court has a discretion of very real importance, which is not in any way intended simply as a 'rubber-stamp' for the opinion of the independent expert or the views of the regulator.” (Decision at 84.)

Not a Capitalization or Size Issue

Mr. Justice Snowden took as undisputed that:

1. as measured by coverage ratios, "the relative financial strengths of PAC and Rothesay are currently comparable, or indeed that Rothesay could be considered to be slightly stronger than PAC;"
2. because the material consideration is capital relative to liabilities, "the fact that PAC is larger than Rothesay does not, of itself, mean that policyholders would have less security of benefits at Rothesay;" and
3. although Rothesay is less resilient than PAC due to having less diversification of risk, "this should be taken into account through Rothesay having a proportionately higher SCR." (Decision at 132 to 133.)
Not a Service Standards Issue

Both Prudential and Rothsay are subject to regulation by the PRA and FCA, and the IE concluded that "the administration, management and governance of the Transferring Policies will continue to be of the same standard following" the transfer. (Decision at 73.)

The court found "no basis on the evidence for concluding that Rothsay would be unable to manage that expansion of its business. PAC has already outsourced the administration of the Transferring Policies to Diligenta, and given the arrangements for that or a similar arrangement to continue if the policies are transferred to Rothsay, I see no reason to conclude that policyholders will be adversely affected by the Scheme in relation to the standards of service that they are likely to experience." (Decision at 115 to 116.)

Not An Issue of the Compensation Paid to the IE

That the independent expert was paid by Prudential and Rothsay "is an issue that is frequently raised at scheme hearings, but there is nothing in it. Mr Dumbreck’s appointment was, as it had to be, approved by the PRA after consultation with the FCA, and there is no realistic alternative to him being paid by the applicants. Mr. Dumbreck is suitably qualified and experienced, having been the independent expert in a number of other scheme cases, including Scottish Equitable. I have no reason to doubt that Mr. Dumbreck understood the importance of his role and the need for independence, and he expressly acknowledged that he was aware of and had complied with his overriding duty to the Court." (Decision at 88.)

Not A Per Se Rule About Personal Lines, or Annuities

Mr. Justice Snowden accepted that:

(1) "a significant number of decisions show that the transfer of annuity policies is within the scope of Part VII" and that it was important for regulatory policy that the capability of transfer exist;
(2) the court had the power to approve a "transfer of liabilities that would not otherwise be capable of being transferred without a person’s consent or concurrence; and
(3) it is "pot for the court to insist on an opt out" right for policyholders. (Decision at 103, 104 and 95.)

Instead, Turned On The Nature of Annuities Generally, Combined With The Manner In Which These Particular Annuities Were Marketed

Given the nature of annuities, it "was entirely reasonable for policyholders reading statements" made by Prudential in marketing its annuities to make the assumption that "it would be PAC and no other company that would be providing them with the resultant annuity for the rest of their lives." (Decision at 123-131.)
Even That Expectation Was Not Itself Sufficient

The policyholder’s reasonable expectation regarding Prudential “does not mean that as a matter of law PAC could not seek to transfer the annuity policies under Part VIII…” (Decision at 131.)

I nevertheless consider that it is a matter that can and should be taken into account in the exercise of my discretion…” (ML)

Specifically, Court Reassessed Parental Support

“In an adverse scenario that threatened PAC’s solvency, the financial resources of Prudential plc available to support PAC may be similarly constrained…”

[It is] currently planned that Prudential plc will demerge its UK and European operations from its operations elsewhere, and if the demerger goes ahead as planned, it is likely that PAC will no longer benefit from parental support to the same degree as is currently the case…

Additionally, Rothesay and its parent are able to undertake capital-raising activities… and have done so in the past.

… I am satisfied that both firms have an adequate range of actions at their disposal to mitigate a scenario in which their solvency position starts to deteriorate, and therefore there is no material adverse impact…” (IE Report at 8.27-8.27.)

Specifically, Court Reassessed Parental Support

“…any comfort that may be drawn from the potential for capital support from Prudential plc must be considered in the context of the likelihood of it being called upon, which is remote. Therefore it should not be considered material in comparison to the comfort that can be drawn from the capital resources of, and the strength of the regulatory capital requirements and capital management policies applicable to, PAC and Rothesay.” (IE June letter.)

Specifically, Court Reassessed Parental Support

“But the fact that the PRA (or an actuary) cannot quantify a firm’s vulnerability or reputation in capital terms, does not mean that it also has to be disregarded by the court. I have already made the point that the court’s role under section 111(3) is not simply intended to replicate, or to be limited by, the risk-based approach of the regulators to the assessment of the scheme, or the actuarial approach of the independent expert.” (Decision at 100.)
Specifically, Court Reassessed Parental Support

"I consider that the opposing policyholders were justified in their submission that such matters do not provide equivalent comfort to the existing availability of capital in the Prudential group and the commercial imperative that would motivate the other Prudential group companies to stand behind PAC. The provision of capital to enable the initial development and expansion of Rothesay's business by acquisition of annuities from other insurers is not the same as the provision of restorative capital to make good an unexpected deterioration in the financial position of the company or to avoid its insolvency. Moreover, the business operations, names and reputations of Blackstone, GIC and MassMutual (or any investors that might replace them) are not integrated with, or inherently tied to the business of Rothesay in the same way as the business operations, name and reputation of other parts of the Prudential group are tied to the business of PAC." (Decision at 146.)

A concern about bare private commercial interest?

"The Scheme has been motivated by PAC's desire to reduce its regulatory capital requirements in connection with a planned demerger of the group headed by Prudential plc... of which PAC is a significant member. The Scheme... offers no benefits to the transferring policyholders in connection with the enforced change of their annuity provider from PAC to Rothesay." (Decision at 2, emphasis added.)

The "question of whether a particular policy was selected by PAC to be... transferred to Rothesay under the Scheme, depended entirely on whether or not it suited the commercial requirements of PAC and Rothesay. In particular, the selection of the affected policyholders was designed to provide PAC with its target level of regulatory capital release in order to facilitate the Demerger." (at 176, emphasis added.)
U.S. Constitution

Contracts Clause

“No state shall . . . pass any . . . law impairing the obligation of contracts.”

Due-Process Clause

“No state shall . . . deprive any person of life, liberty, or property without due process of law.”
14th Amendment to U.S. Constitution.

Under New-Deal Era Jurisprudence, Degree of Impairment is Important, and Both Permit:
- Reasonable and Necessary
- To carry out a legitimate public purpose.

Framework for similar arguments in the U.S.

As a general rule, parties do not have a right to expect performance from a particular party.

An obligor can generally delegate performance of duties capable of being performed by a number of different persons (looking to whether individual traits, skill, or judgment required).
Summary of the report of the Independent Expert

Background

I have been instructed by The Prudential Assurance Company Limited ("PAC")¹ and Rothesay Life Plc ("Rothesay") to report to the High Court of Justice of England and Wales (the "Court") on the terms of the proposed transfer of certain non-profit annuity insurance business of PAC ("the transferring policies") to Rothesay. The transfer will be effected by means of a scheme of transfer (the "Scheme") in accordance Part VII of the Financial Services and Markets Act 2000. Subject to Court approval, the date on which the transfer takes place ("the transfer date") is expected to be 26 June 2019.

On 14 March 2018, Rothesay entered into an agreement to acquire the transferring policies from PAC. While the formal transfer of the transferring policies to Rothesay requires the sanction of the Court, PAC and Rothesay agreed that PAC’s economic interest in the material risks and rewards of the transferring policies should be transferred to Rothesay in the meantime². This was achieved by putting in place a reinsurance agreement between PAC and Rothesay ("the Reinsurance Agreement"). Under the Reinsurance Agreement, Rothesay must reimburse PAC for all benefit payments made to holders of the transferring policies³ unless and until the transferring policies are formally transferred to Rothesay under the Scheme, after which Rothesay will make the payments directly. There are a number of policies that are covered by the Reinsurance Agreement which are not transferring policies. These policies will instead remain reinsured to Rothesay after the transfer date.

I am a Fellow of the Institute and Faculty of Actuaries in the UK and a partner of Milliman LLP. I have fulfilled the role of Independent Expert for over 20 insurance business transfers that have been approved by the Court. I confirm that I do not have any direct or indirect interest in PAC, Rothesay or any other related firms that could compromise my independence.

My assessment of the effect of the transfer has been informed by the financial positions of PAC and Rothesay at 30 June 2018, the most recent date at which both sets of financial results are available at the time of writing.

This is a summary of my full report dated 21 January 2019. Please refer to my full report (which is available from the PAC and Rothesay websites) for the scope of my work and my conclusions, and the reliances, limitations and standards applying to my work. The full report and this summary do not provide financial or other advice to individual policyholders.

Before the final Court Hearing I will prepare a further report (the "Supplementary Report") to provide an update on my conclusions regarding the effect of the proposed transfer on the different groups of policyholders in light of any significant events arising after my full report has been finalised. The Supplementary Report will include information on the financial position of the companies at 31 December 2018.

The effect of the transfer on transferring policies of PAC

Benefit security

Transferring PAC policyholders will be transferred from a very large, long established company with a familiar brand name to a smaller, less well-known company founded only twelve years ago. However, the security of policyholders’ benefits depends primarily on factors other than the size and age of the company, and in reviewing the transfer I have considered, among other things:

¹ PAC is a UK insurance company and is the primary European insurance entity of the Prudential plc group.
² With effect from 1 April 2018 for deferred annuities and 1 July 2018 for annuities in payment.
³ With the exception of differences in payments to policyholders that arise through differences between PAC’s and Rothesay’s commutation factors.
**Solvency cover:** If the proposed transfer had taken place on 30 June 2018, the level of cover for regulatory solvency requirements would have been lower in Rothesay post-transfer than that in PAC pre-transfer. However, PAC’s solvency cover decreased from 14 December 2018 due to the transfer of the legal ownership of PAC’s Hong Kong subsidiaries to Prudential Corporation Asia, reversing the relative positions of the two companies.

**Capital policies:** PAC and Rothesay have capital policies aimed at maintaining solvency cover within an appropriate range. I have reviewed the capital policies of both companies and have concluded that they are of broadly comparable strength. At 30 June 2018 the solvency cover of each company exceeded the upper end of the target range set by its respective Board, and this would also have been the case after the transfer if it had taken place on that date. Each company is free to distribute to its shareholders any surplus capital which is not ring-fenced or expected to be needed by the business, and this means that additional security provided by solvency cover in excess of the target range may be temporary.

**Risk exposures:** Differences in the risks to which each fund is exposed may lead to differences in the variability of solvency cover as financial and other conditions change, and it is also necessary to take account of any such differences.

Based on my review of all the relevant factors, I am satisfied that the transfer will not have a material adverse impact on the security of benefits of the transferring policies.

**Reasonable expectations of transferring policyholders**

The transferring policies are all non-profit annuities and therefore, in my view, policyholders’ reasonable expectations in respect of their policies are principally that:

- They receive their income as guaranteed under the policy, on the dates specified, from the point of purchase;
- The administration, management, and governance of the policies are in line with the contractual terms of the policies; and
- The standards of service received after the transfer are at least as good as those they currently receive.

No changes are proposed to the terms and conditions of the transferring policies, and so the contractual benefits will be unchanged by the Scheme.

Holders of some of the transferring policies are able to elect to commute some or all of the contractual benefits of their policy in certain limited circumstances; that is, the policyholder or contingent beneficiary may choose to forgo some or all of their annuity income in return for a lump sum payment. The amount of lump sum received is, in almost all cases, at the discretion of the insurer (subject to the overriding requirement to treat customers fairly), and is determined by a commutation factor that depends on the insurer’s estimate of the life expectancy of the customer, as well as prevailing market conditions (in particular the level of long-term interest rates). PAC is in the process of implementing a change to its commutation factors which will, by and large, result in the factors reducing. I have received analysis from PAC and Rothesay showing that, while PAC’s commutation factors (after the planned change) may be higher or lower than those of Rothesay depending on the features of the policy, the two sets of

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4 The UK insurance regulations specify minimum levels of capital that an insurer must hold based upon the risks that the insurer has written.
5 The capital that an insurer holds expressed as a percentage of the minimum level permitted by regulations.
6 All transferring policies are in-payment annuities with the exception of a very small number of deferred annuity policies.
7 For in-payment annuities, these circumstances comprise:
   - a situation in which a pension sharing order has been issued; or
   - a situation where the benefits of a contingent beneficiary are small enough to qualify for trivial commutation following the death of the main policyholder.
8 A commutation factor is the lump sum received by the policyholder for each £1 p.a. of pension income forgone. For example, a commutation factor of 20 means that the policyholder would receive a £20 lump sum for each £1 p.a. of pension forgone.
factors will not differ materially. I have provided more details on this aspect in my full report and I will provide an update in my Supplementary Report.

Since October 2018, the administration and servicing of all of PAC’s annuity business (including the transferring policies) has been carried out by Tata Consultancy Services (“TCS”) and Diligenta, its UK subsidiary. Subject to putting in place a suitable transitional services agreement, PAC will continue to provide administration and servicing (undertaken by TCS on its behalf) to Rothesay for 12 to 24 months after the transfer date, which means that no changes to administration or service standards are expected as a result of the transfer during this period. While this transitional services agreement is in place, there is no reason to expect that administration and service standards will differ from those that the transferring business would have received if the Scheme had not been implemented. After the expiry of the transitional services agreement, Rothesay would choose either to put in place a direct relationship with TCS/Diligenta or the administration would migrate to a service provider of Rothesay’s choice. Rothesay already manages approximately 380,000 non-profit annuities and administers these via outsourcing agreements. I have reviewed the target service standards for these policies and I consider the service standards to be reasonable. I have no reason to believe that the future outsourcing arrangements for the transferring policies organised by Rothesay will result in materially different service standards from those applicable to Rothesay’s existing non-profit annuities. I will comment on the outcome of the discussions surrounding the Transitional Services Agreement in my Supplementary Report. However, assuming that a suitable Transitional Services Agreement is put in place, I am satisfied that the implementation of the Scheme will not result in a material adverse impact on service standards applicable to the Transferring Policies.

Following the transfer, the transferring policies will be managed by Rothesay and subject to the governance of the Rothesay Board of Directors. As noted above, Rothesay currently manages large volumes of non-profit annuity business, and is therefore experienced in the management and governance of such business.

After the transfer date it will be necessary to use Rothesay’s Pay As You Earn (“PAYE”) reference for transferring policies. For some holders of transferring policies, this may trigger a change in their PAYE tax code, either at or directly after the transfer date. Rothesay and PAC are liaising with HMRC to establish the best approach to minimise any inconvenience for affected policyholders. I will comment further on this aspect in my Supplementary Report.

In October 2016, the Financial Conduct Authority (the “FCA”) announced the findings of its Thematic Review of Annuity Sales Practices (“TRASP”) which assessed whether firms had provided new annuity customers with sufficient information about the availability of enhanced annuities9 at the point of sale. As a result of TRASP a number of firms, including PAC, were asked by the FCA to review all non-advised annuity sales10 since July 2008 and provide compensation where appropriate. PAC is currently conducting this review.

Depending on the outcome of the TRASP review, PAC may need to make lump sum compensation payments and/or augment the level of annuity payments for certain policies, including some of the transferring policies. The planned processes for reviewing and, where appropriate, providing TRASP compensation after the transfer have been designed with the aim that a transferring policyholder’s experience would be the same as that of a non-transferring policyholder of PAC. Therefore, transferring policyholders should not experience a delay in receiving any compensation due as a result of the implementation of the Scheme, nor will the amount of compensation they receive be affected.

Conclusions for transferring policies

I am satisfied that the implementation of the Scheme will not have a material adverse effect on:

• The security of benefits under the transferring policies;
• The reasonable expectations of the transferring policyholders; or

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9 An annuity sold to an individual in poorer than average health, which pays out a higher annuity amount to reflect their lower life expectancy relative to a healthy individual.
10 When a customer does not receive financial advice when purchasing an annuity, it is called a ‘non-advised annuity sale’.
The service standards and governance applicable to the transferring policies.

The effect of the transfer on non-transferring policies of PAC

Benefit security

If the proposed transfer had taken place on 30 June 2018, there would have been an improvement to PAC’s financial strength as a result of the transfer. However, this improvement would be relatively small as PAC has already transferred the risks and rewards associated with the transferring policies to Rothesay through the Reinsurance Agreement, and so has already realised most of the financial benefits of the transfer.

The proposed transfer will not lead to any material change in the risk appetite\(^{11}\) or capital policy in accordance with which PAC is managed, and PAC’s ability to comply with its capital policy will not be materially affected by the transfer.

Reasonable expectations of non-transferring PAC policyholders

No changes will be made to the terms and conditions of non-transferring policies in PAC as a result of the transfer. Furthermore, there will be no change to the operation of PAC and the governance of non-transferring PAC policies will continue to be the responsibility of the PAC Board of Directors and, in the case of with-profits policyholders (none of which will transfer to Rothesay), the role of the PAC With-Profits Committee will be unchanged.

The non-transferring policies in PAC will continue to be administered under the same arrangements and will therefore not experience any change to service standards as a result of the transfer.

The Scheme will have no effect on the benefits payable under policies remaining in PAC.

Conclusions for non-transferring policies

I am satisfied that the implementation of the Scheme will not have a material effect on:

- The security of benefits under non-transferring policies in PAC;
- The reasonable benefit expectations of non-transferring policyholders of PAC; or
- The service standards and governance applicable to non-transferring policies of PAC.

The effect of the transfer on Rothesay policies

Benefit security

Based on the financial information I have received as at 30 June 2018, there will be no material change to the financial strength of Rothesay as a result of the transfer as PAC has already transferred the risks and rewards associated with the transferring policies to Rothesay through the Reinsurance Agreement.

Rothesay’s existing business consists solely of annuities in payment and deferred annuities, and while the Reinsurance Agreement significantly increased the volume of business in Rothesay, it did not materially change the nature of the risks to which its policies are exposed (principally longevity risk\(^{12}\) and credit risk\(^{13}\)). As the risks on the transferring policies have already been passed to Rothesay through the Reinsurance Agreement, the transfer itself will not add to these risks.

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\(^{11}\) Risk appetite is the amount and type of risk that an organisation is willing to take in order to meet its strategic objectives.

\(^{12}\) Longevity risk is the risk of an adverse financial impact arising from annuity policyholders living longer than expected.

\(^{13}\) Credit risk is the risk of losses arising from a loan made to a third party. A loss may arise from failure of the counterparty to make payments when due. A loss may also arise because the market considers the likelihood of the counterparty defaulting has increased, and so the value at which the loan may be traded falls.
The proposed transfer will not lead to any material change in the risk appetite or capital policy in accordance with which Rothesay is managed, and Rothesay’s ability to comply with its capital policy will not be materially affected by the transfer.

**Reasonable expectations of existing Rothesay policyholders**

The transfer will not alter the terms and conditions of existing policies in Rothesay.

The transfer will not lead to any changes to the servicing and administration arrangements for existing Rothesay policies, and no change is expected to service standards for these policies as a result of the Scheme.

The governance of the existing policies will continue to be the responsibility of the Rothesay Board of Directors.

**Conclusions for existing Rothesay policies**

I am satisfied that the implementation of the Scheme will not have a material effect on:

- The security of benefits of the policyholders of Rothesay;
- The reasonable expectations of the policyholders of Rothesay; or
- The service standards and governance applicable to the policyholders of Rothesay.

**Overall Conclusions**

I am satisfied that the implementation of the Scheme will not have a material adverse effect on:

- The security of benefits of the policyholders of PAC and Rothesay;
- The reasonable benefit expectations of the policyholders of PAC and Rothesay; or
- The service standards and governance applicable to the PAC and Rothesay policies.

I am also satisfied that the Scheme is equitable to all classes and generations of PAC and Rothesay policyholders.

The Independent Expert’s full report is available online at pru.co.uk/annuitytransfer. It shows in much more detail how the Independent Expert has reached his conclusions. You can also request a copy by post, by calling PAC’s helpline on 0800 640 9164 or +44 203 755 9194 if calling from outside the UK, or by writing to PAC at Rothesay Life Transfer, Prudential, PO Box 3122, Lancing BN15 8GB.
APCIA Principles for Insurance Business Transfers (IBT) and Division Statutes

Due Process

• Robust due process must be afforded to stakeholders impacted by a transaction (policyholders, reinsurers, guaranty associations). This should include:
  o Notice to stakeholders as determined by the regulator
  o Public hearing
  o Opportunity to submit written comments

Guaranty Fund Coverage

• No impacted policyholder should lose or gain guaranty fund protection as a result of a transaction.

Robust Regulatory Review Process

• The regulatory review must be robust and should, at a minimum, include the following findings:
  o The assets to be allocated to insurers involved in the transaction are adequate to cover the insurer’s liabilities.
  o The impact and terms of the transaction do not have a material adverse impact on policyholders, reinsurers, or guaranty associations.
  o The review should consider the plans of any insurer involved in the transaction to liquidate another involved insurer, sell its assets, consolidate, merge, or make other changes, and the resulting impact on policyholders, reinsurers, and guaranty associations.

Independent Expert

• The regulatory review process for insurance business transfers will utilize an independent expert to advise and assist the regulator in reviewing proposed transactions (including advising on any material adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.

Court Approval

• Court approval must be required for insurance business transfer transactions but not for divisions.
Group Solvency Issues (E) Working Group
Austin, Texas
December 7, 2019

The Group Solvency Issues (E) Working Group of the Financial Condition (E) Committee met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: Justin Schrader, Chair (NE); Doug Slape, Vice Chair (TX); Kathy Belfi and Michael Shanahan (CT); Virginia Christy and Carolyn Morgan (FL); Kim Cross and Mike Yanacheak (IA); Cindy Andersen and Eric Moser (IL); Roy Eft (IN); John Turchi (MA); Judy Weaver (MI); Shannon Schmoeger (MO); Marlene Caride (NJ); Stephen Doody (NY); Tim Biler and Dale Bruggeman (OH); Joe DiMemmo and Kimberly Rankin (PA); Doug Stolte (VA); and Amy Malm (WI).

1.  Received an Update from the ORSA Implementation (E) Subgroup

Ms. Belfi provided an update of recent activities of the ORSA Implementation (E) Subgroup, which has not met since the Summer National Meeting but has been engaged in ongoing projects. She said the NAIC held its first Own Risk and Solvency Assessment (ORSA) Peer Review session in August, which was led by the Risk-Focused Surveillance (E) Working Group but supported by the Subgroup. She stated that she was able to attend the session as an observer. During the session, several sound practices and opportunities for improvement were identified for use in reviewing and incorporating ORSA work into ongoing analysis and examination processes. Ms. Belfi stated that Subgroup leadership has worked with NAIC staff to develop a state insurance regulator only ORSA Review Sound Practices document to share these takeaways with other states. In addition, as the session was very well received, the NAIC intends to conduct another ORSA Peer Review session in 2020 to allow other states to participate.

Ms. Belfi stated that in addition to its support for ORSA Peer Review work, the Subgroup has also been engaged in the development of guidance for use in reviewing and evaluating an insurer’s use of internal capital models. She said this guidance is not intended as a standard set of procedures to be performed at all ORSA filers, but it will instead be optional supporting guidance for those states that want to dig deeper into their insurers’ use of internal capital models. As such, the guidance is intended for use as a state insurance regulator-only tool, and it is being discussed and developed during regulator-to-regulator calls of the Subgroup. At this point, a first draft of guidance was developed and exposed for state insurance regulator comment. Comments were received from several states, and the proposed guidance is currently being revised to address comments received. Ms. Belfi stated that once a revised draft is developed, it will be reviewed by the Subgroup and approved for use as an optional state insurance regulator-only tool.

2.  Heard a Report on IAIS Activities

Mr. Schrader provided a report on recent group-related activities of the International Association of Insurance Supervisors (IAIS), including the status of ongoing projects of the Insurance Groups Working Group. He said that now that the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) has been adopted, several supporting activities are underway at the IAIS to assist in implementation. A supervisory college workshop is in development to assist supervisors in learning best practices for use in conducting college sessions. Other related projects include the ongoing development of an aide memoire to assist in post-implementation review, as well as a frequently asked questions (FAQ) document for supervisors.

3.  Discussed State Insurance Regulator Approach to ComFrame Implementation

Mr. Schrader stated that the Working Group will be receiving a significant new charge for 2020 related to ComFrame implementation. The IAIS adopted ComFrame on Nov. 14, which establishes supervisory standards and guidance focusing on the effective group-wide supervision of Internationally Active Insurance Groups (IAIGs). ComFrame is a comprehensive and outcome-focused framework aimed at facilitating effective group-wide supervision of IAIGs by providing qualitative and (in a future phase) quantitative supervisory minimum requirements tailored to the international activity and size of IAIGs. The intent of ComFrame is to help supervisors address group-wide risks and avoid supervisory gaps by supporting coordination across jurisdictions.
Mr. Schrader stated that ComFrame builds on, and expands upon, the high-level standards and guidance currently set out in the Insurance Core Principles (ICPs) of the IAIS, which generally apply on both an insurance legal entity and group-wide level. Consistent with the application of the ICPs, the minimum requirements established by ComFrame are expected to be implemented and applied in a proportionate manner. However, supervisors have the flexibility to tailor implementation of supervisory requirements and application of insurance supervision to achieve the outcomes described in ComFrame Standards.

Mr. Schrader stated that certain elements of ComFrame were incorporated into the 2014 revisions to the Insurance Holding Company System Regulatory Act (#440), which were developed by the Working Group. However, there have been a number of additions and enhancements to ComFrame since that time, which is why the Working Group is intended to receive the following charge for 2020: “Assess the IAIS Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and make recommendations on its implementation in a manner appropriate for the U.S.”

Mr. Schrader stated that ComFrame requirements are quite broad and extensive, with elements included in 10 of the 25 ICPs, as well as the ICP Introduction and Assessment Methodology. He said that many of the key elements of ComFrame may already be incorporated into the U.S. system of state insurance regulation, at least partially; but it will be the Working Group’s assignment to identify other elements that may not yet be incorporated and discuss how to address them. He stated that the Working Group asked for comments on how to proceed with addressing this charge in 2020, and it received requests to speak on this topic from several interested parties.

Tom Finnell (America’s Health Insurance Plans—AHIP) stated his agreement that many of the ComFrame elements are already at least partially incorporated into the U.S. system of state-based regulation. In addition, while the ComFrame language and wording tends to emphasize or encourage a centralized approach to group management and oversight, he encouraged state insurance regulators to consider the introductory guidance and assessment methodology that allows for additional flexibility in applying oversight to different types of insurance groups. He stated that the guidance related to who is considered the head of an insurance group is very important, and it should be carefully considered in applying ComFrame concepts in the U.S.

Stephen Broadie (American Property Casualty Insurance Association—APCIA) stated that the language in the charge stating that ComFrame should be implemented “in a manner appropriate for the U.S.” is very important as new requirements should not be adopted or implemented if they do not make sense within the U.S. system of state-based insurance regulation. He also stated that ComFrame is designed to produce equivalent outcomes, but such outcomes can be achieved in different ways. As such, he encouraged state insurance regulators to not adopt ComFrame elements that would promote a prescriptive approach to company management and oversight.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) stated her support for an approach that identifies existing practices in the U.S. system that address ComFrame elements before identifying and addressing any gaps that may need to be considered.

Bill Schwegler (Transamerica) stated that he was speaking on behalf of several U.S. insurance groups, including Jackson National Life Insurance and Protective Live Insurance, that are subsidiaries of foreign-based groups that will be subject to ComFrame requirements imposed by their group-wide supervisors. Therefore, to ensure that these groups are not put at a disadvantage in U.S. ComFrame implementation, he recommended that state insurance regulators consider three important points. First, state insurance regulators should create an appropriate legal architecture to coordinate and share information across jurisdictions. Second, state insurance regulators should avoid placing additional requirements on IAIGs that are not specifically associated with their international activities. Third, as the distinction between IAIGs and other large insurers is not very significant in the U.S. market, state insurance regulators should avoid setting an inappropriate scope in implementing ComFrame requirements.

Mr. Shrader thanked interested parties for their comments, and he committed to hold implementation discussions in an open manner while keeping the interested party comments in mind. Ms. Belfi asked if the ComFrame guidance could be separated out from the ICPs and distributed to Working Group members for review. Mr. Schrader asked NAIC staff to extract the ComFrame elements from the ICPs and distribute the guidance to the Working Group. Mr. Schrader also asked NAIC staff to begin work on a document comparing ComFrame elements to existing practices in the U.S. system of state-based regulation for Working Group review.
4. Discussed Other Matters

Mr. Schrader said the Group Capital Calculation (E) Working Group has been discussing the need to revise the holding company models to allow for the collection of data associated with the calculation, and he has submitted a Request for NAIC Model Law Development to the Executive (EX) Committee for approval. He said that the Group Solvency Issues (E) Working Group will be involved in the project due to its role in overseeing Model #440.

Mr. Bruggeman stated that the Statutory Accounting Principles (E) Working Group exposed agenda item 2019-34 for public comment and would be asking the Working Group to review and provide comment on the proposed changes that are intended to clarify accounting and reporting requirements for related parties. As related parties are more difficult to appropriately identify and disclose in large insurance groups, the proposed revisions should be relevant to the Group Solvency Issues (E) Working Group.

Having no further business, the Group Solvency Issues (E) Working Group adjourned.
MEMORANDUM

TO: Financial Condition (E) Committee

FROM: NAIC Staff

DATE: November 15, 2019

RE: Examiners’ Suggested Salary

For its work in 2020, the Risk-Focused Surveillance (E) Working Group received the following charges from the Financial Condition (E) Committee:

Continually maintain and update standardized job descriptions/requirements and salary range recommendations for common solvency monitoring positions to assist insurance departments in attracting and maintaining suitable staff.

In 2019, the Working Group developed and referred Handbook revisions that would provide clearer compensation suggestions to both the Financial Analysis Solvency Tools (E) Working Group and the Financial Examiners Handbook (E) Technical Group. Both groups adopted their revisions earlier this year and will therefore include related guidance in 2020 editions of their respective Handbooks. The Working Group has also sent a referral to the Financial Regulation Standards and Accreditation (F) Committee to enhance consideration of Department compensation during the Accreditation review process. Those revisions were also adopted in 2019.

To avoid negatively impacting states that base compensation on the current Salary and Per Diem Guidelines, NAIC staff have continued to maintain the existing Handbook guidance on compensation which is being updated via this memorandum. NAIC staff also recommend that the Risk-Focused Surveillance (E) Working Group assume the responsibility to oversee development of updates to all compensation related guidance pursuant to the charge outlined above.

The Consumer Price Index (CPI), as defined by the U.S. Bureau of Labor Statistics (BLS), is a measure of the average change in prices of goods and services purchased by households over time. The CPI is based on prices of food, clothing, shelter, fuels, transportation fares, charges for doctors’ and dentists’ services, drugs, and other goods and services purchased for day-to-day living. In 2008, it was decided that because the CPI takes into consideration most costs incurred by the average household, it is reasonable that an increase in salary should be within the same parameters as the increase in the cost of living. It was therefore proposed, and that proposal accepted, that the CPI be used as a basis for examiner salary increases. In years in which the CPI does not accurately reflect market conditions, additional work—including surveys and salary studies—may be completed to ensure proper salary suggestions. Consistent with past years, inflation has continued to show modest increases in prices and appears appropriate as a metric on which to base a suggested compensation increase.

The following data table shows the average annual salary increases adopted in the previous five years as compared to the CPI, as well as the proposed increase for the following year. The information “as published by BLS” compares the CPI as of July of each year, consistent with the analysis performed in past years.
As shown above, in recent years, the rates suggested by the NAIC were consistently comparable to those published by the BLS, regardless of the method used.

Based upon the current CPI data available (July 2018–July 2019), the estimated annual change in CPI is approximately 1.81%. As such, if the Committee intends to base salary increases on changes in the CPI, we would recommend a 2% increase in all classification categories as shown below.

<table>
<thead>
<tr>
<th>Classification</th>
<th>2018 Daily Rates</th>
<th>Suggested Increase</th>
<th>2019 Daily Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Company Examiner, AFE*</td>
<td>329</td>
<td>2%</td>
<td>$336</td>
</tr>
<tr>
<td>Automated Examination Specialist, AFE (no AES**)</td>
<td>403</td>
<td>2%</td>
<td>$411</td>
</tr>
<tr>
<td>Senior Insurance Examiner, CFE***</td>
<td>403</td>
<td>2%</td>
<td>$411</td>
</tr>
<tr>
<td>Automated Examination Specialist, AES</td>
<td>453</td>
<td>2%</td>
<td>$462</td>
</tr>
<tr>
<td>Automated Examination Specialist, CFE (no AES)</td>
<td>453</td>
<td>2%</td>
<td>$462</td>
</tr>
<tr>
<td>Insurance Examiner In-Charge, CFE</td>
<td>485</td>
<td>2%</td>
<td>$495</td>
</tr>
<tr>
<td>Supervising or Administrative Examiner</td>
<td>515</td>
<td>2%</td>
<td>$525</td>
</tr>
</tbody>
</table>

* Accredited Financial Examiner
** Automated Examination Specialist
*** Certified Financial Examiner

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Process for Developing and Maintaining the NAIC List of Evaluating Qualified and Reciprocal Jurisdictions
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I. Preamble

Purpose

The revised Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) (collectively, the Credit for Reinsurance Models) require an assuming insurer to be licensed and domiciled in a “Qualified Jurisdiction” in order to be eligible for certification by a state as a certified reinsurer for reinsurance collateral reduction purposes. In 2012, the NAIC Reinsurance (E) Task Force was charged to develop an NAIC process to evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, for the purposes of developing and maintaining a list of jurisdictions recommended for recognition by the states as Qualified Jurisdictions. This charge was extended in 2019 to encompass the recognition of Reciprocal Jurisdictions in accordance with the 2019 amendments to the Credit for Reinsurance Models, including the maintenance of a list of recommended Reciprocal Jurisdictions. The purpose of the Process for Developing and Maintaining the NAIC List of Evaluating Qualified and Reciprocal Jurisdictions is to provide a documented evaluation process for creating and maintaining the NAIC lists.

Background

On November 6, 2011, the NAIC Executive (EX) Committee and Plenary adopted revisions to the Credit for Reinsurance Models. These revisions serve to reduce reinsurance collateral requirements for certified reinsurers that are licensed and domiciled in Qualified Jurisdictions. Under the previous version of the Credit for Reinsurance Models, in order for U.S. ceding insurers to receive reinsurance credit, the reinsurance was required to be ceded to U.S.-licensed reinsurers or secured by collateral representing 100% of U.S. liabilities for which the credit is recorded. When considering revisions to the Credit for Reinsurance Models, the Reinsurance (E) Task Force contemplated establishing an accreditation-like process, modeled on the current NAIC Financial Regulation Standards and Accreditation Program, to review the reinsurance supervisory systems of non-U.S. jurisdictions. Under the revised Credit for Reinsurance Models, the approval of Qualified Jurisdictions is left to the authority of the states; however, the models provide that a list of Qualified Jurisdictions will be created through the NAIC committee process, and that individual states must consider this list when approving jurisdictions.

The enactment in 2010 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the Federal Insurance Office (FIO), which has the following authority: (1) coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters; (2) assist the Secretary of the U.S. Department of the Treasury in negotiating covered agreements (as defined in the Dodd-Frank Act); (3) determine whether the states’ insurance measures are preempted by covered agreements; and (4) consult with the states (including state insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance. Further, the Dodd-Frank Act authorizes the U.S. Treasury Secretary and the U.S. Trade Representative (USTR), jointly, to negotiate and enter into covered agreements on behalf of the United States. It is the NAIC’s intention to communicate and coordinate with the FIO and related federal authorities as appropriate with respect to the evaluation of the reinsurance supervisory systems of non-U.S. jurisdictions.

On September 22, 2017, the United States and the European Union (EU) entered into the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.” A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements (collectively referred to as the “Covered Agreements”) will require the states to eliminate reinsurance...
collateral requirements for reinsurers licensed and domiciled in these jurisdictions within 60 months (five years) after signing or face potential federal preemption by the Federal Insurance Office (FIO) under the Dodd-Frank Act.

**Reciprocal Jurisdictions**

On June 25, 2019, the NAIC Executive (EX) Committee and Plenary adopted revisions to the Credit for Reinsurance Models. These revisions were intended to conform the Models to the relevant provisions of the Covered Agreements. The Covered Agreements would eliminate reinsurance collateral requirements for EU and UK reinsurers that maintain a minimum amount of own funds equivalent to $250 million and a solvency capital requirement (SCR) of 100% under Solvency II, among other conditions. Conversely, U.S. reinsurers that maintain capital and surplus equivalent to 226 million euros with a risk-based capital (RBC) of 300% of authorized control level would not be required to maintain a local presence in order to do business in the EU or UK or post reinsurance collateral. Under the revised Credit for Reinsurance Models, jurisdictions that are subject to in-force Covered Agreements are considered to be Reciprocal Jurisdictions, and reinsurers that have their head office or are domiciled in a Reciprocal Jurisdiction are not required to post reinsurance collateral if they meet all of the requirements of the Credit for Reinsurance Models.

Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to Covered Agreements treated as Reciprocal Jurisdictions for reinsurance collateral purposes, but any other Qualified Jurisdictions can also qualify for collateral elimination as Reciprocal Jurisdictions. States that meet the requirements of the NAIC Financial Standards and Accreditation Program are also considered to be Reciprocal Jurisdictions.

The NAIC has updated and revised this *Process for Evaluating Qualified and Reciprocal Jurisdictions* to specify how Qualified Jurisdictions that recognize key NAIC solvency initiatives, including group supervision and group capital standards, and also meet the other requirements under the revised Credit for Reinsurance Models, will be recognized as Reciprocal Jurisdictions and receive similar treatment as that provided under the EU and UK Covered Agreements, including the elimination of reinsurance collateral and local presence requirements by the states.
II. Principles for the Evaluation of Non-U.S. Jurisdictions

1. The NAIC model revisions applicable to certified reinsurers are intended to facilitate cross-border reinsurance transactions and enhance competition within the U.S. market, while ensuring that U.S. insurers and policyholders are adequately protected against the risk of insolvency. To be eligible for certification, a reinsurer must be domiciled and licensed in a Qualified Jurisdiction as determined by the domestic regulator of the ceding insurer. A Qualified Jurisdiction not subject to an in-force Covered Agreement under the Dodd-Frank Act may also be determined to be a Reciprocal Jurisdiction, and reinsurers that have their head office or are domiciled in any such Reciprocal Jurisdiction will not be required to post reinsurance collateral, provided they meet the minimum capital and financial strength requirements and comply with the other requirements of the Credit for Reinsurance Models.

2. The evaluation of non-U.S. jurisdictions as Qualified Jurisdictions and Reciprocal Jurisdictions will be conducted in accordance with the provisions of the Credit for Reinsurance Models and any other relevant guidance developed by the NAIC.

3. The evaluation of non-U.S. jurisdictions as Qualified Jurisdictions is intended as an outcomes-based comparison to financial solvency regulation under the NAIC Financial Regulation Standards and Accreditation Program (Accreditation Program), adherence to international supervisory standards, and relevant international guidance for recognition of reinsurance supervision. It is not intended as a prescriptive comparison to the NAIC Accreditation Program. In order for a Qualified Jurisdiction that is not subject to an in-force Covered Agreement to be evaluated as a Reciprocal Jurisdiction, that Qualified Jurisdiction must agree to recognize the states’ approach to group supervision, including group capital, and other such requirements as provided under the Credit for Reinsurance Models.

4. The states shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system within the Qualified Jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the U.S. The determination of Qualified Jurisdiction status is based on the effectiveness of the entire reinsurance supervisory system within the jurisdiction.

5. Each state may evaluate a non-U.S. jurisdiction to determine if it is a Qualified Jurisdiction. A list of Qualified Jurisdictions will be published through the NAIC committee process. A state must consider this list in its determination of Qualified Jurisdictions, and if the state approves a jurisdiction not on this list, the state must thoroughly document the justification for approving this jurisdiction in accordance with the standards for approving Qualified Jurisdictions contained in the Credit for Reinsurance Models. The creation of this list does not constitute a delegation of regulatory authority to the NAIC. The regulatory authority to recognize a Qualified Jurisdiction resides solely in each state and the NAIC List of Qualified Jurisdictions is not binding on the states.

6. A list of Reciprocal Jurisdictions will be published through the NAIC committee process. Jurisdictions subject to an in-force Covered Agreement and states that meet the requirements of the NAIC Financial Standards and Accreditation Program are automatically included on the List of Reciprocal Jurisdictions. A state must consider this list in its determination of Reciprocal Jurisdiction status, and if the state approves a jurisdiction not on this list, the state must thoroughly document the justification for approving this jurisdiction in accordance with the standards for approving Reciprocal Jurisdictions contained in the Credit for Reinsurance Models.
7. In order to facilitate multi-state recognition of assuming insurers and to encourage uniformity among the states, the NAIC has initiated a process called “passporting” under which the commissioner has the discretion to defer to another state’s determination that a jurisdiction is a Qualified or Reciprocal Jurisdiction. Passporting is based upon individual state regulatory authority, and states are encouraged to act in a uniform manner in order to facilitate the passporting process. States are also encouraged to utilize the passporting process to reduce the amount of documentation filed with the states and reduce duplicate filings. The NAIC Lists of Qualified and Reciprocal Jurisdictions are intended to facilitate the passporting process.

6.8. Both Qualified Jurisdictions and Reciprocal Jurisdictions must agree to share information and cooperate with the state with respect to all certified applicable reinsurers domiciled within that jurisdiction. Critical factors in the evaluation process include but are not limited to the history of performance by assuming insurers in the applicant jurisdiction and any documented evidence of substantial problems with the enforcement of final U.S. judgments in the applicant jurisdiction. A jurisdiction will not be a Qualified Jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

7.9. The determination of Qualified Jurisdiction status can only be made with respect to the reinsurance supervisory system in existence and applied by a non-U.S. jurisdiction at the time of the evaluation.

8.10. The NAIC and the states will communicate and coordinate with the FIO, USTR and other relevant federal authorities as appropriate with respect to the evaluation of the reinsurance supervisory systems of non-U.S. jurisdictions.
III. Procedure for Evaluation of Non-U.S. Jurisdictions

   a. The NAIC will initially evaluate and expedite the review of those jurisdictions that were approved by the states of Florida and New York prior to the adoption of the revised Credit for Reinsurance Models (i.e., Bermuda, Germany, Switzerland and the United Kingdom). The NAIC may also consider expediting the review of additional jurisdictions, as outlined in paragraph 1(d) below. While the same evaluation procedure and methodology will be applicable to any jurisdiction under review, U.S. state insurance regulators’ familiarity with these particular jurisdictions may lead to a more expeditious review. Subsequent priority will be on the basis of objective factors including but not limited to ceded premium volume and reinsurance capacity issues raised by the states. Priority will also be given to requests from the states and from those jurisdictions specifically requesting an evaluation by the NAIC.
   
   b. Formal notification of the NAIC’s intent to initiate the evaluation process will be sent by the NAIC to the reinsurance supervisory authority in the jurisdiction selected, with copies to the FIO and other relevant federal authorities as appropriate. The NAIC will issue public notice on the NAIC website upon confirmation that the jurisdiction is willing to participate in the evaluation process. The NAIC will at this time request public comments with respect to consideration of the jurisdiction as a Qualified Jurisdiction. The process of evaluation and all related documentation are private and confidential matters between the NAIC and the applicant jurisdiction, unless otherwise provided in this document, subject to a preliminary confidentiality and information sharing agreement between the NAIC, relevant states and the applicant jurisdiction.
   
   c. Relevant U.S. state and federal authorities will be notified of the NAIC’s decision to evaluate a jurisdiction.
   
   d. Expedited Review Procedure. Based on the prior review and approval by Florida and New York of reinsurers domiciled in Bermuda, Germany, Switzerland and the United Kingdom, the NAIC will apply an expedited review procedure with respect to these jurisdictions. The NAIC may also consider extending this expedited review procedure to other jurisdictions approved by a state as a Qualified Jurisdiction, provided that:
      
      i. The state provides a report to the Qualified Jurisdiction Working Group confirming that it has completed a full review of the jurisdiction in accordance with that set forth in Part IV: Evaluation Methodology. If current information as outlined in paragraph 1(e)(i) (i.e., FSAP Report and ROSC) is not available to the state, it must demonstrate that it has obtained and reviewed information consistent with Appendix A and Appendix B.
      
      ii. The state completes the full review and lists the jurisdiction as a Qualified Jurisdiction within 60 days of the NAIC’s adoption of the Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions.

This procedure is not intended to eliminate or reduce any element provided under Part IV: Evaluation Methodology, but is intended to allow for a designation of Conditional Qualified Jurisdiction of these jurisdictions in order to facilitate the certification of reinsurers domiciled therein. Final qualification of each jurisdiction will be contingent upon completion of the full, outcomes-based evaluation procedure.
e.— Upon confirmation that a jurisdiction is willing to be considered for designation as a Conditional Qualified Jurisdiction, the following expedited review procedure will apply:

i.— The Qualified Jurisdiction Working Group will perform an initial review of the jurisdiction’s most recent Detailed Assessment of Observance on Insurance Core Principles under the International Monetary Fund (IMF)/World Bank Financial Sector Assessment Program (FSAP Report), Report on Observance for Standards and Codes (ROSC), and any other publicly available information regarding the laws, regulations, practices and procedures applicable to the reinsurance supervisory system in conjunction with the information provided under Section C through Section G of the Evaluation Methodology. The NAIC will invite each jurisdiction (or its designee) to provide information relative to Section C through Section G of the Evaluation Methodology in order to complete or supplement publicly available information. The NAIC may designate the jurisdiction as a Conditional Qualified Jurisdiction, to be effective immediately, upon: (1) receipt of all necessary initial information requested in this section; (2) opportunity for comment by interested parties; and (3) conclusion of any appropriate communication with the FIO, USTR and other relevant federal authorities.

ii.— During this period as a Conditional Qualified Jurisdiction, the Qualified Jurisdiction Working Group will complete its full analysis of the information provided by the jurisdiction, in addition to any specific information that is subsequently requested by the NAIC, in order to evaluate the jurisdiction’s laws, regulations, practices and procedures from an outcomes-based perspective in accordance with the guidance provided under Appendix A and Appendix B of the Evaluation Methodology. Upon satisfactory completion of the outcomes-based review of this information, the NAIC may upgrade the jurisdiction’s designation to Qualified Jurisdiction. The NAIC may also address any issues identified within the review or revoke the designation of Conditional Qualified Jurisdiction.

iii.— A jurisdiction may be permitted to maintain the designation of Conditional Qualified Jurisdiction for one year, unless: (1) an extension is granted by the Qualified Jurisdiction Working Group; or (2) a determination is made that the jurisdiction is not a Qualified Jurisdiction.

2. Evaluation of Jurisdiction

a. Evaluation Materials. The Qualified Jurisdiction Working Group will initiate evaluation of a jurisdiction’s regulatory system by using the information identified in Section A through Section G of the Evaluation Methodology (Evaluation Materials). The Qualified Jurisdiction Working Group will begin by undertaking a review of the most recent Financial Sector Assessment Program (FSAP) Report prepared by the International Monetary Fund (IMF), including the Technical Note on Insurance Sector Supervision, ROSC and any other publicly available information regarding the laws, regulations, practices and procedures applicable to the reinsurance supervisory system. The Qualified Jurisdiction Working Group will also invite each jurisdiction or its designee to provide information relative to Section A through Section G of the Evaluation Methodology in order to update, complete or supplement publicly available information. The Qualified Jurisdiction Working Group may also request or accept relevant information from reinsurers domiciled in the jurisdiction under review.

b. The Qualified Jurisdiction Working Group will notify the jurisdiction of any information upon which the Working Group is relying— that was not otherwise provided by the jurisdiction. In that communication, the NAIC will invite the supervisory authority to compare the materials identified by the NAIC to the materials
described in Appendix A and Appendix B, and provide information required to update the identified public information or supplement the public information, as required, to address the topics identified in Section A through Section G of the Evaluation Methodology. The use of publicly available information (e.g., the FSAP Report and/or the ROSC Insurance Sector Technical Note) is intended to lessen the burden on applicant jurisdictions by requiring the production of information that is readily available, while still addressing substantive areas of inquiry detailed in the Evaluation Methodology. The Qualified Jurisdiction Working Group’s review at this stage will be focused on how the jurisdiction’s laws, regulations, administrative practices and procedures, and regulatory authorities regulate the financial solvency of its domestic reinsurers in comparison to key principles underlying the U.S. financial solvency framework\(^1\) and other factors set forth in the Evaluation Methodology.

c. After reviewing the Evaluation Materials, the Qualified Jurisdiction Working Group may request that the applicant jurisdiction submit supplemental information as necessary to determine whether the jurisdiction has sufficient authority to regulate the solvency of its reinsurers in an effective manner. The Working Group will address specific questions directly with the jurisdiction related to items detailed in the Evaluation Methodology that are not otherwise addressed in the Evaluation Materials.

d. The NAIC will request that all responses from the jurisdiction being evaluated be provided in English. Any responses submitted with respect to a jurisdiction’s laws and regulations should be provided by a person qualified in that jurisdiction to provide such analyses and, in the case of statutory analysis, qualified to provide such legal interpretations, to ensure that the jurisdiction is providing an accurate description.

e. The NAIC does not intend to review confidential company-specific information in this process, and has focused the procedure on reviewing publicly available information. No confidential company-specific information shall be disclosed or disseminated during the course of the jurisdiction’s evaluation unless specifically requested, subject to appropriate confidentiality safeguards addressed in a preliminary confidentiality and information-sharing agreement. If no such agreement is executed or the jurisdiction is unable to enter into such an agreement under its regulatory authority, the NAIC will not accept any confidential company-specific information.

3. NAIC Review of Evaluation Materials

a. NAIC staff and/or outside consultants with the appropriate knowledge, experience and expertise will review the jurisdiction’s Evaluation Materials.

b. Expenses with respect to the evaluations will be absorbed within the NAIC budget. This will be periodically reviewed.

c. Timeline for review. A project management approach will be developed with respect to the overall timeline applicable to each evaluation.

d. Upon completing its review of the Evaluation Materials, the internal reviewer(s) will report initial findings to the Qualified Jurisdiction Working Group, including any significant issues or concerns identified. This report will be included as part of the official documentation of the evaluation. Copies of the initial findings may also be made available to FIO and other relevant federal authorities subject to appropriate confidentiality and information-sharing agreements being in place.

\(^1\) The U.S. financial solvency framework is understood to refer to the key elements provided in the NAIC Financial Regulation Standards and Accreditation Program. Appendix A and Appendix B are derived from this framework.
4. Discretionary On-site Review

a. The NAIC may request the jurisdiction under consideration for the opportunity to perform an on-site review of the jurisdiction’s reinsurance supervisory system. Factors that the Qualified Jurisdiction Working Group will consider in determining whether an on-site review is appropriate include the completeness of the information provided by the jurisdiction under review, the general familiarity of the jurisdiction by the NAIC staff or other state regulators participating in the review based on prior conduct or dealings with the jurisdiction, and the results of other evaluations performed by other regulatory or supervisory organizations. If the review is performed, it will be coordinated through the NAIC, utilizing personnel with the appropriate knowledge, experience and expertise. Individual states may also request that representatives from their state be added to the review team.

b. The review team will communicate with the supervisory authority in advance of the on-site visit to clearly identify the objectives, expectations and procedures with respect to the review, as well as any significant issues or concerns identified within the review of the Evaluation Materials. Information to be considered during the on-site review includes, but is not limited to, the following:

   i. Interviews with supervisory authority personnel.

   ii. Review of organizational and personnel practices.

   iii. Any additional information beneficial to gaining an understanding of document and communication flows.

c. Upon completing the on-site review, the reviewer(s) will report initial findings to the Qualified Jurisdiction Working Group, including any significant issues or concerns identified. This report will be included as part of the official documentation of the evaluation.

5. Standard of Review

The evaluation is intended as an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program, adherence to international supervisory standards and relevant international guidance for recognition of reinsurance supervision. The standard for qualification of a jurisdiction is that the NAIC must reasonably conclude that the jurisdiction’s reinsurance supervisory system achieves a level of effectiveness in financial solvency regulation that is deemed acceptable for purposes of reinsurance collateral reduction, that the jurisdiction’s demonstrated practices and procedures with respect to reinsurance supervision are consistent with its reinsurance supervisory system, and that the jurisdiction’s laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models.

6. Additional Information to be Considered as Part of Evaluation

The NAIC may also consider information from sources other than the jurisdiction under review. This information includes:

a. Documents, reports and information from appropriate international, U.S. federal and U.S. state authorities.

b. Public comments from interested parties.

c. Rating agency information.

d. Any other relevant information.
7. **Preliminary Evaluation Report**

a. NAIC staff and/or outside consultants will prepare a Preliminary Evaluation Report for review by the Qualified Jurisdiction Working Group. This preliminary report will be private and confidential (i.e., may only be reviewed by Working Group members, designated NAIC staff, consultants, the states, the FIO and other relevant federal authorities that specifically request to be kept apprised of this information, provided that such entities have entered into a preliminary confidentiality and information-sharing agreement with the foreign jurisdiction. Any outside consultants retained by the NAIC will be required to enter into a confidentiality and nondisclosure agreement.).

b. The report will be prepared in a consistent style and format to be developed by NAIC staff. It will contain detailed advisory information and recommendations with respect to the evaluation of the jurisdiction’s reinsurance supervisory system and the documented practices and procedures thereunder. The report will contain a recommendation as to whether the NAIC should recognize the jurisdiction as a Qualified Jurisdiction.

c. All workpapers and reports, including supporting documentation and data, produced as part of the evaluation process are the property of the NAIC and shall be maintained at the NAIC Central Office. In the event that the NAIC shall come into possession of any confidential information, the information shall be held subject to a confidentiality and information-sharing agreement, which will outline the appropriate actions necessary to protect the confidentiality of such information.


a. The Qualified Jurisdiction Working Group’s review of the Preliminary Evaluation Report will be held in regulator-to-regulator session in accordance with the NAIC Policy Statement on Open Meetings.

b. The Qualified Jurisdiction Working Group will make a preliminary determination as to whether the jurisdiction under consideration satisfies the Standard of Review and is deemed acceptable to be included on the NAIC List of Qualified Jurisdictions. If the preliminary determination is that the jurisdiction should not be included on the NAIC List of Qualified Jurisdictions, the Qualified Jurisdiction Working Group will set forth its specific findings and identify those areas of concern with respect to this determination.

c. The results of the Preliminary Evaluation Report will be immediately communicated in written form to the supervisory authority of the jurisdiction under review.

9. **Opportunity to Respond to Preliminary Evaluation Report**

a. Upon receipt of the Preliminary Evaluation Report, the supervisory authority will have an opportunity to respond to the initial findings and determination. This is not intended to be a formal appeals process that would initiate U.S. state administrative due process requirements.

b. The Qualified Jurisdiction Working Group will consider any response, and will proceed to prepare its Final Evaluation Report. The Qualified Jurisdiction Working Group will consider the Final Evaluation Report for approval in regulator-to-regulator session in accordance with the NAIC Policy Statement on Open Meetings. This report will be approved upon an affirmative vote of a majority of the members in attendance at this meeting.
c. Upon approval of the Final Evaluation Report, the Qualified Jurisdiction Working Group will issue a public statement and a summary of its findings with respect to its determination. At this time, the Working Group will release the summary for public comment. The detailed report will be a confidential, regulator-only document. The report may be shared with any state indicating that it is considering relying on the NAIC List of Qualified Jurisdictions and has entered into a preliminary confidentiality and information-sharing agreement with the foreign jurisdiction.

10. NAIC Determination regarding List of Qualified Jurisdictions

a. Once the Qualified Jurisdiction Working Group has adopted its Final Evaluation Report, it will submit the summary of its findings and its recommendation to the Reinsurance (E) Task Force at an open meeting. Upon approval by the Reinsurance (E) Task Force, the summary and recommendation will be submitted to the Executive (EX) Committee and Plenary, as well as to the FIO, USTR and other relevant federal authorities for consultation purposes. Upon approval as a Qualified Jurisdiction by the Executive (EX) Committee and Plenary, the jurisdiction will be added to the NAIC List of Qualified Jurisdictions. The NAIC will maintain the List of Qualified Jurisdictions on its public website and in other appropriate NAIC publications.

b. In the event that a jurisdiction is not approved as a Qualified Jurisdiction, the supervisory authority will be eligible for reapplication at the discretion of the NAIC.

c. Upon final adoption of the Qualified Jurisdiction Working Group’s determination with respect to a jurisdiction, the Final Evaluation Report will be made available to individual U.S. state insurance regulators upon request and confirmation that the information contained therein will remain confidential.

11. Memorandum of Understanding (MOU)

a. A Qualified Jurisdiction must agree to share information and cooperate on a confidential basis with the U.S. state insurance regulatory authority with respect to all certified reinsurers domiciled within that jurisdiction.

b. The International Association of Insurance Supervisors (IAIS) Multilateral Memorandum of Understanding (MMoU) is the recommended method under which a Qualified Jurisdiction will agree to share information and cooperate with U.S. state insurance regulatory authorities. However, until such time as a state has been approved as a signatory to the MMoU by the IAIS, the such state may rely on an MOU entered into by a “Lead State” designated by the NAIC. This Lead State will act as a conduit for information between the Qualified Jurisdiction and other states that have certified a reinsurer domiciled and licensed in that jurisdiction, and will share information with these states consistent with the terms governing the further sharing of information included in the applicable IAIS MMoU or bilateral MOU between the Lead State and the Qualified Jurisdiction and pursuant to the NAIC Master Information Sharing and Confidentiality Agreement. The jurisdiction must also confirm in writing that it is willing to permit this Lead State to act as the contact for purposes of obtaining information concerning its certified reinsurers, provided the Lead State share that information with the other states requesting the information consistent with the terms governing the further sharing of information included in the applicable IAIS MMoU or bilateral MOU between the Lead State and the Qualified Jurisdiction.
c. If a Qualified Jurisdiction has not been approved by the IAIS for use of the MMoU, it must enter into an MOU with a Lead State. The MOU will also provide for appropriate confidentiality safeguards with respect to the information shared between the jurisdictions.

d. The NAIC and the states will communicate and coordinate with the FIO, USTR and other relevant federal authorities as appropriate with respect to this process.

12. Process for Periodic Evaluation after Initial Approval

a. The process for determining whether a non-U.S. jurisdiction is a Qualified Jurisdiction is ongoing and subject to periodic review. The Qualified Jurisdiction Working Group will perform a yearly review of Qualified Jurisdictions to determine whether there have been any significant changes over the prior year that might affect their status as Qualified Jurisdictions. This yearly review shall follow such abbreviated process as may be determined by the Qualified Jurisdiction Working Group to be appropriate.

b. Qualified Jurisdictions must provide the Qualified Jurisdiction Working Group with notice of any material change in the applicable reinsurance supervisory system that may affect the status of the Qualified Jurisdiction. A U.S. jurisdiction should also notify the Qualified Jurisdiction Working Group if it receives notice of any material change in the applicable reinsurance supervisory system, or any adverse developments with respect to enforcement of final U.S. judgments, that may affect the status of the Qualified Jurisdiction. Upon receipt of any such notice, the Qualified Jurisdiction Working Group will consider whether it is necessary to re-evaluate the status of the Qualified Jurisdiction.

e. Once approved, a Qualified Jurisdiction is subject to a re-evaluation every five years. The Periodic Evaluation may follow a similar process as that set forth above, or such abbreviated process as the Qualified Jurisdiction Working Group may deem appropriate.

d. If the Qualified Jurisdiction Working Group finds the jurisdiction to be out of compliance at any time with the requirements to be a Qualified Jurisdiction, the specific reasons will be documented in a report to the jurisdiction under review, and the status as a Qualified Jurisdiction may be placed on probation, suspended or revoked.

e. The Qualified Jurisdiction Working Group will monitor those jurisdictions that have been approved as Qualified Jurisdictions by individual states, but are not included on the NAIC List of Qualified Jurisdictions.

13. Review of Qualified Jurisdictions as Reciprocal Jurisdictions

a. In undertaking the evaluation of a Qualified Jurisdiction as a Reciprocal Jurisdiction, the Qualified Jurisdiction Working Group shall utilize such processes and procedures as outlined in the immediately-preceding paragraphs 1 – 12 of Section III. Procedure for Evaluation of Non-U.S. Jurisdictions such as the Qualified Jurisdiction Working Group deems is appropriate. Specifically, the Qualified Jurisdiction Working Group will use processes and procedures outlined in paragraph 1 (Initiation of Evaluation of the Reinsurance Supervisory System of an Individual Jurisdiction), paragraph 3 (NAIC Review of Evaluation Materials), paragraph 7 (Preliminary Evaluation Report), paragraph 8 (Review of Preliminary Evaluation Report), paragraph 9 (Opportunity to Respond to Preliminary Evaluation Report), paragraph 10 (NAIC Determination regarding List of Qualified Jurisdictions), paragraph 11 (Memorandum of Understanding) and paragraph 12 (Process for Evaluation after Initial Approval), as modified for use with Reciprocal Jurisdictions.
b. A Qualified Jurisdiction may not be reviewed for inclusion on the NAIC List of Reciprocal Jurisdictions, unless it has undergone the Evaluation Methodology outlined in Section IV, and remains in good standing with the NAIC as a Qualified Jurisdiction. The Qualified Jurisdiction Working Group may, if it determines an extended review period to be appropriate after its initial approval of a new Qualified Jurisdiction, defer consideration of that jurisdiction as a possible Reciprocal Jurisdiction until there has been sufficient United States experience with that jurisdiction and its Certified Reinsurers that the Working Group believes it is appropriate to progress from collateral reduction to collateral elimination. Nothing in this process requires a finding that a Qualified Jurisdiction meets the standards for recognition as a Reciprocal Jurisdiction, and the Qualified Jurisdiction Working Group may base such recommendation on factors not specifically included in this process.

c. A list of Reciprocal Jurisdictions will be published through the NAIC committee process. Jurisdictions subject to an in-force Covered Agreement and states that meet the requirements of the NAIC Financial Standards and Accreditation Program are automatically included on the NAIC List of Reciprocal Jurisdictions. In making its recommendation with respect to whether a Qualified Jurisdiction that is not automatically designated as a Reciprocal Jurisdiction should be added to the NAIC List of Reciprocal Jurisdictions, the Qualified Jurisdiction Working Group shall undertake the following analysis in making its evaluation:

i. The Qualified Jurisdiction must confirm that an insurer which has its head office or is domiciled in that jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance assumed by insurers domiciled in that jurisdiction is received by United States ceding insurers;

ii. The Qualified Jurisdiction must confirm that it does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by that jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

iii. The Qualified Jurisdiction must recognize the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by its competent regulatory authority that insurance groups that are domiciled or maintain their worldwide headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to their U.S. home jurisdiction’s worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, 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;

iv. The Qualified Jurisdiction must provide written confirmation by its competent regulatory authority that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the states in accordance with a memorandum of understanding or similar document between a state and the Qualified Jurisdiction, including but not limited to the IAIS MMoU or other multilateral memoranda of understanding coordinated by the NAIC. This requirement may be satisfied by an MOU with a Lead State,
which shall provide for appropriate confidentiality safeguards with respect to the information shared between the jurisdictions, similar to the MOU requirement outlined in paragraph 11 of this section III; and

v. The Qualified Jurisdiction must confirm that it will provide to the states on an annual basis confirmation that each eligible assuming insurer that is domiciled in the Qualified Jurisdiction continues to comply with the requirements set forth in in Section 9C(2) and (3) of Model #786; i.e., must maintain minimum capital and surplus of no less than $250,000,000, and maintains on an ongoing basis the required minimum solvency or capital ratio, as applicable.

d. In order to satisfy the requirements of subsection (c) above, the chief insurance supervisor of the Qualified Jurisdiction being evaluated as a Reciprocal Jurisdiction may provide the NAIC with a written letter confirming, as follows:

[Jurisdiction] is a Qualified Jurisdiction under the NAIC Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786), and is currently in good standing on the NAIC List of Qualified Jurisdictions. As the lead insurance regulatory supervisor for [Jurisdiction], I hereby confirm to the National Association of Insurance Commissioners (NAIC) and the chief insurance regulators of the 50 states, the District of Columbia and five U.S. territories the following:

- An insurer which has its head office or is domiciled in [Jurisdiction] shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance assumed by insurers domiciled in [Jurisdiction] is received by United States ceding insurers. [Jurisdiction] does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by [Jurisdiction] or as a condition to allow the ceding insurer to recognize credit for such reinsurance.

- [Jurisdiction] recognizes the U.S. state regulatory approach to group supervision and group capital, and confirms that insurance groups that are domiciled or maintain their worldwide headquarters in jurisdictions accredited by the NAIC shall be subject only to their U.S. home jurisdiction’s worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, 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].

- [Jurisdiction] confirms that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the states in accordance with a memorandum of understanding or similar document between a state and the [Jurisdiction].

- [Jurisdiction] will annually provide to the states confirmation that applicable assuming insurers domiciled in [Jurisdiction] maintain minimum capital and surplus of no less than $250,000,000, and maintain on an ongoing basis the required minimum solvency or capital ratio, as applicable.
Finally, I confirm that [Jurisdiction] will immediately notify the NAIC upon any changes to the assurances provided in this letter.

e. The Qualified Jurisdiction Working Group will perform a due diligence review of available public and confidential documents to confirm that to the best of its determination, the representations in the letter are true and accurate, and will prepare for the review by the Reinsurance Task Force a Summary of Findings and Determination recommending that the Qualified Jurisdiction be recognized as a Reciprocal Jurisdiction. Upon approval by the Task Force, the Summary of Findings and Determination must be adopted by a vote of the NAIC Executive (EX) Committee and Plenary for inclusion on the List of Reciprocal Jurisdictions.

f. The Qualified Jurisdiction Working Group, working in coordination with the Qualified Jurisdiction and the Reinsurance Financial Analysis (E) Working Group, must make a determination on a minimum solvency or capital ratio under which reinsurers licensed and domiciled in the Qualified Jurisdiction may assume insurance from U.S. ceding companies without posting reinsurance collateral. The applicable minimum solvency or capital ratio must be an effective measure of solvency, comparable to either an NAIC risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, or one hundred percent (100%) of the solvency capital requirement (SCR) as calculated under the Solvency II Directive issued by the European Union, giving due consideration to any applicable equivalency assessment conducted by the European Insurance and Occupational Pensions Authority (EIOPA) on the Qualified Jurisdiction with respect to Solvency II.

g. Except for Reciprocal Jurisdictions entitled to automatic recognition, a jurisdiction’s status as a Reciprocal Jurisdiction may be placed on probation, suspended or revoked for good cause in the same manner as provided for Qualified Jurisdictions under paragraph 12. If cause is found to question the fitness of a Reciprocal Jurisdiction that is subject to an in-force covered agreement, or its compliance with applicable requirements of the covered agreement, the Qualified Jurisdiction Working Group would report any concerns to its parent Task Force for further discussion and communication with appropriate federal and/or international authorities.
IV. **Evaluation Methodology**

The Evaluation Methodology was developed to be consistent with the provisions of the NAIC Credit for Reinsurance Models. It is intended to provide an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program, adherence to international supervisory standards and relevant international guidance for recognition of reinsurance supervision. Although the methodology includes a comparison of the jurisdiction’s supervisory system to a number of key elements from the NAIC Accreditation Program, it is not intended as a prescriptive assessment under the NAIC Accreditation Program. Rather, the NAIC Accreditation Program simply provide the framework for the outcomes-based analysis. The NAIC will evaluate the appropriateness and effectiveness of the reinsurance supervisory system within the jurisdiction and consider the rights, benefits and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the U.S. The determination of a Qualified Jurisdiction is based on the effectiveness of the entire reinsurance supervisory system within the jurisdiction.

The Evaluation Methodology consists of the following:

- Section A: Laws and Regulations
- Section B: Regulatory Practices and Procedures
- Section C: Jurisdiction’s Requirements Applicable to U.S.-Domiciled Reinsurers
- Section D: Regulatory Cooperation and Information Sharing
- Section E: History of Performance of Domestic Reinsurers
- Section F: Enforcement of Final U.S. Judgments
- Section G: Solvent Schemes of Arrangement

This information will be the basis for the Final Evaluation Report and the determination of whether the jurisdiction will be included on the NAIC List of Qualified Jurisdictions.
Section A: Laws and Regulations

The NAIC will review publicly available information, as well as information provided by an applicant jurisdiction with respect to its laws and regulations, in an effort to evaluate whether the jurisdiction has sufficient authority to regulate the solvency of its reinsurers in an effective manner. This will include a review of elements believed to be basic building blocks for sound insurance/reinsurance regulation. A jurisdiction’s effectiveness under Section A may be demonstrated through law, regulation or established practice that implements the general authority granted to the jurisdiction, or any combination of laws, regulations or practices that meet the objective.

The Qualified Jurisdiction Working Group will initiate evaluation of a jurisdiction’s regulatory system by gathering and undertaking a review of the most recent FSAP Report, ROSC and any other publicly available information regarding the laws, regulations, practices and procedures applicable to the reinsurance supervisory system. The Qualified Jurisdiction Working Group will simultaneously invite each jurisdiction (or its designee) to provide information relative to Section A (and other sections, as relevant) to assist the NAIC in evaluating its laws and regulations. The NAIC will review this information in conjunction with Appendix A, which provides more detailed guidance with respect to elements the NAIC intends to consider on an outcomes basis in the evaluation under this section. Appendix A is not intended as a prescriptive checklist of requirements a jurisdiction must meet in order to be a Qualified Jurisdiction. Rather, it is provided in an effort to facilitate an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program. An applicant jurisdiction is requested to address the following information, which the NAIC will consider, at a minimum, in determining whether the outcomes achieved by the jurisdiction’s laws and regulations meet an acceptable level of effectiveness for the jurisdiction to be included on the NAIC List of Qualified Jurisdictions:

1. Confirmation of the jurisdiction’s most recent FSAP Report, including relevant updates with respect to descriptions or elements of the FSAP Report in which changes have occurred since the assessment or where information might otherwise be outdated.

2. Confirmation of the jurisdiction’s ROSC, including relevant updates with respect to descriptions or elements of the ROSC in which changes have occurred since the report was completed or where information might otherwise be outdated.

3. If materials responsive to the topics under review have been provided in response to information exchanges between the jurisdiction under review and the NAIC, such prior responses may be cross-referenced provided updates are submitted, if required to address changes in laws or procedures.

4. Any other information, descriptions or responses the jurisdiction believes would be beneficial to the NAIC’s evaluation process in order to address, on an outcomes basis, the key elements described within Appendix A.

The NAIC will review the information provided by the applicant jurisdiction and determine whether it is adequate to reasonably conclude whether the jurisdiction has sufficient authority to regulate the solvency of its reinsurers in an effective manner. After reviewing the initial submission, the NAIC may request that the applicant jurisdiction

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2 The basic considerations under this section are derived from Model #786, Section 8C(2), which include: (a) the framework under which the assuming reinsurer is regulated; (b) the structure and authority of the jurisdiction’s reinsurance supervisory authority with regard to solvency regulation requirements and financial surveillance; (c) the substance of financial and operating standards for reinsurers domiciled in the jurisdiction; and (d) the form and substance of financial reports required to be filed or made publicly available by reinsurers domiciled in the jurisdiction and the accounting principles used.

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submit supplemental information as necessary in order to make this determination. An applicant jurisdiction is strongly encouraged to provide thorough, detailed and current information in its initial submission in order to minimize the number and extent of supplemental information requests from the NAIC with respect to Section A of this Evaluation Methodology. The NAIC will provide a complete description in the Final Evaluation Report of the information provided in the Evaluation Materials, and any updates or other information that have been provided by the applicant jurisdiction.

**Section B: Regulatory Practices and Procedures**

Section B is intended to facilitate an evaluation of whether the jurisdiction effectively employs baseline regulatory practices and procedures to supplement and support enforcement of the jurisdiction’s financial solvency laws and regulations described in Section A. This evaluation methodology recognizes that variation may exist in practices and procedures across jurisdictions due to the unique situations each jurisdiction faces. Jurisdictions differ with respect to staff and technology resources that are available, as well as the characteristics of the domestic industry regulated. A determination of effectiveness may be achieved using various financial solvency oversight practices and procedures. This evaluation is not intended to be prescriptive in nature.

The NAIC will utilize the information provided by the jurisdiction as outlined under Section A in completing this section of the evaluation. The NAIC will review this information in conjunction with Appendix B, which provides more detailed guidance with respect to elements the NAIC intends to consider on an outcomes basis in the evaluation under this section. Appendix B is not intended as a prescriptive checklist of requirements a jurisdiction must meet in order to be a Qualified Jurisdiction. Rather, it is provided in an effort to facilitate an outcomes-based comparison to financial solvency regulation under the NAIC Accreditation Program. An applicant jurisdiction should also provide any other information, descriptions or responses the jurisdiction believes would be beneficial to the NAIC’s evaluation process in order to address, on an outcomes basis, the key elements described within Appendix B.

**Section C: Jurisdiction’s Requirements Applicable to U.S. Domiciled Reinsurers**

The jurisdiction is requested to describe and explain the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. supervisory authority to reinsurers licensed and domiciled in the U.S.

**Section D: Regulatory Cooperation and Information-Sharing**

The Credit for Reinsurance Models require the supervisory authority to share information and cooperate with the U.S. state insurance regulators with respect to all certified reinsurers domiciled within their jurisdiction. The jurisdiction is requested to provide an explanation of the supervisory authority’s ability to cooperate, share information and enter into an MOU with U.S. state insurance regulators and confirm that they are willing to enter into an MOU. This should include information with respect to any existing MOU with U.S. state and/or federal authorities that pertain to reinsurance. Both the jurisdiction and the states may rely on the IAIS MMoU to satisfy this requirement, and any states that have not yet been approved by the IAIS as a signatory to the MMoU may rely on an MOU entered into by a Lead State with the jurisdiction until such time that the state has been approved as a signatory to the IAIS MMoU. The NAIC and the states will communicate and coordinate with the FIO, USTR and other relevant federal authorities as appropriate with respect to this process.

**Section E: History of Performance of Domestic Reinsurers**
The jurisdiction is requested to provide a general description with respect to the historical performance of reinsurers domiciled in the jurisdiction. The NAIC does not intend to review confidential company-specific information under this section. Rather, it is intended that any information provided would be publicly available, unless specifically addressed with the jurisdiction under review. This discussion should address, at a minimum, the following information:

a. Number of reinsurers domiciled in the jurisdiction, and a list of any reinsurers domiciled in the jurisdiction that have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, of no less than $250,000,000.

b. Up to a 10-year history of any regulatory actions taken against specific reinsurers.

c. Up to a 10-year history listing any reinsurers that have gone through insolvency proceedings, including the size of each insolvency and a description of the related outcomes (e.g., reinsurer rehabilitated or liquidated, payout percentage of claims to priority classes, payout percentage of claims to domestic and foreign claimants).

d. Up to a 10-year history of any significant industry-wide fluctuations in capital or profitability with respect to domestic reinsurers.

Drafting Note: The NAIC will determine the appropriate time period for review on a case-by-case basis with respect to this information.

Section F: Enforcement of Final U.S. Judgments

The NAIC has previously collected information from a number of jurisdictions with respect to enforcement of final U.S. judgments. The jurisdiction is also requested to provide a current description or explanation of any restrictions with respect to the enforcement of final foreign judgments in the jurisdiction. Based on the foregoing information, the NAIC will make an assessment of the effectiveness of the ability to enforce final U.S. judgments in the jurisdiction. This will include a review of the status, interpretations, application and enforcement of various treaties, conventions and international agreements with respect to final judgments, arbitration and choice of law. The Qualified Jurisdiction Working Group will monitor the enforcement of final U.S. judgments and the Qualified Jurisdiction is requested to notify the NAIC of any developments in this area.

Section G: Solvent Schemes of Arrangement

The jurisdiction is requested to provide a description of any legal framework that allows reinsurers domiciled in the jurisdiction to propose or participate in any solvent scheme of arrangement or similar procedure. In addition, the jurisdiction is requested to provide a description of any solvent scheme of arrangement or similar procedure that a domestic reinsurer has proposed or participated in and the outcome of such procedure.
V. Appendices: Specific Guidance with Respect to Section A and Section B

It is important to note that Part IV, Section A: Laws and Regulations, and Part IV, Section B: Regulatory Practices and Procedures, are derived from the NAIC Financial Regulation Standards and Accreditation Program, which is intended to establish and maintain standards to promote sound insurance company financial solvency regulation among the U.S. states. As such, the NAIC Accreditation Program requires the states to employ laws, regulations and administrative policies and procedures substantially similar to the NAIC accreditation standards in order to be considered an accredited state.

However, it is not the intent of the Evaluation Methodology to require applicant jurisdictions to meet the standards required by the NAIC for accreditation. Instead, Section A and Section B (and their corresponding appendices) are intended to provide a framework to facilitate an outcomes-based evaluation by the NAIC and state insurance regulators of the effectiveness of the jurisdiction’s supervisory authority. This framework consists of a description of the jurisdiction’s laws, regulations, practices and procedures applicable to the supervision of its domestic reinsurers. The amount of detail provided within these appendices should not be interpreted as specific requirements that must be met by the applicant jurisdiction. Rather, the information is intended to provide direction to the applicant jurisdiction in an effort to facilitate a complete response and increase the efficiency and timeliness of the evaluation process.
Appendix A: Laws and Regulations

1. Examination Authority

Does the jurisdiction have the authority to examine its domestic reinsurers? This description should address the following:

   a. Frequency and timing of examinations and reports.
   b. Guidelines for examination.
   c. Whether the jurisdiction has the authority to examine reinsurers whenever it is deemed necessary.
   d. Whether the jurisdiction has the authority to have complete access to the reinsurer’s books and records and, if necessary, the records of any affiliated company.
   e. Whether the jurisdiction has the authority to examine officers, employees and agents of the reinsurer when necessary with respect to transactions directly or indirectly related to the reinsurer under examination.
   f. Whether the jurisdiction has the authority to share confidential information with U.S. state insurance regulatory authorities, provided that the recipients are required, under their law, to maintain its confidentiality.

2. Capital and Surplus Requirement

Does the jurisdiction have the authority to require domestic reinsurers to maintain a minimum level of capital and surplus to transact business? This description should address the following:

   a. Whether the jurisdiction has the authority to require reinsurers to maintain minimum capital and surplus, including a description of such minimum amounts.
   b. Whether the jurisdiction has the authority to require additional capital and surplus based on the type, volume and nature of reinsurance business transacted.
   c. Capital requirements for reinsurers, including reports and a description of any specific levels of regulatory intervention.

3. Accounting Practices and Procedures

Does the jurisdiction have the authority to require domestic reinsurers to file appropriate financial statements and other financial information? This description should address the following:

   a. Description of the accounting and reporting practices and procedures.
   b. Description of any standard financial statement blank/reporting template, including description of content/disclosure requirements and corresponding instructions.

4. Corrective Action

Does the jurisdiction have the authority to order a reinsurer to take corrective action or cease and desist certain practices that, if not corrected or terminated, could place the reinsurer in a hazardous financial condition? This description should address the following:

   a. Identification of specific standards which may be considered to determine whether the continued operation of the reinsurer might be hazardous to the general public.
   b. Whether the jurisdiction has the authority to issue an order requiring the reinsurer to take corrective action when it has been determined to be in hazardous financial condition.
5. Regulation and Valuation of Investments

What authority does the jurisdiction have with respect to regulation and valuation of investments? This description should address the following:

a. Whether the jurisdiction has the authority to require a diversified investment portfolio for all domestic reinsurers as to type, issue and liquidity.

b. Whether the jurisdiction has the authority to establish acceptable practices and procedures under which investments owned by reinsurers must be valued, including standards under which reinsurers are required to value securities/investments.

6. Holding Company Systems

Does the jurisdiction have laws or regulations with respect to supervision of the group holding company systems of reinsurers? This description should address the following:

a. Whether the jurisdiction has access to information via the parent or other regulated group entities about activities or transactions within the group involving other regulated or non-regulated entities that could have a material impact on the operations of the reinsurer.

b. Whether the jurisdiction has access to consolidated financial information of a reinsurer’s ultimate controlling person.

c. Whether the jurisdiction has the authority to review integrity and competency of management.

d. Whether the jurisdiction has approval and intervention powers for material transactions and events involving reinsurers.

e. Whether the jurisdiction has authority to monitor, or has prior approval authority over:
   i. Change in control of domestic reinsurers.
   ii. Dividends and other distributions to shareholders of the reinsurer.
   iii. Material transactions with affiliates.

7. Risk Management

Does the jurisdiction have the authority to require its domestic reinsurers to maintain an effective risk-management function and practices? This description should address the following:

a. Whether the jurisdiction has Own Risk and Solvency Assessment (ORSA) requirements and reporting.

b. Any requirements regarding the maximum net amount of risk to be retained by a reinsurer for an individual risk based on the reinsurer’s capital and surplus.

c. Whether the jurisdiction has authority to monitor enterprise risk, including any activity, circumstance, event (or series of events) involving one or more affiliates of a reinsurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the reinsurer or its insurance holding company system as a whole.

d. Whether the jurisdiction has corporate governance requirements for reinsurers.
8. Liabilities and Reserves

Does the jurisdiction have standards for the establishment of liabilities and reserves (technical provisions) resulting from reinsurance contracts? This description should address the following:

a. Liabilities incurred under reinsurance contracts for policy reserves, unearned premium, claims and losses unpaid, and incurred but not reported (IBNR) claims (including whether discounting is allowed for reserve calculation/reporting).

b. Liabilities related to catastrophic occurrences.

c. Whether the jurisdiction requires an opinion on reserves and loss and loss adjustment expense reserves by a qualified actuary or specialist for all domestic reinsurers, and the frequency of such reports.

9. Reinsurance Ceded

What are the jurisdiction’s requirements with respect to the financial statement credit allowed for reinsurance retroceded by its domestic reinsurers? This description should address the following:

a. Credit for reinsurance requirements applicable to reinsurance retroceded to domestic and non-domestic reinsurers.

b. Collateral requirements applicable to reinsurance contracts.

c. Whether the jurisdiction requires a reinsurance agreement to provide for insurance risk transfer (i.e., transfer of both underwriting and timing risk).

d. Requirements applicable to special purpose reinsurance vehicles and insurance securitizations.

e. Affiliated reinsurance transactions and concentration risk.

f. Disclosure requirements specific to reinsurance transactions, agreements and counterparties, if such information is not provided under another item.

10. Independent Audits

Does the jurisdiction require annual audits of domestic reinsurers by independent certified public accountants or similar accounting/auditing professional recognized in the applicant jurisdiction? This description should address the following:

a. Requirements for the filing of audited financial statements prepared in conformity with accounting practices prescribed or permitted by the supervisory authority.

b. Contents of annual audited financial reports.

c. Requirements for selection of auditor.

d. Allowance of audited consolidated or combined financial statements.

e. Notification of material misstatements of financial condition.

f. Supervisor’s access to auditor’s workpapers.

g. Audit committee requirements.

h. Requirements for reporting of internal control-related matters.

11. Receivership

Does the jurisdiction have a receivership scheme for the administration of reinsurers found to be insolvent? This should include a description of any liquidation priority afforded to policyholders and the liquidation priority of
reinsurance obligations to domestic and non-domestic ceding insurers in the context of an insolvency proceeding of a reinsurer.

12. Filings with Supervisory Authority

Does the jurisdiction require the filing of annual and interim financial statements with the supervisory authority? This description should address the following:

a. The use of standardized financial reporting in the financial statements, and the frequency of relevant updates.

b. The use of supplemental data to address concerns with specific companies or issues.

c. Filing format (e.g., electronic data capture).

d. The extent to which financial reports and information are public records.

13. Reinsurance Intermediaries

Does the jurisdiction have a regulatory framework for the regulation of reinsurance intermediaries?

14. Other Regulatory Requirements with respect to Reinsurers

Any other information necessary to adequately describe the effectiveness of the jurisdiction’s laws and regulations with respect to its reinsurance supervisory system.
Appendix B: Regulatory Practices and Procedures

1. Financial Analysis

What are the jurisdiction’s practices and procedures with respect to the financial analysis of its domestic reinsurers? Such description should address the following:

   a. **Qualified Staff and Resources**
      The resources employed to effectively review the financial condition of all domestic reinsurers, including a description of the educational and experience requirements for staff responsible for financial analysis.

   b. **Communication of Relevant Information to/from Financial Analysis Staff**
      The process under which relevant information and data received by the supervisory authority are provided to the financial analysis staff and the process under which the findings of the financial analysis staff are communicated to the appropriate person(s).

   c. **Supervisory Review**
      How the jurisdiction’s internal financial analysis process provides for supervisory review and comment.

   d. **Priority-Based Analysis**
      How the jurisdiction’s financial analysis procedures are prioritized in order to ensure that potential problem reinsurers are reviewed promptly.

   e. **Depth of Review**
      How the jurisdiction’s financial analysis procedures ensure that domestic reinsurers receive an appropriate level or depth of review commensurate with their financial strength and position.

   f. **Analysis Procedures**
      How the jurisdiction has documented its financial analysis procedures and/or guidelines to provide for consistency and continuity in the process and to ensure that appropriate analysis procedures are being performed on each domestic reinsurer.

   g. **Reporting of Material Adverse Findings**
      The process for reporting material adverse indications, including the determination and implementation of appropriate regulatory action.

   h. **Early Warning System/Stress Testing**
      Whether the jurisdiction has an early warning system and/or stress testing methodology that is utilized with respect to its domestic reinsurers.
2. **Financial Examinations**

What are the jurisdiction’s practices and procedures with respect to the financial examinations of its domestic reinsurers? Such description should address the following:

a. **Qualified Staff and Resources**
   The resources employed to effectively examine all domestic reinsurers. This should include whether the jurisdiction prioritizes examination scheduling and resource allocation commensurate with the financial strength and position of each reinsurer, and a description of the educational and experience requirements for staff responsible for financial examinations.

b. **Communication of Relevant Information to/from Examination Staff**
   The process under which relevant information and data received by the supervisory authority are provided to the examination staff and the process under which the findings of the examination staff are communicated to the appropriate person(s).

c. **Use of Specialists**
   Whether the supervisory authority’s examination staff includes specialists with appropriate training and/or experience or whether the supervisory authority otherwise has available qualified specialists that will permit the supervisory authority to effectively examine any reinsurer.

d. **Supervisory Review**
   Whether the supervisory authority’s procedures for examinations provide for supervisory review.

e. **Examination Guidelines and Procedures**
   Description of the policies and procedures the supervisory authority employs for the conduct of examinations, including whether variations in methods and scope are commensurate with the financial strength and position of the reinsurer.

f. **Risk-Focused Examinations**
   Does the supervisory authority perform and document risk-focused examinations and, if so, what guidance is utilized in conducting the examinations? Are variations in method and scope commensurate with the financial strength and position of the reinsurer?

g. **Scheduling of Examinations**
   Whether the supervisory authority’s procedures provide for the periodic examination of all domestic reinsurers, including how the system prioritizes reinsurers that exhibit adverse financial trends or otherwise demonstrate a need for examination.

h. **Examination Reports**
   Description of the format in which the supervisory authority’s reports of examinations are prepared, and how the reports are shared with other jurisdictions under information-sharing agreements.

i. **Action on Material Adverse Findings**
   What are the jurisdiction’s procedures regarding supervisory action in response to the reporting of any material adverse findings.

3. **Information Sharing**
Does the jurisdiction have a process for the sharing of otherwise confidential documents, materials, information, administrative or judicial orders, or other actions with U.S. state regulatory officials, provided that the recipients are required, under their law, to maintain its confidentiality?

4. **Procedures for Troubled Reinsurers**

What procedures does the jurisdiction follow with respect to troubled reinsurers?

5. **Organization, Licensing and Change of Control of Reinsurers**

What processes does the supervisory authority use to identify unlicensed or fraudulent activities? The description should address the following:

a. **Licensing Procedure**
   Whether the supervisory authority has documented licensing procedures that include a review and/or analysis of key pieces of information included in a primary licensure application.

b. **Staff and Resources**
   The educational and experience requirements for staff responsible for evaluating company licensing.

c. **Change in Control of a Domestic Reinsurer**
   Procedures for the review of key pieces of information included in filings with respect to a change in control of a domestic reinsurer.