

FINANCIAL CONDITION (E) COMMITTEE

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Draft Pending Adoption

Draft: 12/9/20

Financial Condition (E) Committee
Virtual 2020 Fall National Meeting
December 8, 2020

The Financial Condition (E) Committee met Dec. 8, 2020. The following Committee members participated: Scott A. White, Chair (VA); Eric A. Cioppa, Vice Chair (ME); Michael Conway (CO); David Altmaier (FL); Colin M. Hayashida represented by Patrick P. Lo (HI); Robert H. Muriel (IL); Stephen W. Robertson represented by Roy Eft (IN); Grace Arnold represented by Kathleen Orth (MN); Mike Chaney represented by David Browning (MS); Marlene Caride (NJ); Russell Toal represented by Robert Doucette (NM); Raymond G. Farmer (SC); Texas represented by Jamie Walker (TX); James A. Dodrill (WV); and Jeff Rude (WY).

1. Adopted its Nov. 19, Oct. 27 and Summer National Meeting Minutes

Commissioner White said the Committee met Nov. 19, Oct. 27 and Aug. 11. During its Nov. 19 meeting, the Committee adopted changes to the *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) to enable the group capital calculation (GCC) and the liquidity stress test. During its Oct. 27 meeting, the Committee adopted its 2021 proposed charges.

Director Farmer made a motion, seconded by Commissioner Caride, to adopt the Committee's Nov. 19 (Attachment One), Oct. 27 (Attachment Two) and Aug. 11 (*see NAIC Proceedings – Summer 2020, Financial Condition (E) Committee*) minutes. The motion passed unanimously.

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

Commissioner White 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 Caride made a motion, seconded by Commissioner Dodrill, to adopt the following task force and working group reports: the Accounting Practices and Procedures (E) Task Force, the Capital Adequacy (E) Task Force, the Examination Oversight (E) Task Force, the Receivership and Insolvency (E) Task Force, the Reinsurance (E) Task Force, the Risk Retention Group (E) Task Force, the Valuation of Securities (E) Task Force, the Group Capital Calculation (E) Working Group (Attachment Three), the NAIC/American Institute of Certified Public Accountants (AICPA) (E) Working Group (Attachment Four), the National Treatment and Coordination (E) Working Group (Attachment Five), and the Risk-Focused Surveillance (E) Working Group (Attachment Six).

The Financial Analysis (E) Working Group met Nov. 16, 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 2020 financial results. Additionally, the Valuation Analysis (E) Working Group met Nov. 16, Oct. 19 and Oct. 6 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 Guideline for Administration of Large Deductible Policies in Receivership

Mr. Kennedy noted that in 2018, the Receivership Large Deductible Workers' Compensation (E) Working Group of the Receivership and Insolvency (E) Task Force was given charges in response to issues arising out of the *2016 Workers' Compensation Large Deductible Study* to recommend possible enhancements to the U.S. receivership regime with regard to the administration of large deductible policies in receivership. He stated that one of the key receivership issues is that having clear statutory authority specific to large deductible workers' compensation products in receivership is key to the successful resolution of these insurers. He noted that in 2019, the Working Group began work on the Guideline for the Administration of Large Deductible Policies in Receivership as an alternative to the *Insurer Receivership Model Act* (#555) Section 712, which

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addresses the administration of loss reimbursement policies. He added that a dozen states have already adopted variations of model language proposed by the National Conference of Insurance Guaranty Funds (NCIGF). Mr. Kennedy summarized that this guideline follows similar principles as the NCIGF model, but the Task Force believes it is an improvement upon prior versions of the NCIGF's model as well as on Model #555 Section 712. He noted how a central topic of discussion was the issue of ownership of collateral, which is addressed in the guideline. States may choose to keep their existing large deductible language or update it for the new guideline. For that reason, it is proposed as a guideline, rather than a revision to Model #555. He concluded by suggesting the Task Force strongly encourage states that do not currently have a receivership provision that addresses large deductible policies to consider the guideline.

Superintendent Cioppa made a motion, seconded by Commissioner Caride, to adopt the Guideline for Administration of Large Deductible Policies in Receivership (Attachment Seven). The motion passed unanimously.

4. Adopted the GCC Template and Instructions

Commissioner White stated that during the Committee's Nov. 19 meeting, Commissioner Altmaier presented proposed changes to Model #440 and Model #450 that enable the GCC. He stated that the Group Capital Calculation (E) Working Group had also adopted the actual template and instructions during its Nov. 17 meeting, but NAIC staff needed a little bit of time to incorporate the additional changes to each proposed during that Nov. 17 meeting. He stated both are now ready for adoption by the Committee and noted how he sees the changes no different than risk-based capital (RBC) with a continual work to improve upon them over time. Commissioner White stated how this project had been a priority of the Committee all year, and a project that had been going on longer than Commissioner Altmaier, the Committee chair, likely wished. He stated how the Working Group came into the year with a tight deadline and had addressed a number of challenging issues. Commissioner White emphasized the remarkable job by Commissioner Altmaier in getting everything to the finish line and congratulated Commissioner Altmaier and the Working Group. Commissioner Altmaier thanked Commissioner White and noted how it had been a significant project with a great deal of work since its inception. He stated his appreciation to all of the Working Group members, especially over the past six to eight months where the pace of work was high. He described the template and instructions, which are built off an RBC aggregation approach. Therefore, they are familiar to those using RBC for some time. He described how the template and instructions would continue to be maintained and updated, as necessary.

Commissioner Altmaier made a motion, seconded by Commissioner Conway, to adopt the Group Capital Calculation (GCC) Template and Instructions (Attachment Eight). The motion passed unanimously.

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

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Draft: 11/30/20

Financial Condition (E) Committee
Virtual Meeting
November 19, 2020

The Financial Condition (E) Committee met Nov. 19, 2020. The following Committee members participated: Scott A. White, Chair, (VA); Eric A. Cioppa, Vice Chair (ME); Michael Conway represented by Rolf Kaumann (CO); David Altmaier (FL); Colin M. Hayashida (HI); Robert H. Muriel represented by Kevin Fry (IL); Stephen W. Robertson represented by Roy Eft (IN); Grace Arnold represented by Kathleen Orth (MN); Marlene Caride (NJ); Russell Toal (NM); Raymond G. Farmer (SC); Texas represented by Jamie Walker (TX); James A. Dodrill (WV); and Jeff Rude represented by Linda Johnson (WY).

1. Adopted Proposed Changes to Model #440 and Model #450

Commissioner White stated that Committee members were given a summary of the changes the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) from the two projects last week, which should provide each with an understanding of the proposed changes before the Committee. However, he asked Commissioner Altmaier to summarize the changes to the models for the group capital calculation (GCC) and highlight anything he thinks is important for the Committee members.

Commissioner Altmaier summarized the major changes to the proposed models, noting that changes to Section 4L(2) of Model #440 was the most important provision as it requires the ultimate controlling person of every insurer subject to registration to concurrently file an annual GGC as directed by the lead state commissioner with the registration statement. He stated the second most important aspect of the changes were the provisions immediately following in Sections 4L(2)(a) –(d), which provide four types of holding company systems that are exempt from filing. Third, Section 4L(2)(e) permits, under certain circumstances, a subgroup capital calculation. Fourth, Section 4L(2)(f) provides the insurance commissioner the discretion to exempt other groups from the filing, which meet the criteria in #450. Fifth, Section 8(A)(1) provides key statutory authority to hold the GCC confidential and prevents the group from sharing the GCC publicly. Finally, Commissioner Altmaier stated that Model #450 provides more detailed aspects of the exemptions, including additional discretionary authority for exempting certain groups, as well as additional details of the NAIC process for maintaining a list of jurisdictions whose groups recognize and accept the GCC and are, therefore, exempt from filing the GCC. Ms. Walker asked if the proposed changes to Section 4L(2)(e) had been sent to the Federal Insurance Office (FIO) for feedback. Commissioner Altmaier responded not to his knowledge. He said he knew members of the FIO had sat in on the meeting, but he said that the Committee had not heard from the FIO. Commissioner Altmaier stated he would be certain to share the proposed changes with the FIO and ask for their input prior to the Plenary meeting.

Commissioner White asked Commissioner Caride to summarize the changes to Model #440 for the Liquidity Stress Test (LST) and to highlight anything she thinks is important for the Committee members. Commissioner Caride summarized the major changes, noting that changes to Section 4L(3) is the most important provision, as it requires the ultimate controlling person of every insurer subject to registration and meeting the scope criteria to file the results of a specific year's LST to the lead state insurance commissioner. She stated the second most important aspect of the changes were the provisions immediately following regarding the scope criteria that indicate that the lead state commissioner, in consultation with the Financial Stability (E) Task Force or its successor, will make the final determination regarding the insurers that will be scoped in and out of a specific data year's LST. She stated the number of companies selected was a very small number, likely expected to be less than 25. Third, Section 4L(3)(b) indicates the filing of the results from a specific year's LST shall comply with the NAIC LST Framework's instructions and reporting templates for that year, along with any from the lead state insurance commissioner (in consultation with the Financial Stability (EX) Task Force or its successor). Commissioner Caride stated that Section 8(A)(2) provides key statutory authority to hold the LST confidential, which is also important.

Director Farmer made a motion, seconded by Commissioner Altmaier, to adopt the proposed changes to Model #440 and Model #450 to effectuate the GCC and the LST (Attachment One-A). The motion passed unanimously.

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

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Adopted by the Financial Condition (E) Committee November 19, 2020

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

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Section 1. Definitions note

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

- A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

- C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- D. "Group-wide supervisor." The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.

- E. "Group Capital Calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- F. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.
- GF. "Insurer." The term "insurer" shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to "Chapter" are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

- HG. "Internationally active insurance group." An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).
- IH. "Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].
- J. "NAIC" means the National Association of Insurance Commissioners.
- K. "NAIC Liquidity Stress Test Framework." The "NAIC Liquidity Stress Test Framework" is a separate NAIC publication which includes a history of the NAIC's development of regulatory liquidity stress testing, the Scope Criteria applicable for a specific data year, and the Liquidity Stress Test instructions and reporting templates for a specific data year, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- LJ. "Person." A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.
- M. "Scope Criteria." The "Scope Ceriteria," as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.
- MJ-N. "Securityholder." A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.
- NK-O. "Subsidiary." A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

~~OLP~~ “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

(1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer’s assets or fifty percent (50%) of the insurer’s surplus as regards policyholders, provided that after such investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

(a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term “health maintenance organizations” in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, “the total investment of the insurer” shall include:

(a) Any direct investment by the insurer in an asset, and

(b) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary;

- (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:].

Drafting Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

- D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

- A. Filing Requirements.
 - (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.
 - (2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.
 - (3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).

- (4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary broker's function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:
- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the "acquiring party"), and
 - (a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
 - (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;
 - (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;
 - (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
 - (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
 - (5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;
 - (6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
 - (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

- (8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
- (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;
- (11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L(1), for so long as control exists;
- (13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- (14) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

- (1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:
 - (a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
 - (b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:
 - (i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;
 - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and
 - (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
 - (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
 - (d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 - (e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 - (f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.
- (2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A

commissioner may attend such hearing, in person or by telecommunication.

- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.
- (5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

- (1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Drafting Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

- (2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

F. Violations. The following shall be violations of this section:

- (1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or
- (2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

A. Definitions. The following definitions shall apply for the purposes of this section only:

- (1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.
- (2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

B. Scope

- (1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

- (2) This section shall not apply to the following:
- (a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;
 - (b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);
 - (c) The acquisition of already affiliated persons;
 - (d) An acquisition if, as an immediate result of the acquisition,
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
 - (ii) There would be no increase in any market share, or
 - (iii) In no market would
 - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
 - (II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;
 - (e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
 - (f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 8 of this Act.

- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this

section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

- (2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

- (1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.
- (2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

- (a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

- (i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

- (ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

- (b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period

of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

- (i) There is a significant trend toward increased concentration in the market;
 - (ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
 - (iii) Another involved insurer's market is two percent (2%) or more.
- (c) For the purposes of Section 3.1D(2):
- (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
 - (ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;
 - (iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.
- (d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (3) An order may not be entered under Section 3.1E(1) if:
- (a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
 - (b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

- (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:
 - (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

- (ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (b) Such an order shall not be entered unless:
 - (i) There is a hearing;
 - (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
 - (iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.

- (c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.
- (2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:
 - (a) A monetary penalty of not more than \$10,000 for every day of violation; or
 - (b) Suspension or revocation of the person's license.
- (3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections 10B, 10C, and 12 do not apply to acquisitions covered under Section 3.1B.

Section 4. Registration of Insurers

- A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:
 - (1) Section 4;
 - (2) Section 5A(1), 5B, 5D; and
 - (3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

- B. Information and Form Required. Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:
- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
 - (2) The identity and relationship of every member of the insurance holding company system;
 - (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:
 - (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (b) Purchases, sales or exchange of assets;
 - (c) Transactions not in the ordinary course of business;
 - (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (e) All management agreements, service contracts and all cost-sharing arrangements;
 - (f) Reinsurance agreements;
 - (g) Dividends and other distributions to shareholders; and
 - (h) Consolidated tax allocation agreements;
 - (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
 - (5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;
 - (6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

Alternative Section 4B(7):

- (7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and
- (8) Any other information required by the commissioner by rule or regulation.

- C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. The definition of materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation or the Liquidity Stress Test Framework.
- E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.
- I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.
- J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
- K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

- (1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;
- (2) Group Capital Calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file

the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:

- (a) An insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state, and assumes no business from any other insurer;
- (b) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing;
- (c) An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital;

Drafting Note: 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 are considered to be a “covered agreement” entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that addresses the U.S. state regulatory approach to group supervision and group capital, and provides that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group. Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to the EU and UK Covered Agreements treated as Reciprocal Jurisdictions, but any other Qualified Jurisdiction can also qualify as Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.

- (d) An insurance holding company system:
 - (i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and
 - (ii) Whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

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

- (+)(c) Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

- (f) Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.
- (g) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state commissioner based on reasonable grounds shown.
- (3) Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year's Liquidity Stress Test. The filing shall be made to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners:
- (a) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific data year. These Scope Criteria are reviewed at least annually by the Financial Stability Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured shall be effective on January 1 of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the Scope Criteria are considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year. Similarly, insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year.
- (i) Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis. The lead state insurance commissioner, in consultation with the Financial Stability Task Force or its successor, will assess this concern as part of the determination for an insurer.
- (b) The performance of, and filing of the results from, a specific year's Liquidity Stress Test shall comply with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that year and any lead state insurance commissioner determinations, in conjunction with the Financial Stability Task Force or its successor, provided within the Framework.

Drafting Note: The delay included in the change to the NAIC Liquidity Stress Test Framework or to the data year for which the Scope Criteria are to be measured being effective on January 1 of the year following the calendar year when such changes are adopted is present to: 1) allow sufficient time for states needing to adopt by rule the NAIC Liquidity Stress Test Framework for a given data year and 2) to ensure scoped in insurers have adequate time to comply with the requirements for a given data year .

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

Section 5. Standards and Management of an Insurer Within an Insurance Holding Company System

A. Transactions Within an Insurance Holding Company System

- (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
 - (a) The terms shall be fair and reasonable;
 - (b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;
 - (c) Charges or fees for services performed shall be reasonable;
 - (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
 - (e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
 - (f) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.
- (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.
 - (a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
 - (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

- (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (c) Reinsurance agreements or modifications thereto, including:
 - (i) All reinsurance pooling agreements;
 - (ii) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
- (e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;
- (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

- (g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

- (3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.
- (4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.

- (5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of:

- (1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or
- (2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
 - (5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.
 - (6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.
- D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:
- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
 - (2) The extent to which the insurer's business is diversified among several lines of insurance;
 - (3) The number and size of risks insured in each line of business;
 - (4) The extent of the geographical dispersion of the insurer's insured risks;
 - (5) The nature and extent of the insurer's reinsurance program;
 - (6) The quality, diversification and liquidity of the insurer's investment portfolio;
 - (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
 - (8) The surplus as regards policyholders maintained by other comparable insurers;
 - (9) The adequacy of the insurer's reserves; and
 - (10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine any insurer registered under Section 4 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

- B. Access to Books and Records.
- (1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.
 - (2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$[insert amount] for each day's delay, or may suspend or revoke the insurer's license.
- C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.
- D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].
- E. Compelling Production. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

- A. Power of Commissioner. With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:
- (1) Initiating the establishment of a supervisory college;
 - (2) Clarifying the membership and participation of other supervisors in the supervisory college;
 - (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
 - (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
 - (5) Establishing a crisis management plan.

- B. Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.
- C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 7.1. Group-wide Supervision of Internationally Active Insurance Groups

- A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section.. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:
 - (1) Does not have substantial insurance operations in the United States;
 - (2) Has substantial insurance operations in the United States, but not in this state; or
 - (3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

- B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:
 - (1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;
 - (2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;
 - (3) The location of the executive offices or largest operational offices of the internationally active insurance group;
 - (4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:
 - (a) Substantially similar to the system of regulation provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

- (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Paragraphs (1) through (5) above, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

- C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:
- (1) The internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets or liabilities; or
 - (2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.
- D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.
- E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:
- (1) Assess the enterprise risks within the internationally active insurance group to ensure that:
 - (a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and
 - (b) Reasonable and effective mitigation measures are in place;
 - (2) Request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:
 - (a) Governance, risk assessment and management,
 - (b) Capital adequacy, and
 - (c) Material intercompany transactions;

- (3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;
 - (4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;
 - (5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and
 - (6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.
- F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:
- (1) The commissioner's cooperation is in compliance with the laws of this state; and
 - (2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.
- G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.
- H. The commissioner may promulgate regulations necessary for the administration of this section.
- I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 8. Confidential Treatment

- 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 are recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make 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.

- (1) For purposes of the information reported and provided to the Department of Insurance pursuant to Section 4L(2), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group wide supervisor.
- (2) For purposes of the information reported and provided to the [Department of Insurance] pursuant to Section 4L(3), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors.

Drafting note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. Similarly, the liquidity stress test may include confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information.

- 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, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC ~~and its affiliates and subsidiaries~~, and with any third-party consultants designated by the commissioner, 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(1) 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, including propriety and trade-secret information from the NAIC and its affiliates and subsidiaries 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 designated by the commissioner governing sharing and use of information provided pursuant to this Act consistent with this subsection that shall:
 - (a) 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 designated by the commissioner~~ 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 privileged status of the documents, materials or other information and has verified in writing the legal authority to maintain such confidentiality;

- (b) Specify that ownership of information shared with the NAIC or a third party consultant and its affiliates and subsidiaries pursuant to this Act remains with the commissioner and the NAIC's or a third-party consultant's, as designated by the commissioner, use of the information is subject to the direction of the commissioner;
 - (c) Excluding documents, material or information reported pursuant to Section 4L(3), prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;
 - (e)(d) Require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant designated by the commissioner pursuant to this Act is subject to a request or subpoena to the NAIC or a third-party consultant designated by the commissioner for disclosure or production; and
 - (e) Require the NAIC or a third-party consultant designated by the commissioner and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant designated by the commissioner and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant designated by the commissioner and its affiliates and subsidiaries pursuant to this Act.
 - (f) For documents, material or information reporting pursuant to Section 4L(3), in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurer 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, 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 a third-party consultant designated by the commissioner pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
- G. The group capital calculation and resulting group capital ratio required under Section 4L(2) and the liquidity stress test along with its results and supporting disclosures required under Section 4L(3) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems 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 any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, 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, resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures 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 announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Drafting Note: In Section 8-C(4) above, the exclusions in sub-items (ii), (iii) and (vi) are the result of the Liquidity Stress Test primary purpose, which is to be used as a tool for assessing macroprudential risks by the NAIC Financial Stability Task Force assisted by NAIC staff, including trend analysis over time. Provisions against the NAIC owning the information, databasing the results and disclosures, and obtaining written consent from the insurer when a consultant is involved were deemed inappropriate.

Section 9. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

Section 10. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

- A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.
- B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.
- C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
- C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.
- D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than \$[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than \$[insert amount] or be imprisoned for not more than one to three (3) years or both.
- E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined \$[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.
- F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision].

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

- A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.
- B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the commissioner that any person has committed a violation of this Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Judicial Review, Mandamus

- A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.
- B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.
- C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a preemptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

**APPENDIX
ALTERNATE PROVISIONS**

Alternative Section 1. Findings

- A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
- (1) Engage in activities which would enable them to make better use of management skills and facilities;
 - (2) Diversify into new lines of business through acquisition or organization of subsidiaries;
 - (3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;
 - (4) Implement sound tax planning conclusions; and
 - (5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;
 - (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
 - (3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable;
or
 - (4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.
- C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:
- (1) Facilitating the achievement of the objectives enumerated in Subsection A;
 - (2) Requiring disclosure of pertinent information relating to changes in control of an insurer;
 - (3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and
 - (4) Providing standards governing material transactions between the insurer and its affiliates.
- D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
 - (3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
 - (4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
 - (7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
 - (8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

- (9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

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

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37, 178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).

2011 Proc. 1st Quarter I 3-11 (amended).
2014 Proc. 3rd Quarter, Vol. I 122, 136, 140, 183, 243-266 (amended).

Adopted by the Financial Condition (E) Committee on 11/19/2020

**INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION
WITH REPORTING FORMS AND INSTRUCTIONS**

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Form F	Enterprise Risk Report

Section 20. Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 4L(1) of the Act shall furnish the required information on Form F, hereby made a part of these regulations.

Section 21. Group Capital Calculation

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

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

(2) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

- (3) Has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (4) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
- (5) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

- (1) The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional criteria are met:
 - (a) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
 - (b) Does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and
 - (c) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

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

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

D. A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

- (1) With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]
 - (a) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to

worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(b) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1)(a).

(2) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

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

(1) A list of jurisdictions that “recognize and accept” the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)], is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to Sections 4L(2)(d)]. To assist with a determination under 4L(2)(e), the list will also identify whether a jurisdiction that is exempted under either [insert cross-reference to Sections 4L(2)(c) and 4L(2)(d)] requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.

(2) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Section 21D(1)(b) will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.

(3) If the lead state commissioner makes a determination pursuant to Section 4L(2)(d) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(4) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accepts” the group capital calculation.

Section 212. Extraordinary Dividends and Other Distributions

A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) The amount of the proposed dividend;
- (2) The date established for payment of the dividend;
- (3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

- (4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
 - (a) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
 - (b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;
 - (c) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
 - (d) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and
 - (e) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years;
 - (5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
 - (6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.
- B. Subject to Section 5B of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsection A(4).

Section 223. Adequacy of Surplus

The factors set forth in Section 5D of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

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

*1970 Proc. IIB 1055-1066 (printed).
1971 Proc. I 54, 58, 134, 149 (adopted).
1986 Proc. II 12, 19-20, 93-94, 109-123 (amended).
1993 Proc. 1st Quarter 3, 33, 362, 364-370 (amended).
2011 Proc. 1st Quarter I 3-11 (amended).
2013 3rd Quarter (editorial revision).*

Draft: 11/3/20

Financial Condition (E) Committee
Virtual Meeting
Oct. 27, 2020

The Financial Condition (E) Committee met Oct. 27, 2020. The following Committee members participated: Scott A. White, Chair, (VA); Eric A. Cioppa, Vice Chair (ME); Michael Conway represented by Rolf Kaumann (CO); David Altmaier (FL); Robert H. Muriel represented by Kevin Fry (IL); Stephen W. Robertson and Roy Eft (IN); Mike Chaney represented by David Browning (MS); Raymond G. Farmer (SC); Texas represented by Jamie Walker (TX); James A. Dodrill (WV); and Jeff Rude represented by Linda Johnson (WY).

1. Adopted its 2021 Proposed Charges

Commissioner White stated that all the proposed charges had previously been exposed, and no comments were received. He indicated that with the exception of the Group Capital Calculation (E) Working Group, which is expected to adopt the calculation in the near future and move into an implementation phase in 2021, most of the charges were kept relatively consistent with the prior year. The only other noteworthy changes were to push back the due date of many of the charges a year given COVID-19 prevented many of the groups from meeting until the Summer National Meeting.

Director Farmer made a motion, seconded by Commissioner Dodrill, to adopt the Committee's 2021 proposed charges (Attachment Two-A). The motion passed unanimously.

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

W:\National Meetings\2020\Summer\Cmte\E\Attachment 1 Minutes from 7-1 Call.docx

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

2021 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:
 - A. Monitor all of the changes to the annual/quarterly financial statement blanks and instructions, risk-based capital (RBC) formulas, *Financial Condition Examiners Handbook*, *Accounting Practices and Procedures Manual* (AP&P Manual), *Financial Analysis Handbook*, *Purposes and Procedures Manual of the NAIC Investment Analysis Office* (P&P Manual), NAIC model laws, NAIC accreditation standards, and other NAIC publications.
 - 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; Receivership and Insolvency (E) Task Force; Reinsurance (E) Task Force; Risk Retention Group (E) Task Force; and Valuation of Securities (E) Task Force.
 - C. 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.
 - D. 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. Continually review and monitor the effectiveness of the group capital calculation (GCC), and consider revisions, as necessary, to maintain the effectiveness of its objective under the U.S. solvency system.
 - B. Develop regulatory guidance related to the GCC. Complete by the 2021 Summer 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.
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 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
 - 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.

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

FINANCIAL CONDITION (E) COMMITTEE (continued)

5. The **Own Risk and Solvency Assessment (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 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. Finalize Model #630 by the 2021 Spring National Meeting.

7. The **NAIC/American Institute of Certified Public Accountants (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 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.
 - E. Make necessary enhancements to promote electronic submission of all company licensing applications.

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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Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

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.
 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 2021 Summer National Meeting.
- B. Identifies and addresses the legal issues associated with restructuring using a protected cell. Complete by the 2021 Summer National Meeting.

FINANCIAL CONDITION (E) COMMITTEE (*continued*)

- 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 2021 Summer National Meeting.
11. The **Restructuring Mechanisms (E) Subgroup** of the Restructuring Mechanisms (E) Working Group 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. 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 its consideration. Complete by the 2021 Summer National Meeting.
 - 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 2021 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 2021 Fall National Meeting.
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. 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.
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* (#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.

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

NAIC Support Staff: Dan Daveline/Julie Gann/Bruce Jenson

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Accounting Practices and Procedures (E) Task Force, Aug. 3, 2020

2021 Proposed Charges

ACCOUNTING PRACTICES AND PROCEDURES (E) TASK FORCE

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:
 - A. Oversee the activities of the Blanks (E) Working Group and the Statutory Accounting Principles (E) Working Group.
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 Capital Adequacy (E) Task Force and its working groups.
 - 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 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.

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Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Accounting Practices and Procedures (E) Task Force, Aug. 3, 2020

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.

NAIC Support Staff: Robin Marcotte

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Capital Adequacy (E) Task Force, Sept. 25, 2020

2021 Proposed Charges

CAPITAL ADEQUACY (E) TASK FORCE

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. 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 RBC formulas.
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 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 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 **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 RBC calculation, and determine if additional revisions need to be made.
 - B. Develop and recommend appropriate changes including those to improve accuracy and clarity of variable annuity (VA) capital and reserve requirements.

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Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Capital Adequacy (E) Task Force, Sept. 25, 2020

CAPITAL ADEQUACY (E) TASK FORCE *(continued)*

4. The **Longevity Risk (E/A) 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 the appropriate treatment of longevity risk transfers by the new longevity factors.

5. 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 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/Lou Felice

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Examination Oversight (E) Task Force, Sept. 14, 2020

2021 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 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:
 1. Electronic Workpaper (E) Working Group.
 2. Financial Analysis Solvency Tools (E) Working Group.
 3. Financial Examiners Coordination (E) Working Group.
 4. Financial Examiners Handbook (E) Technical Group.
 5. Information Technology (IT) Examination (E) Working Group.
2. 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.
3. 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. 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.

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Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Examination Oversight (E) Task Force, Sept. 14, 2020

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 regarding 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 Examination 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 Solvency Tools (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. Adjust the *Financial Condition Examiners Handbook* based upon any recommendations as requested from the Life Actuarial (A) Task Force to incorporate PBR changes.

6. The **Information Technology 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*.

NAIC Support Staff: Bailey Henning

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Receivership & Insolvency Task Force, Oct. 7, 2020

2021 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.
 - B. Monitor and promote state adoption of insurance receivership and guaranty association 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 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. The **Receivership Financial Analysis (E) Working Group** will:
 - A. Monitor receiverships involving nationally significant insurers/groups to support, encourage, promote and coordinate multistate efforts in addressing problems.
 - B. Interact 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) regarding potential or pending receiverships.
3. The **Receivership Law (E) Working Group** will:
 - A. Review and provide recommendations on any issues identified that may affect the states' receivership and guaranty association laws (e.g. any issues that arise as a result of market conditions; insurer insolvencies; federal rulemaking and studies; or international resolution initiatives; or as a result of the work performed by or referred from 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 Receivership and Insolvency (E) Task Force, to address recommendations from the Financial Stability (EX) Task Force's Macroprudential Initiative (MPI) referral:
 1. Complete work related to qualified financial contracts (QFCs), including 1) explore if bridge institutions could be implemented under regulatory oversight pre-receivership to address an early termination of QFCs and, if appropriate, develop applicable guidance; 2) develop enhancements to the Receiver's Handbook guidance on QFCs; and 3) 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.
 2. Review and provide recommendations for remedies to ensure the continuity of essential services and functions

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to an insurer in receivership by affiliated entities, including non-regulated entities. Among other solutions, this will encompass a review of the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) to provide proposed revisions to address the continuation of essential services through affiliated intercompany agreements in a receivership.

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE *(continued)*

3. Consult with and/or make referrals to other NAIC working groups, as deemed necessary as the topic relates to affiliated intercompany agreements and pre-receivership considerations. Complete by the 2021 Fall National Meeting.

NAIC Support Staff: Jane Koenigsman

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Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Reinsurance (E) Task Force, Aug. 6, 2020

2021 Proposed Charges

REINSURANCE (E) TASK FORCE

The mission of the Reinsurance (E) Task Force is to monitor and coordinate activities and areas of interest that 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.
 - B. Oversee the activities of the Reinsurance Financial Analysis (E) Working Group.
 - C. Oversee the activities of the Qualified Jurisdiction (E) Working Group.
 - D. Monitor the implementation of the 2011, 2016 and 2019 revisions to the *Credit for Reinsurance Model Law* (#785); and the 2011 and 2019 revisions to the *Credit for Reinsurance Model Regulation* (#786) and the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787).
 - E. Communicate and coordinate with the Federal Insurance Office (FIO), other federal authorities, and international regulators and 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. 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).
2. 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*.
3. 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.

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Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Reinsurance (E) Task Force, Aug. 6, 2020

- I. 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.
- J. Consider evaluations of any additional jurisdictions for inclusion on the *NAIC List of Qualified Jurisdictions*.

NAIC Support Staff: Jake Stultz/Dan Schelp

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Risk Retention (E) Task Force, Sept. 23, 2020

2021 Proposed Charges

RISK RETENTION GROUP (E) TASK FORCE

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 actions 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.
 - 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/Sara Franson

Draft: 10/27/20

Adopted by the Executive (EX) Committee and Plenary, Dec. 9, 2020

Adopted by the Financial Condition (E) Committee, Oct. 27, 2020

Adopted by the Valuation of Securities (E) Task Force, Sept. 29, 2020

2021 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* (AP&P 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 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.
 - I. Implement policies to oversee the NAIC's staff administration of rating agency ratings used in NAIC processes, including staff's discretion over the applicability of their use in its administration of filing exemption.

NAIC Support Staff: Charles Therriault

Draft: 11/23/20

Group Capital Calculation (E) Working Group
Virtual Meeting
November 17, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met Nov. 17, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair (CT); Susan Bernard (CA); Philip Barlow (DC); Carrie Mears and Mike Yanacheak (IA); Roy Eft (IN); Christopher Joyce (MA); Judy Weaver (MI); Kathleen Orth (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Dave Wolf (NJ); Bob Kasinow (NY); Dale Bruggeman (OH); Andrew R. Stolfi and Greg Lathrop (OR); Melissa Greiner and Kimberly Rankin (PA); Trey Hancock (TN); Jamie Walker (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Adopted its Oct. 30, Oct. 20, Sept. 29, Sept. 18 and Sept. 2 Minutes

Commissioner Altmaier said the Working Group met Oct. 30, Oct. 20, Sept. 29, Sept. 18 and Sept. 2 to continue discussions regarding proposed changes to the *Insurance Holding Company System Regulatory Act* (#440), the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450), and the group capital calculation (GCC) template and instructions.

Mr. Eft made a motion, seconded by Ms. Orth, to adopt the Working Group's Oct. 30 (Attachment Three-A), Oct. 20 (Attachment Three-B), Sept. 29 (Attachment Three-C), Sept. 18 (Attachment Three-D) and Sept. 2 (Attachment Three-E). The motion passed unanimously.

2. Adopted Revisions to Model #440 and Model #450

Commissioner Altmaier stated that the goal for the meeting is to consider adoption of proposed revisions Model #440 and Model #450 where, barring any changes adopted today from the models as previously exposed, that is what will be voted on at the end of the meeting. To the extent members of the Working Group want to change the exposed models before considering adoption of Model #440 and Model #450 at the end of the meeting, as a result of any of the comments received and discussed (Attachment Three-F), a separate vote will be taken on any such proposed changes.

a. Subgroup Reporting

Commissioner Altmaier stated that this topic was discussed extensively in prior conference calls, and, while he was willing to give interested parties an opportunity to provide comments on their submitted comment letters, he asked each party to be relatively brief in getting to the point.

Bill Schwegler (Transamerica) summarized the comments of Transamerica and Allianz. He stated that Transamerica and Allianz support the exposed California language currently incorporated into Model #440. He noted that they support providing clear legal authority for lead states to collect aggregated capital information for the entities under their purview. He noted that the California language accomplishes this well, and they view it as likely to be acceptable under the "Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement).

Mr. Schwegler discussed how they previously pointed out that subgroup supervision does exist in certain jurisdictions for prudential reasons and that the authority created by the California language would seem sufficient to achieve a so-called level playing field. He discussed how there were some alternatives in the meeting materials that go well beyond the California language. Some had been proposed by a group of industry stakeholders, others by a few state insurance regulators. But basically, those alternatives all seek either to require or to promote the imposition of subgroup capital on a retaliatory basis. He stated that the arguments are that the Covered Agreement restricts only worldwide capital and permits subgroup capital are both true. However, those arguments fail to address the actual conflict with the Covered Agreement created by the so-called subgroup reciprocity.

Mr. Schwegler indicated that the proposals from others inherently presume subgroup supervision and capital are objectionable, but the Covered Agreement explicitly permits both parties to impose them; therefore, they are not objectionable, which is how the core conflict arises. He indicated that these proposals would interfere with a right that is explicitly granted to the European Union (EU) and the United Kingdom (UK) that allows supervisors in both jurisdictions to impose subgroup supervision and capital. He stated that to impose prudential subgroup measures without fear of retaliation, and then later turn around and decide

to retaliate on the basis of the exercise of the right that has been previously granted, a party is unilaterally modifying the essence of the agreement and that is what would be happening. More specifically, U.S. states would be imposing a retributive regulatory measure that would be motivated by the exercise of the right that had been granted to the other party. The U.S. would be impairing that right and modifying the essence of the agreement unilaterally.

Mr. Schwegler noted that while Transamerica obviously cannot speak for the Federal Insurance Office (FIO) or other authorities, he would expect that language either requiring or promoting retaliation would be deemed problematic because it would interfere with a right that is explicitly granted to the other party under the Covered Agreement. He stated that Transamerica notes that none of these more expansive alternatives has been exposed for comment, but all of them appear to create internal conflicts with other provisions in Model #440 and Model #450. He noted that, in the interest of finalizing models that are suitable for adoption, and really to protect the interest of state insurance regulators more generally, Transamerica and Allianz urge the expansive alternatives not to be pursued.

Finally, Mr. Schwegler stated that there is a proposal from Texas to reduce the risk that a state insurance regulator would use discretion in any retaliatory manner that would run afoul of the Covered Agreement. Transamerica and Allianz believe that this language does not appear to create new conflicts and they would support it.

Bonnie Guth (Munich Re America Services—Munich Re) summarized Munich Re’s comments. She indicated that Munich Re supports the previously exposed California language, noting that it is a thoughtful compromise. She stated that what is interesting is that Munich Re really does want the state insurance regulators to be able to have some latitude here to use their discretion on whether to impose these sub-capital requirements in the U.S. She noted that with all the comments that have been shared, there are not any stakeholders commenting that subgroup capital requirements serve any regulatory purpose. So, she said, requiring or allowing U.S. state insurance regulators to have some discretion on whether to oppose it is important. She said Munich Re supports the California language.

Kimberly M. Welsh (Reinsurance Group of America—RGA), representing the Coalition of U.S. groups, summarized the Coalition’s comments. She stated she had two different provisions to speak to, but initially she noted the Coalition also supports the decision to retain text in Section 4L(2)(e) that would expressly reserve a state commissioner’s authority to apply the GCC to U.S. group operations of a non-U.S.-based group, noting that the Coalition understands that the intent of that language is to permit consideration of reciprocal treatment by a non-U.S. jurisdiction.

Ms. Welsh said, with respect to the question of whether a home supervisor of a non-U.S. group imposes subgroup capital, the Coalition believes it is important to expressly incorporate that concept into Model #440. Therefore, the Coalition strongly supports the proposal from Connecticut, Nebraska and New Jersey (the “Tri-State Proposal”) to amend the current draft to retain the “recognize and accept” provision for subgroup reporting. In the coming years, she said the U.S. will be addressing the broader issue of whether the GCC will be recognized by other jurisdictions. The Coalition believes U.S. state insurance regulators should put themselves in a position to be able to advocate for mutual recognition. She stated that the Coalition believes the proposal more strongly supports the goals of mutual recognition and uniformity.

Ms. Welsh said the Coalition also believes the states should be as unified as possible on its actions regarding a foreign jurisdiction. She noted that a strong and consistent U.S. voice will better support mutual recognition and will help ensure that groups from the same jurisdiction are treated in a similar matter by all relevant states. She stated that the Coalition also believe the U.S. should support the fair treatment of U.S. firms and promote a level playing field for U.S. firms abroad, which the Tri-State Proposal would help ensure.

Ms. Welsh stated that, as explained in its letter and supplemental attachment, the Coalition believes the Tri-State Proposal, as well as the Coalition’s alternative proposed text, is not in conflict with the Covered Agreement. She stated that the Covered Agreement sets out restrictions on worldwide group supervision and those restrictions are without prejudice to subgroup supervision. Article 4H of the Covered Agreement addresses capital explicitly, and she said that explicitly is limited to worldwide group capital. She noted that a question has been raised about whether and to what extent the states are limited by the “where appropriate” language in Article 4B of the Covered Agreement.

Ms. Welsh then explained that the Coalition’s comment letter points out that the Covered Agreement, the U.S. Department of the Treasury, the Office of the U.S. Trade Representative (USTR) policy statement and FIO testimony before the U.S. Congress—in addition to statements made by the European Commission—make clear that the Covered Agreement does not apply to a U.S. group’s operations and activities that occur in, or originate from, the EU. She noted that, in testimony, former FIO Director Michael McRaith explained that Article 4B of the Covered Agreement, which contains the “where appropriate”

language, means that U.S. insurers are subject to EU law only for purposes of operations and activities occurring in, or originating from, the EU.

Ms. Welsh noted that Mr. McRaith further stated in testimony that, with respect to group supervision, EU supervisors can apply their law and regulation to U.S. insurers only for operations and activities that occur in, and originate from, the EU. Mr. McRaith said this limitation applies to all aspects of group supervision, including capital. She noted that what a supervisor cannot do is regulate at the worldwide level. To the extent the language is intended to limit a state's authority, it is only with respect to the jurisdictional reach of supervisors outside of their own territory. In other words, it is only appropriate to exercise subgroup authority over operations that occur in, or originate from, your own jurisdiction. Whether, how and why to engage in subgroup supervision is left entirely to the discretion of the prudential regulators; and, thus, whether to provide exemptions based on reciprocal treatment is also within the supervisor's discretion.

On this point, and in response to a comment from Transamerica that the Covered Agreement explicitly grants a right to engage in subgroup supervision, Ms. Welsh stated that right already exists among the states and it is up to the states to determine when they should do so. Therefore, what the Covered Agreement does is explicitly exempt from its application subgroup supervision, including subgroup capital. From that standpoint, the Covered Agreement would not limit the text here.

In response to the idea that the regulation of subgroups due to a lack of reciprocity as being inappropriate, Ms. Welsh noted that the Coalition originally proposed text that would have required subgroup supervision for groups exempted from worldwide supervision unless there was reciprocal treatment. That text would be like the other amendments to the Model #440 in Section 4L(2)(c) and Section 4L(2)(d), which appear to have been drafted with mutual recognition in mind. Section 4L(2)(c) and Section 4L(2)(d) both provide exemptions from worldwide reporting of the GCC, and those are entirely conditioned on reciprocal treatment. She stated it is not clear by comparison, therefore, why those sections were not being considered retaliatory, and that somehow extending that kind of exemption to subgroups in the Coalition's original language or in the Tri-State Proposal would be retaliatory.

Ms. Welsh stated that the Coalition also does not believe preemption is applicable to this subgroup supervision issue. She noted that, first of all, it is not inconsistent with the Covered Agreement. Second, as a subgroup GCC requirement would simply be requesting a narrower version of the GCC from non-U.S. groups that is already required from U.S. groups, it would not result in less favorable treatment, and would only take place if the non-U.S. jurisdictions also requiring subgroup reporting. Thus, it simply ensures that U.S. state insurance regulators are able to respond to less favorable treatment.

Ms. Welsh noted that, with respect to the Coalition's alternative text, there has been a lot of debate around discretion, as well as the application of the Covered Agreement; and, while the Coalition strongly support the language in the Tri-State Proposal, they are also offering alternative text that would serve as a possible compromise between the two versions that are out now. This would include additional language to the current text as to whether to apply Section 4L(2)(c), which would include an explicit consideration of whether the jurisdiction recognizes and accepts the GCC for subgroup purposes. She stated that while the states are already permitted to do so under the current language, the provision should be explicit. Under this language, the state would still have the same broad discretion as in the current draft, but this language would avoid any future confusion as to the intent and whether state insurance regulators should or can look at subgroup supervision.

Ms. Welsh said this compromise text would also serve as notice to the world that the U.S. states care about and promote mutual respect for, and recognition of, the U.S. state-based insurance regulatory system. Importantly, the language would make clear that the NAIC process that will be developed for determining which jurisdictions recognize and accept the GCC at the worldwide level, would also extend to review of subgroup reporting requirements. This would assist that states, which should not have to engage in their own individual reviews. The process also will promote more discussion among that states and with the jurisdictions at issue, which will promote the ultimate goal of eliminating subgroup capital reporting.

Matthew T. Wulf (Swiss Re) reiterated Swiss Re's previous comments, noting that Swiss Re believes that what has been exposed already is viewed as a compromise, but noted that continuing to compromise can often makes things work. He added that Swiss Re continues to believe that the current language as exposed allows the state insurance regulators to do what they need. Specifically, he said state insurance regulators need to discourage some reporting without being retaliatory, noting that the current language puts regulators in a better spot.

Ms. Walker summarized the comments from Texas. She emphasized how Model #440 and Model #450 should correspond to the actual solvency and operations of the groups, and that should be the determining factor on whether to have subgroup reporting, not how other jurisdictions are managing operations in their jurisdictions. She noted that while she would suggest

some changes to the exposed language, the current exposed language is the best solution the Working Group has exposed so far, noting that she could support it.

Ms. Belfi summarized the comments from Connecticut, Nebraska and New Jersey, but asked each of those states to also comment. She discussed each of the sections of their proposed language. She noted the first section is identical to the California proposal, noting that they agree with this language in that it includes prudential regulatory authority. However, she discussed that as they started to think about this issue more, as far as reciprocity is concerned, they believe the language in the California proposal is too broad and it includes commissioner discretion.

Ms. Belfi discussed that the original action taken by the Working Group was to expose the language, then the concern regarding the Covered Agreement was raised and somehow that changed the conversation. She noted that in their proposed language, there is a sentence that is really the crux of the issue, as it talks about if the non-U.S. groupwide supervisor does not recognize and accept the GCC required by the insurance commissioner. She questioned what that means and, specifically, how to define “not recognized and accepted.” She said she believes it means that non-U.S. group supervisors can—for valid reasons, such as solvency issues—require subgroup reporting for a specific group. She said she believes they certainly should have that ability where they think reciprocity would definitely be triggered is when there is a non-U.S. jurisdiction that makes a broad policy decision to simply not deem the GCC as acceptable.

Ms. Belfi noted, however, that to not accept the GCC could affect multiple states that may be designated as groupwide supervisors and could affect the states that lead on a subgroup level. She said the three states that drafted the Tri-State Proposal believe the potential for not recognizing, and possibly requiring additional capital to be held outside the U.S., is why they believe state insurance regulators should be standing behind the Tri-State Proposal. She said it is right for the U.S. industry to have this lever of last resort; more specifically, so they will not be put at a competitive disadvantage. She stated this is a national issue and not a state-by-state issue in which regulators must collaborate to be successful.

Ms. Belfi stated the last section is language proposed to be added to Model #440 from the Coalition that the three states really like, as they want to make sure that there is a process for this to occur. She discussed how they envision that if one or more lead states or groupwide supervisors believe that there is clear evidence of another regulator not accepting the GCC on the subgroup level, then there should be a forum they could go to. She stated that a clear vetting process should be established. She emphasized how difficult it is for a state to open up these models and how she did not want to come back to it in four years and have an issue that requires them to be opened up again. She stated that it would be helpful to hear from the U.S. industry that they would be proactive in helping promote these changes to the holding company laws/regulations as they are being passed in the respective states.

Mr. Schrader emphasized that the GCC is an important tool for the U.S. state insurance regulators to oversee holding companies, whether that be as the groupwide supervisor or, in cases of non-U.S. lead groups, to a state’s responsibility as a lead state within the U.S. to make sure that we look out for our policyholders and provide a level playing field to ensure all protections and information is available as needed.

Mr. Schrader agreed with the comment by Ms. Belfi regarding the additional language to add back into Model #450 regarding process. He emphasized the need for a process that is as transparent and clear as possible and being clear about the value of the GCC. He discussed that such a process within the NAIC committee structure that represents a collection of state insurance regulators would help ensure consistency because this is a national process, and all states should be working in concert. This would come into play if another state either decides it does not directly affect them and decides not to impose reciprocity or vice versa. It could require the U.S. subgroup that they are going to unilaterally determine that the reciprocity needs to occur and potentially put other states in a tough spot.

Mr. Schrader discussed how it gets harder and harder each time to reopen the state statute on holding companies and it becomes more difficult to justify. He noted that he struggles with not adopting something as thorough and transparent as possible, and something that is able to identify or deal with a potential situation in the future. He stated that, obviously, the states hope that the situation never arises or that just by having the language in there, the expectation is clear to other jurisdictions. However, he noted a few years may come before these issues arise and who knows what everyone will remember. As such, he said it is important to make this decision clearly and transparently and to make sure to stand up for what he believes is a strong GCC that that has value, works globally and help ensures that other jurisdictions reciprocate and acknowledge these requirements. He said state insurance regulators do not want to run into a situation that results in a flight of capital outside the U.S. for various reasons.

Mr. Wolf stated that the Tri-State Proposal is not a retaliatory requirement. It is a level playing field issue, an appropriate solvency tool and it promotes policyholder protection. He noted that, as mentioned before, the Covered Agreement clearly states a European jurisdiction can require subgroup reporting of entities in their jurisdiction of a U.S. holding company. He emphasized how the Tri-State Proposal simply does the same for U.S. jurisdictions. He emphasized how it creates a level playing field if the foreign jurisdiction does not require subgroup reporting of U.S. companies that recognize and accept the GCC. He described how U.S. subgroups of foreign holding companies can be quite large and, therefore, meaningful for solvency analysis, financial stability and policyholder protection in the U.S. He discussed how the requirement should be consistent for all states and how the Tri-State Proposal simply provides the means for mutual recognition.

Commissioner Altmaier indicated comments had now been received and now was the time to consider if any of those comments had changed anyone's view on how to approach this matter. He asked if anyone would like to make a motion to replace the California language on subgroup reporting included in the exposure with either of the other proposals discussed in the comment letters and during this meeting.

Mr. Bruggeman noted that Mr. Schwegler had made a comment earlier that he previously had not considered and understood with respect to another country doing what it needs to do for its own purposes and asked if he could expand on the issue.

Commissioner Altmaier asked Mr. Schwegler to provide such, but noted it is likely that a person could get a different response if the same questions was asked of someone else.

Mr. Schwegler responded that he believes the question gets into the motivation for subgroup reporting, which is something Transamerica tried to explain in a prior comment letter. He indicated that he believes the underlying premise is that group supervision in some form, including group supervision of foreign groups, relative to that jurisdiction is important to protect policyholders.

Mr. Schwegler discussed that, previously, he explained the dynamic in Japan, where they basically say, "We're not going to try to think about whether a group supervision outside of Japan is adequate. We do not want to deal with it." So, he explained, they basically kind of wall off the Japanese border in that respect, which ultimately leads to a subgroup dynamic, but the motivation there is prudential supervision. So, it is done to protect policyholders. The same is true in the EU and UK under Solvency II, where there is a system to consider group supervision outside of the continent. Basically, they have established a system that is pretty analogous to the U.S. approach for reinsurance. They allow jurisdictions to apply and, if they meet certain conditions, they will be accepted. He explained that this dynamic has led to subgroups situations in in the EU and UK. All of this is motivated by credential reasons, and they are all interested in protecting their citizens. They have done this in different ways, but the premise is that some form of effective group supervision is needed to protect their citizens.

Ms. Belfi noted that, with the Tri-State Proposal, they are concerned about the broad, sweeping action of either the EU or a particular country. Then, maybe another country will come say, "We are not going to recognize the GCC in the U.S." It is unknown what something like that would mean for the U.S. insurance industry. She stated that she does not know if that means additional capital would have to go into these local jurisdictions and be held there. She noted that it could affect the market and every single state in this country, emphasizing that the California language is too broad and discretionary.

Ms. Belfi made a motion, seconded by Mr. Schrader, to replace the exposed language on subgroup reporting in Section 4L(2)(e) of Model #440 with the language in the Tri-State Proposal, as included in their comment letter, including corresponding changes to Section 21E(1) of Model #450, as included in their comment letter. Connecticut, Massachusetts, Nebraska and New Jersey voted for the motion. California, District of Columbia, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier asked if anyone else would like to make a motion to replace the California language on subgroup reporting included in the exposure with one of the other proposals discussed in the comment letters and during this meeting.

Mr. Yanacheak stated he does not believe the alternative language from the Coalition had been fully vetted because it had not been exposed, and he questioned the last sentence that gives the commissioner the authority to promulgate a regulation that does not have any specifications around it.

Ms. Walsh stated that the language to promulgate was simply defining the "recognize and accept" determination for subgroup reporting, noting that the regulation language that corresponds was previously mentioned by the Tri-State Proposal.

Commissioner Altmaier suggested that those uncomfortable with the amount of time spent on such an alternative to vote accordingly. So, it is really meant to link this back to something that has already been vetted and is already included in the proposed revisions.

Mr. Stolte made a motion, seconded by Mr. Rehagen, to replace such language with the alternative text proposed by the Coalition. Connecticut, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio and Virginia voted for the motion. California, District of Columbia, Indiana, Iowa, Minnesota, North Carolina, Oregon, Pennsylvania, Tennessee, Texas and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier stated that he is uncomfortable considering any other alternative texts due to the reasons he outlined previously, noting that because there are no additional alternatives that have been provided, at least in the materials, the California language on this issue will be left as-is.

Mr. Schrader asked that the minutes be clear that the California language that was adopted does give the states the authority and discretion to address subgroup reciprocity.

Commissioner Altmaier stated that he spoke to many of the Working Group members over the past few days, noting that all of those states indicated that while they may not vote in favor of the California language, they will support the model in its entirety. He expressed his appreciation for those states' support, noting that the voting record on the two votes will make clear which states voted against the California language through their support of the other proposals.

b. Previously Deleted Limited Filing for Ultimate Controlling Parties that File RBC

Commissioner Altmaier stated that the other topic that was discussed extensively during the Working Group's last meeting was the situation where the ultimate controlling parties that file risk-based capital (RBC) no longer be allowed to automatically complete the limited GCC filing.

Bob Ridgeway (America's Health Insurance Plans—AHIP), also representing the Blue Cross and Blue Shield Association (BCBSA) and the National Association of Mutual Insurance Companies (NAMIC), summarized their joint comment letter. He emphasized that this is not an automatic exemption and is strictly up to the lead state commissioner's discretion. Also, it is not a complete exemption and, even then, it is an exemption only to the extent that the group file the limited GCC instead of the full GCC. Recall also, the group must have already filed the GCC at least once. He stated the whole goal of the exemption language and the way it was conceived is to avoid companies having to prepare and file the same information twice. It is also to prevent state insurance regulators from having to look at the same information twice, with the basic theory that the GCC is going to be similar, or highly consistent, with the information that would be produced by the RBC filing.

Mr. Ridgeway stated that it is important to consider the mechanics of how this is going to work for those who are saying RBC is different from the GCC. It might not be, but the commissioner who is approached for this exemption is going to know that the group asking for this exemption has already filed at least one full GCC. The commissioner can easily go to the previous GCC and the previous RBC calculation to see if they are consistent. That is the simple test and it provides a valuable guardrail to prevent any errors or mistakes or misuse of this exemption. He indicated that the data elements necessary to do the financial analysis called for by the GCC are in the annual financial statement. He said AHIP hopes Texas, or someone else, will make a motion to adopt either the language that was previously deleted as-is or to replace that language with the Texas language.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) summarized the ACLI's views on this issue. She noted that, in response to AHIP, it is not a complete exemption, it is a limited GCC, except it does not include a GCC ratio or the detailed information in the inventory. She said it is not just the same information and that there is additional information in the GCC. She noted that, with respect to the comment that data elements necessary for financial analysis are in the annual financial statement, the ACLI disagrees, as there is entity-level capital data required, especially for regulated financial entities, that is not captured in RBC filings. She noted that the ACLI has been proud to collaborate with the Working Group on the GCC for the past five years.

Over that time, Ms. Gomez-Vock stated the ACLI and the Working Group may have disagreed on some technical issues, but the ACLI has always supported the overarching concept of the GCC. She said the ACLI believes that the GCC is a value-add to the regulatory toolbox that complements the RBC framework, regardless of whether the ultimate controlling party is a stock or a mutual company. She said the ACLI has never said the GCC is unnecessary nor asked that life insurers be exempted from its reach. Instead, she said the ACLI has "buckled down" and wrestled with tough topics, alongside Working Group members

and NAIC staff. She said the ACLI also plans to leverage its resources to help get the proposed revisions to Model #440 and Model #450 passed in the states, as that is a strategic priority for the ACLI members.

Ms. Gomez-Vock stated that the ACLI's support of the GCC is exactly why it opposes the limited filing exemption in Section 21B(1) for groups that are headed by an RBC filer. The ACLI does not oppose a limited filing exemption for small groups, but it believes that allowing large, complex groups that may include international operations or material financial entities is detrimental to the credibility of the GCC. Small groups and single-state writers are already exempt from the GCC. She noted that, as it was written, Section 21B(1) would have allowed groups with international operations and/or material financial entities, to avoid filing a GCC ratio, as long as their international business was not in the UK or the EU.

Ms. Gomez-Vock said, in other words, an internationally active insurance group (IAIG) could be exempt from the GCC. She stated that Texas has proposed limiting the exemption to non-IAIGs but noted that limiting the exemption to non-IAIGs does not cure the deficiencies in Section 21B(1), because it would still allow large and complex groups to evade the GCC, as long as they have filed at least once. To be an IAIG, a group must have \$50 billion in annual written premiums and operate in at least three countries. However, as seen during the 2008 financial crisis, it only takes one non-U.S. financial products unit to bring down the entire financial system. This seems like an undesirable level of risk, from the ACLI's perspective.

Ms. Gomez-Vock noted that, in addition, while the "file once, get an exemption" approach makes sense for small groups, its utility as the primary criteria, other than corporate structure, to excuse some of the largest carriers in the nation and even globally, from filing the GCC is questionable. She stated that the ACLI believes the Working Group members got it right when they voted, 14-4, in favor of removing the exemption from Model #450. The argument the ACLI has heard the most in promoting the return of this exemption turns mostly on the similarities between RBC ratios and GCC ratios. While there are many similarities between the two frameworks at this date, they are not identical. However, the ACLI thinks this argument misses the point of the GCC. The point of the GCC is not to produce a ratio that can be compared to other groups or against a predetermined benchmark. The point of the full GCC report is to provide state insurance regulators with valuable entity-level analytical data, especially about subsidiaries and affiliates, that is not available in the parent RBC report or a limited group GCC report, as well as enhanced details about intragroup transactions. This level of insight is a unique benefit of an aggregation method, like the GCC, that should not be understated.

Therefore, Ms. Gomez-Vock said, part of the GCC's value is that it allows state insurance regulators to look at the data accompanying the ratio, and use the data in the templates as a roadmap to gain greater insights into the risks (and strengths) within the group. The GCC ratio is just the beginning; the real value of the GCC lies in the regulator's ability to easily examine the "pieces of the puzzle" that generated in the ratio.

Ms. Gomez-Vock noted that the ACLI believes it is important to consider how reinstating an exemption for large and complex groups will impact the overall credibility of the GCC. The ACLI analysis reveals that the impact of this exemption for the life industry alone is large; it could lead to 12% of the life insurance industry, calculated by premium volume, being exempt from the GCC. Some of the life insurance industry's largest players are captured in that 12%. She stated that a significant number of ACLI members, including some of its largest life insurance members, would qualify for the exemption, yet the ACLI is advocating against it. She said the ACLI is doing this because the ACLI Board of Directors directed ACLI members to stand united in their support for a strong and credible GCC. An exemption that allows large and complex groups, whether they are mutual or stock, to be exempt from filing a GCC ratio and a full GCC report hurts the credibility of the states and the GCC. It also unnecessarily calls into question the value proposition of the GCC as a whole.

Ms. Gomez-Vock closed by stating the NAIC is poised to adopt the first GCC for insurance groups in the U.S. This should be a time for Working Group members to stand proudly behind their work. The ACLI supports and honors the work the Working Group members have done over the past five years, and she said the ACLI hopes that Working Group members will similarly stand behind their own work product and avoid watering it down at the 11th hour, by potentially exempting some of the industry's largest members from filing a full GCC.

Ms. Walker stated that her struggle with not having an exemption for an RBC filer at the top of the house is that if it is determined that there is something in the GCC that is missing in that RBC number, then why not try to align the RBC with the GCC. With the information and the better method the Working Group has come up with in the GCC, she asked if the Working Group is undercutting RBC. She said the purpose of the GCC is to understand the capital needed at a groupwide basis. She indicated that, with most groups, regulators do not have the information needed for the group; however, with a holding company system with a carrier at the top of the house, regulators do have the information and can address matters through RBC. She noted that just giving discretion, if at any point the information is needed, regulators can always go back and get it. With respect to issues with recognition of the states, she noted she added language to address that carve-out.

Dan Daveline (NAIC) noted that before the Working Group votes on the Texas proposal, it would be necessary to add into the proposal language dealing with Covered Agreement jurisdictions that was in previous drafts.

Ms. Walker made a motion, seconded by Mr. Bruggeman, to reinstate the previous Section 21B(1) in Model #450 that existed prior to the Working Group's Oct. 20 conference call, with a modification to add in a restriction related to IAIGs, as included in the Texas comment letter. District of Columbia, Missouri, North Carolina, Ohio, Tennessee and Texas voted for the motion. California, Connecticut, California, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Virginia and Wisconsin voted against the motion. The motion failed.

Commissioner Altmaier said the Working Group would retain the exposed language related to this issue.

c. Incorporation by Reference

Commissioner Altmaier said Texas had submitted a warning with respect to the result of the use of incorporation by reference, but there was no further discussion on this comment.

d. Previous Deletion of Language for Subgroup Reporting List

Mr. Rehagen stated he would like to get a sense of whether the Working Group would be interested in adding the proposed changes to Model #450 related to the "recognize and accept" list that was previously proposed by the Tri-State Proposal. He stated that he believes this would be a good change, even without the changes to Model #440 proposed by the Tri-State Proposal.

Mr. Rehagen made a motion, seconded by Ms. Belfi, to add a sentence to the end of Model #450 as proposed in the Tri-State Proposal, as previously mentioned. The motion passed unanimously.

e. Request to Delete Language that Enables the Commissioner to Issue Regulations

Ian Adamczyk (Prudential) stated the point of this comment is the belief that this language is overly broad and would "open the door" to too many broader exemptions beyond what is included in Model #440. So, the thinking is to keep the exemptions limited to what is included in Model #440; a potential alternative could be to move that finite set of exemptions or the limited filing into Model #440 in place of this language.

Commissioner Altmaier stated that the NAIC staff recommendation was to reject the suggestion because the language is needed to enable the commissioner to issue the specific exemptions in Model #440, but not beyond those exemptions. No changes were made as a result of the comment.

f. Request Deletion of Limited Filing

Mr. Adamczyk noted that there was some confusion over the vote during the last Working Group meeting, so no changes are needed. No changes were made as a result of the comment.

Commissioner Altmaier stated that the Working Group is now ready to consider adoption of the revised Model #440 and Model #450 as a result of the decisions made on the call. Ms. Belfi stated that she still has strong reservations about the California language being in Model #440.

Ms. Bernard made a motion, seconded by Ms. Mears, to adopt the proposed revisions to Model #440 and Model #450 (*see NAIC Proceedings – Fall 2020, Financial Condition (E) Committee, Attachment One-A*). The motion passed unanimously.

3. Adopted the GCC Template and Instructions

Commissioner Altmaier asked Lou Felice (NAIC) to present the "fatal flaw" comments received on the GCC instructions and template. Mr. Felice stated that comments would be presented in two parts. First would be the NAIC staff recommendation on comments (Attachment Three-G) contained in the two comment letters received (Attachment Three-H) from the ACLI and AHIP. He added that the second part includes changes discussed during the exposure period with Ms. Belfi and the American Property Casualty Insurance Association (APCIA).

Mr. Felice began with comment topics from the letters. Commissioner Altmaier asked Mr. Felice to go through all the comments before taking comments or questions.

a. Sensitivity Analysis at 300% x Authorized Control Level (ACL) RBC

Mr. Felice stated that the ACLI questioned the need for the sensitivity analysis in the GCC template and that, in keeping it, the guidance developed for the *Financial Analysis Handbook* (Handbook) should be clear on how it would be used. He stated that, in certain cases, it may be more than a straight mathematical exercise.

NAIC staff recommend that it be retained as providing complementary data point to be used with other analytical metrics provided by the GCC. Mr. Felice agreed that the guidance to be included in the Handbook should coordinate with the data collected in the GCC.

b. Allowance for Capital Instruments as Additional Capital

Mr. Felice stated that an AHIP comment requested an increase in the proxy allowance on qualifying senior and hybrid debt from the current 30% and 15%, consistent with a previously agreed-upon increase in the overall allowance limit from 50% to 75% of total adjusted capital reported in the GCC.

Mr. Felice stated that NAIC staff recommend against any adjustments at this time because the proxy allowance does consider qualifying debt and this allowance potentially increases with the issuance of qualifying debt. He also noted that another method suggested by the APCIA was added to the calculation of an allowance, which has a stronger connection to structural subordination. That approach replaced “tracked downstream.” Mr. Felice left open the possibility of further refinement of the debt allowance after further data collection.

Tom Finnell (AHIP) asked whether NAIC staff is recommending leaving this issue open for further consideration.

Mr. Felice responded that the current methodologies will be incorporated into the GCC, but if future data collection discloses unintended consequences, those could be addressed via revisions to the calculation for the allowance.

c. Treatment of Financial Entities Without a Specified Regulatory Capital Requirement

Mr. Felice stated that the ACLI commented that the operations of certain asset managers can represent low risk to the insurers in the group and that capital requirements imposed by the U.S. Securities and Exchange Commission (SEC) and/or the Financial Industry Regulatory Authority (FINRA) may be more relevant than the stratified revenue-based charges currently included in the GCC.

Mr. Felice stated that sufficient information on the robustness and associated actions of the SEC and/or FINRA requirements has not been presented, noting that the principle-based approach to material risk and the assignment of risk levels is preferable. Therefore, NAIC staff recommend moving forward with the current GCC approach.

A second ACLI comment supports continued study around reinstatement of a deleted quantitative criterion for determining material risk to help promote consistency in reporting.

Mr. Felice stated that NAIC staff’s position is that the activities and financial interconnections described in the material risk principles can be applied to allow general consistency in the risk level assigned, noting that the lead state’s review would include the filer’s selected risk level. He added that neither the Working Group members nor the 2019 field test volunteers could reach consensus on a quantitative benchmark, so continuing down that path seems unlikely to result in a single agreed-upon threshold.

d. Future Data Collection

Mr. Felice stated that the ACLI letter supports additional data collection and NAIC staff agree that such data collection is necessary to pick up unintended consequence, particularly in the area of an allowance for debt as additional capital and for potential scalars.

Mariana Gomez-Vock (ACLI) expressed support for a broad data collection of the entire template using updated data, in addition to rerunning the field test data through the template. She added that this could be done in a way that promotes forward progress in 2021.

e. Other Comments

Mr. Felice noted that the ACLI presented revised wording for a portion of the definition of “financial entity” in the GCC that has been accepted in the GCC instructions. He added that an AHIP comment relating to reporting if intangible assets was addressed via a revision to Input 6 – “Other Information” tab in the GCC, which resulted from discussion with Ms. Belfi.

Mr. Finnell asked what that revision looks like. Mr. Felice stated that he will cover that in the second part of his presentation.

Commissioner Altmaier asked Mr. Felice to continue with the walkthrough of other wording changes in the GCC instructions.

In addition to the two revisions noted above, Mr. Felice presented the changes that were summarized in the material (Attachment Three-I). These included language revisions resulting from the written comments or from continued discussion with interested parties on prior issues that had not been settled. In particular, Mr. Felice described a change to define a “limited group capital filing,” along with what parts of the GCC template would be required in such a filing. One significant element is the need for a separate Input 2 – “Inventory” tab to replace what will be required for a full GCC submission.

A second change that Mr. Felice detailed related to language added in consultation with the APCA that would address call provisions generally, and “make whole” provisions specifically, while maintaining a degree of permanence of qualifying debt. He added that not addressing “make whole” provisions could result in much of senior debt being disqualified from the allowance for capital instruments.

Hearing no objections to the NAIC staff recommendations and other language revisions, as well as no further “fatal flaw” comments, Commissioner Altmaier called for a motion to adopt the GCC template and instructions.

Ms. Belfi made a motion, seconded by Mr. Rehagen, to adopt the GCC template and instructions (*see NAIC Proceedings – Fall 2020, Financial Condition (E) Committee, Attachment Eight*). The motion passed unanimously.

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

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Draft: 11/11/20

Group Capital Calculation (E) Working Group
Virtual Meeting
October 30, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met Oct. 30, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair (CT); Susan Bernard (CA); Philip Barlow (DC); Mike Yanacheak (IA); Susan Berry (IL); Roy Eft (IN); Christopher Joyce (MA); Judy Weaver (MI); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Dave Wolf (NJ); Bob Kasinow (NY); Dale Bruggeman (OH); Greg Lathrop (OR); Kimberly Rankin (PA); Trey Hancock (TN); Mike Boerner (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Discussed Revisions to the GCC Instructions

Commissioner Altmaier expressed his appreciation for the comments received (Attachment Three-A1) on the latest exposed template and instructions. He stated that the comments were divided into five main areas (Attachment Three-A2), and NAIC staff developed a recommended course of action for each. He stated that the purpose of the meeting is to discuss suggested further revisions to the group capital calculation (GCC) instructions (Attachment Three-A3). He added that his goal is to expose the revised instructions on a “fatal flaw” basis until mid-November at the end of the discussion. He stated that such an exposure could put the Working Group in a position to adopt the instructions and template and send it to the Financial Condition (E) Committee when it meets at the Fall National Meeting. The following revisions and recommendations were presented:

a. Calibration Level of the GCC

Lou Felice (NAIC) stated that the comments received all called for setting the calibration of the GCC at 200% x Authorized Control Level (ACL) Risk-Based Capital (RBC) rather than the 300% currently included in the template. The reasons generally related to confusion and outside use of an unfamiliar capital benchmark. Mr. Felice offered a compromise that reduces the calibration level of the GCC to 200% x ACL, but it includes sensitivity analysis at 300% x ACL RBC and shows a 100% x ACL for informational purposes. He added that all calculations that are related to RBC will be reported at 200% x ACL, but jurisdictional or sectoral capital requirements will be reported at the same amount for the GCC and the sensitivity analysis, pending eventual selection of scalars. He stated that the ongoing drafting of analysis guidance will need to be updated to provide appropriate guidance on the levels reported.

Mr. Barlow expressed support for retaining a 300% x ACL since the GCC is a different view from entity-based capital requirements. Mr. Bruggeman stated that the calibration level causes a perception issue and calibrating the GCC at a level similar to existing RBC levels makes sense. He added that including 300% x ACL as a sensitivity analysis provides information that is helpful to state insurance regulators, and it maintains flexibility in international discussions, so he supports the compromise proposal. Ms. Belfi and Mr. Eft agreed. Mr. Schrader stated that his preference is for calibrating the GCC 300% x ACL since it should not be compared with entity-based RBC levels. However, he is comfortable with a compromise proposal. Ian Adamcyk (Prudential Financial) summarized points raised in a letter from a coalition of then insurers supporting a 200% x ACL calibration, and he supports the calculation. Joe Engelhard (MetLife) stated that the compromise supports the goals of the GCC and mitigates issues related to the perception and use by rating agencies. Mariana Gomez-Vock (American Council of Life Insurers—ACLI) stated that based on an initial review, the ACLI is supportive of the compromise proposal. Tom Finnell (America’s Health Insurance Plans—AHIP) noted concern about how the GCC ratio is expressed relative to ACL RBC versus 200% or 300% x ACL causing confusion. He asked that the analysis guidance being developed be clear about the importance of the 200% and 300% sensitivity analysis. David Neve (Global Atlantic Financial Group) expressed support for the compromise.

Commissioner Altmaier recognized that the stakeholders had not seen the compromise language until very recently and accepted their initial support for the compromise on that basis. He instructed NAIC staff to include the compromise in the instructions and template for the next exposure.

b. Application of Scalars for Non-U.S. Insurance Entities

Mr. Felice stated that NAIC staff recommend no further changes. He noted that the interested parties had previously supported using 100% of jurisdiction prescribed capital requirement (PCR) as a placeholder and including the excess relative ratio method as part of sensitivity analysis, pending further evaluation and input from the American Academy of Actuaries’ (Academy’s) ongoing work at the International Insurance Relations (G) Committee regarding potential other scaling methodologies. Mr.

Engelhard expressed support, and MetLife is providing feedback to the Academy. He stressed the importance of further data collection. A new issue of possible scalars for mortgage insurance was raised by Genworth. Mr. Engelhard stated that this issue requires further study. Dale Porfilio (Genworth) offered to work with NAIC staff on potential solutions.

Commissioner Altmaier noted that no changes are required.

c. Allowance for Capital Instruments as Additional Capital

Mr. Felice stated that the comments are generally in three areas: 1) increasing the proxy limits on qualifying senior and hybrid debt from the current 30% and 15%; 2) removing “tracked downstream” as a way to measure the allowance; and 3) suggested changes to the criteria for qualifying debt to recognize “make whole” provisions in the debt instruments.

For the first issue, Mr. Felice noted that the main rationale supporting a debt allowance is structural subordination of the debt proceeds. Adjusting the 30% and 15% without a strong tie to structural subordination could undermine the proxy approach. Mr. Felice also discussed how the calculation mitigates reductions in the allowance in times of financial stress. He recommended no change to the 30% and 15% allowances. Mr. Finnell stated that concerns about procyclicality were addressed by the International Association of Insurance Supervisors (IAIS) via applying the limits to required capital rather than available capital. Ms. Gomez-Vock agreed that applying the current limits to available capital could constrain a group’s ability to maintain capital levels, and at that point in time, results from the last field test could change. Mr. Engelhard agreed and noted that much of his group’s hybrid debt is closer to senior debt.

On the issue of “tracked downstream,” Mr. Felice noted that prior and current comments received from interested parties supported removal of this method for measuring an allowance. He agreed and recommended deletion. Furthermore, he recommended replacing “tracked downstream” with an alternative method proposed by the American Property Casualty Insurance Association (APCIA). There were no objections.

Finally, with regard to calling provisions “make whole” provisions, Mr. Felice offered to reach out to the commenters over the next week or so to gain a better understanding of the issue. Mr. Finnell was receptive to presenting the issue offline.

Commissioner Altmaier stated that the NAIC staff proposal will be in the instructions and template for the next exposure.

Commissioner Altmaier stated that the GCC instructions and template will go forward with the NAIC staff recommendations.

d. Treatment of Financial Entities Without a Specified Regulatory Capital Requirement

Mr. Felice stated that some comments were related to how to assess risk level. He stated that the added principles for material risk were meant to be applied by the filer to assess risk level, and the lead state will evaluate the risk level selected. The instruction currently contains a drafting note that suggests assigning a “medium” risk if it is unclear after applying the principles. He also mentioned that the risk factors for this entity type will be adjusted to the 200% x ACL calibration level.

Another comment related to applying capital requirements applied by organizations such as the Financial Industry Regulatory Authority (FINRA) or the U.S. Securities and Exchange Commission (SEC). Mr. Felice stated that there is insufficient background on the nature of the capital requirements nor on entity types to be covered to make a change at this point. Lastly, he stated that NAIC staff agree with comments asking for the deletion of the only quantitative criteria in the material risk principle because consensus was never reached by the Working Group on any quantitative measure of material risk. There were no additional oral comments.

e. Future Data Collection

Mr. Felice noted that almost all the comments received on this issue support future data collections in 2021 and possible adjustments to the GCC in order to filter out any unintended consequences based on the results of that data. He stated that NAIC staff support data collection during the period between adoption of the template and states’ action on the *Insurance Holding Company System Regulatory Act* (#440). He added that the mechanism for data collection in 2021 will require further discussion by the Working Group. In response to a question from Mr. Bruggeman, Ned Tyrrell (NAIC) stated that previous field test data could be run through the revised template, but a few data items are not available from the field test data. He added that the results could be presented in a similar way, as was done after the field test. Mr. Bruggeman stated that we should be careful as to how the individual revisions interact in the overall GCC ratio results. Martin Hanson (North American Chief Risk Officers [CRO] Council) agreed and supports an impact assessment.

f. Other Comments

Commissioner Altmaier stated that most other comments have been addressed via revised wording in the GCC instructions. Ms. Belfi described two issues raised by UnitedHealth Group (UHG). The first related to the reporting of intangible assets, which are collected in the template. Ms. Belfi supports bifurcating the information to highlight the distinction between health led groups and other groups. She offered to work with NAIC staff to adjust the way the data is being requested.

Commissioner Altmaier again expressed his appreciation for the comments received, and he stated that the revised version of the GCC instructions and template will be exposed for a public comment period ending Nov. 12. However, there will be some flexibility in accepting comments in order to allow a day or two for NAIC staff to complete the revisions and distribute the materials.

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

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October 15, 2020

Commissioner David Altmaier
Chair, NAIC Group Capital Calculation (E) Working Group
Florida Office of Insurance Regulation
Via-email with copy to lfelice@naic.org

Re: NAIC Group Capital Calculation (“E”) Working Group 9/29/2020 Exposure of the NAIC’s
Group Capital Calculation Instructions Document

Dear Commissioner Altmaier:

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation (“GCC”) Working Group’s proposed revisions to the GCC instructions and template. The 9/29 exposure requested feedback on a broad range of complex technical issues. While we attempted to provide as much feedback as we could during the exposure period, we believe that continual refinement and a holistic, quantitative analysis of how all of the GCC elements, including scalars, perform together is necessary.

Highlights from our letter

- The calibration of the GCC and scalars for foreign insurance regimes should be 200% ACL RBC.
- Scalars are a critical component of an aggregation method like the GCC.
- The caps on senior and hybrid debt should be increased to avoid magnifying the impact of economic downturns.
- Additional quantitative analysis should be performed to evaluate how the GCC’s elements perform together under different scenarios.

While these are our members’ top policy issues requiring attention within the GCC instructions and template, this letter also addresses several other important technical items requiring resolution before adoption and implementation of the GCC. We propose solutions to the issues identified in this letter but recognize that, in some cases, complete resolution will best be informed by the additional testing we have suggested.

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States.

acli.com

ACLI comment letter on the 9/29 exposure of the NAIC GCC Instructions
October 15, 2020

1. The calibration of the GCC and scalars for foreign insurance regimes should be 200% ACL RBC.

We believe the GCC and scalars for non-U.S. insurance regimes should be calibrated to the 200% ACL RBC. The GCC ratio should use the same denominator that is commonly used to assess capitalization at the legal entity level. Using a different denominator to assess group capitalization levels potentially sets the stage for unfair dynamics among groups that are subject to the GCC, and those that are not.

The Working Group and NAIC staff have offered a few high-level comments on why calibrating the GCC at 300% may be appropriate; below we offer reactions to some of these comments:

- 300% has been used when aligning intervention points across regimes when determining if a jurisdiction is Reciprocal and in the Covered Agreements – ACLI does not believe the use of 300% to compare supervisory intervention points should suggest it be used as the denominator of the GCC ratio – i.e., calibration level. Like other elements of the GCC, we believe the calibration level should be consistent with current industry and supervisory practices.
- It may help with the efforts to have the Aggregation Method recognized as comparable by the IAIS – ACLI fully supports development of the Aggregation Method and believes the IAIS should recognize it as comparable. While we support the NAIC taking steps to secure this outcome, we believe the GCC must be designed in a manner that first and foremost ensures it is appropriate for the U.S. insurance market. We believe undermining years of industry and regulatory norms to potentially appease the perspectives of foreign supervisors would be inconsistent with this objective. Further, we do not believe it will in any way enhance the ability of the GCC to provide insight into risks, which should be a guiding factor for all decisions on design related elements.
- It would reinforce that the GCC is a tool rather than a standard – ACLI believes the way the NAIC and state regulators present the GCC and the way its role is explained in the instructions and financial analysis handbook are the appropriate channels for delivering this message to stakeholders.

2. Scalars are a critical component of an aggregation method, like the GCC.

We welcome the Working Group's decision to collect information regarding the "Excess Relative Ratio Approach" scalar in the sensitivity tab. Scalars are a critical component of an Aggregation Method approach, like the Group Capital Calculation, because they are necessary to equate the local capital requirement to an adjusted capital level that is comparable to U.S. levels.

While ACLI strongly believes that accurate scalars are needed to make the GCC results meaningful, given the importance of getting scalars done "right" instead of "done quickly," ACLI understands why the NAIC has chosen to use a temporary placeholder for scalars. The collection of scaled data in the sensitivity tab will hopefully allow for meaningful GCC results to be observed as the GCC model continues to be developed. We encourage the Working Group and NAIC to consider how scalars will be evaluated over the course of the coming year.

ACLI comment letter on the 9/29 exposure of the NAIC GCC Instructions
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3. ACLI's comments on capital instruments

a. The caps on senior and hybrid debt should be increased to avoid magnifying the impact of economic downturns.

While the move to 75% is a positive step, we are concerned that the proposed individual debt caps on senior and hybrid debt will make it harder for regulators and groups to successfully navigate periods of stress unless they are similarly increased. For many groups, the increase to 75% will not help them in times of stress unless the individual debt caps are similarly increased.

We believe that the conservative limits (15% and 30%) on senior and hybrid debt will make it harder for companies to counteract periods of economic stress. Because the individual limit is directly tied to available capital levels, the amount of debt a group can receive credit for will naturally decline when available capital decreases. Unless the individual limits are increased, we think they are likely to create a procyclical effect that will magnify the impact of economic stresses on companies, regulators and consumers.

The individual debt cap limits (15% and 30%) have been justified because field testing results showed that about 75% of volunteers would receive full credit for capital instruments under those limits. However, we do not believe that figure justifies the caps because that percentage reflects a single "point in time" view that does not demonstrate the number of companies that would *actually* be impacted if the restrictions were imposed during periods of economic decline, when available capital levels tend to decrease at the same time the company's legal entity capital requirement rises. When this happens, companies need to be able to take action to counter the decline in capital resources and the corresponding decreases in capital ratios.

The inability of companies to counter periods of economic stress by raising capital by down streaming debt proceeds creates a procyclical effect that magnifies the impact of economic stresses on companies balance sheets. If the debt caps for senior and hybrid debt are going to be tied to available capital limits, they should be increased to avoid creating procyclical impacts that can make it harder for groups and regulators to navigate periods of economic stress. To avoid this, we urge the Working Group to increase the individual debt limits.

b. Call options should be removed (Paragraph 67, subparagraph a)

The GCC Instructions still require that the capital instrument has a fixed term of a minimum of 5 years at the date of issuance or refinance, including call options. The presence of call options should not prevent a capital instrument's inclusion as a qualifying instrument. Call options are a common feature of U.S. issued capital instruments and are often followed by a refinance of the instrument which supports its permanence and structural subordination. We strongly recommend removing the call option because including it would prevent most U.S. debt instruments from qualifying as structurally subordinated.

c. ACLI supports the NAIC's recommendation to eliminate the down-stream tracking requirement for senior debt (Input 3, Capital Instruments – paragraph 69)

ACLI agrees with the NAIC staff's recommendation to eliminate the down-stream tracking requirement for senior debt. As we noted in our previous letter, downstream tracking requirements are difficult to implement, especially if the debt has been refinanced by the parent or if the date of

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the downstreaming does not align with the borrowing date. These concerns, and others, are why the ACLI agrees that eliminating the downstream tracking requirement for senior debt is a prudent approach.

4. Additional quantitative analysis should be performed to evaluate how the GCC's elements perform together under different scenarios.

The process for developing and refining the GCC merits additional consideration. We urge the Working Group to commit to performing additional quantitative analysis of how the elements of the GCC perform holistically, under different scenarios. It is likely that some elements may interact with each other and it would be useful to understand how they will interact under different economic stresses. It would also be helpful if the Working Group would articulate a clear and transparent process for future revisions to the GCC elements and instructions.

5. Clarification of ACLI's previous comments regarding "in the aggregate for all such subsidiaries" – definition of financial entity (Paragraph 9)

NAIC staff requested additional feedback on why the ACLI recommended inserting the phrase "in the aggregate for all such subsidiaries" in the definition of financial entity that addresses which entities should not be considered financial entities and as a result, do not have to be de-stacked. As amended, the section reads as follows:

"For purposes of this definition, a subsidiary or subsidiaries of an insurance company whose predominant purpose, in the aggregate for all such subsidiaries is to manage or hold investments or act as a broker / dealer for those investments on behalf of the insurance company and its affiliated insurance (greater than 90% of all such investment subsidiaries' the investment subsidiary's assets under management or held are owned by or for the benefit of these insurance affiliates) should NOT be considered a Financial Entity." (emphasis added)

ACLI recommended adding "in the aggregate for all such subsidiaries" to address situations when there may be a fund/funds managed by an insurer subsidiary that have outside dollars that exceed 10% of the fund's investments, but on the whole in excess of 90% of the investments managed by the investment management function are on behalf of the insurance entities. In such a scenario, the individual funds should not be treated as "financial entities" because the administrative burden of destacking these individual funds as "financial entities" appears to outweigh the benefits of destacking them, given that the fund is already included within the insurer's RBC and subject to an RBC equity charge such that destacking such funds would be unlikely to have a material impact on the group capital measure.

The purpose of the language proposed by ACLI is to clarify this treatment and avoid unnecessary administrative burden.

6. Preliminary feedback on the proposed treatment of non-insurance, financial entities not subject to a specified regulatory capital requirement (Paragraph 63).

NAIC staff has proposed a new gradation of (non-insurance) financial entities according to the level of risk (low, medium, high), and has proposed corresponding GCC required capital treatment that varies according to whether the (non-insurance, non-bank) financial entity falls into a low risk, medium risk, or high risk bucket. The charges range from 3% charge based on annual revenue for

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the low-risk bucket to a 15% charge based on revenue (high risk). The medium bucket is 6% x 3-year average revenue, which “represents Basel charged scaled to combined industry average RBC ratios at 300% ACL”).

It may be reasonable to apply a gradation of financial entities according to level of risk and to determine the appropriate GCC required capital treatment according to that gradation. However, it is difficult for us to evaluate this proposal without a more complete understanding of what entities fall into which “risk” bucket. Additional guidance on this will be necessary to ensure that the capital requirement measures are determined consistently.

We also welcome further clarification on the treatment of entities that are subject to certain capital requirements, like those applied by FINRA or the SEC, are categorized in the GCC. We presume that such entities should be treated as subject to a regulatory capital requirement such that the GCC would apply that securities-related requirement in calculating required capital for the de-stacked entity pursuant to paragraph 62, however, this is not clear from the current language in paragraph 63 which seems to suggest such entities may be treated as not subject to a specified regulatory capital requirement. We request clarity.

On a related note, the framework for identifying “material risk” should also consider the applicable sectoral regulatory regime (in the case of a regulated entity) treats the financial entity. That factor is not currently reflected in paragraph 15.

7. ACLI supports removing the reference to Schedule A and Schedule BA assets from the definition of affiliates (Part II, paragraph 18)

NAIC staff has indicated that de-stacking of non-financial Schedule A and BA assets will not be required. The direction not to de-stack non-financial entities from an insurer’s RBC seems to be a reasonable and practical conclusion at this time, as the existing RBC charge applied to equity values is a conservative treatment of such entities for purposes of a group-level capital measure. The decision not to de-stack non-financial Schedule A and BA assets raises two further questions: (1) whether separate treatment or reference to Sch. A and BA assets are still necessary in the definition of Affiliate and other portions of the Instructions, and (2) if so, whether excluding some entities from the definition of “affiliate” is the most effective way to accomplish this objective.

Regarding (1), if the only question relevant to whether a subsidiary of an insurer is to be de-stacked or not is whether that subsidiary is a “financial entity,” it is not clear what purpose the Schedule A / BA reference serves. All Schedule A / BA entities are included within the insurer’s RBC. And an entity will be de-stacked if it is a “financial entity” regardless of where the investment is scheduled.

If, however, the NAIC determines to keep the references to Schedule A / BA entities, we would suggest that the NAIC consider a different approach than defining them out of the Affiliate definition in order to avoid confusion given that as subsidiaries of insurance companies these entities are “affiliates” by any common understanding of the term.

ACLI comment letter on the 9/29 exposure of the NAIC GCC Instructions
October 15, 2020

Conclusion

Thank you for your consideration of our comments. As always, we would be happy to discuss our comments with you or your staff, at your convenience.

Regards



Gabrielle Griffith



Mariana Gomez



October 15, 2020

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

By e-mail to Lou Felice (LFelice@naic.org)

Re: Exposed GCC Instructions and Staff Revisions Summary

Dear Mr. Altmaier:

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on the Working Group's proposed revisions to the Group Capital Calculation (GCC) Instructions and the related Staff Revisions Summary.

To begin, we acknowledge the active engagement we have experienced over the past several months with the GCC Working Group and with NAIC staff. The process has been productive, and we believe has resulted in demonstrative improvement in the proposed GCC. We look forward to continuing the dialogue to assure a GCC that is appropriate for the U.S. insurance market and our system of state-based supervision.

AHIP would like to offer the following comments for your consideration as you work to finalize the GCC Instructions.

Treatment of Debt: The recent revisions increase the overall limit from 50% to 75% of Total Adjusted Carrying Value. However, the Proxy Allowance based on the maximum of the amount downstreamed (or paid-in capital and surplus) or 30%/15% of senior/hybrid debt has not been increased. We understand that the rationale for increasing the overall limit but not the proxy allowance was based on field testing data which showed that most insurance groups were limited by the overall limit. That is not the case for our largest members, who find the proxy calculation to be the primary constraint. For purposes of parity, we request the GCC Working Group also increase the proxy allowance to reduce the impact of the artificial restrictions created by the initially suggested limits.

Risk Charges for Non-Insurance, Non-Financial Entities: AHIP supports the proposed charges which are based on the predominant sectoral business of the group (life, property/casualty, or health) and which are based on the average post-tax post-covariance charge in each respective sector's Risk-Based Capital. This approach appropriately maintains a neutral stance for purposes of the risk charge whether the entity is under an RBC-filing insurer, or otherwise affiliated.

Definition of Financial Entities: We also applaud the revisions that have been made to better define financial entities. We do however have some suggestions to the underlined phrase below in the current draft of the Instructions:

“In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through products or transactions such as a mortgage, other credit offering, a derivative, and intra-group cross support mechanisms (as defined below).

We believe the intent of this sentence is to address transactions with external parties (the underlined text), as well as intra-group transactions between affiliates (the phrase regarding cross support mechanisms). However, the underlined phrase does not seem to distinguish between an entity that uses derivatives from one that issues them; or an entity that owes a mortgage or invests in mortgages from one that issues mortgages; or an entity that merely has a credit balance from one that offers credit in the marketplace. We would suggest the following:

“In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through the offering of products or transactions in the external marketplace in the external marketplace such as a-mortgages, other credit offerings, or a derivatives, and intra-group cross support mechanisms (as defined below).”

Material Risk: AHIP concurs with the definition of material risk, however we have a suggestion with regard to the accompanying list of considerations. The list includes several which are noted as secondary considerations, i.e., “If primary considerations suggest exclusion may be reasonable, these can be used to further support exclusions.” Our concern is that this distinction between primary and secondary considerations may be quickly lost on many users and regulatory analysts alike and, as a practical matter, some analysts may treat some of the secondary considerations as primary. That is particularly troubling in the case of the final listed secondary consideration which introduces the notion of a quantitative materiality threshold based on 5% of group-wide equity or revenue, notwithstanding that the GCC Working Group apparently could not agree on any particular measure to denote materiality of risk in the GCC. Thus, our suggestion is to delete this final secondary consideration from the Instructions.

Definition of Cross Support Mechanisms: The current draft of the Instructions now provides a definition of this term on page 9 which includes citing some examples, but the term is also used on page 8 with just one example mentioned. To avoid confusion, we recommend that wherever the term is used in the Instructions that it not be further defined or illustrated, rather to include a reference to the definition (as is done on pages 6 and 10). The definition on page 9 is as follows:

“For purposes of evaluating material risk, these may include corporate guarantees, capital maintenance agreements (regulatory or ratings based), letters of credit, intercompany

indebtedness, bond repurchase agreements, securities lending or other agreements or transactions that create a financial interdependence or link between entities in the group.”

With regard to the reference to intercompany indebtedness (receivable /payable), such arrangements may exist with most if not all affiliates in the ordinary course of business. However, they would only pose material risk in rare situations. To assure that all readers view this in the appropriate context, we would recommend referring to the definition of material risk, as follows:

“For purposes of evaluating material risk ([see definition at paragraph 15](#)), these may include corporate guarantees, capital maintenance agreements (regulatory or ratings based), letters of credit, intercompany indebtedness, bond repurchase agreements, securities lending or other agreements or transactions that create a financial interdependence or link between entities in the group.”

Maintenance of the GCC: While not a current topic covered by the Instructions or the Staff Revisions Summary, AHIP is curious about the way the GCC, once implemented, will be maintained. What group will oversee that, what data will it have at its disposal, what protections will exist over that data, and what processes will there be for stakeholder engagement (etc.)? We recognize that implementation itself is sometime off in the future and issues around maintenance may be secondary at the current moment. However, we want to let you know that it is a matter on the minds of our members and who would be interested in hearing the GCC Working Group’s thoughts about that at an appropriate time.

Clarity of the Instructions: As a general matter, our members have found the Instructions to be a “difficult read.” We appreciate all the hard work and sheer volume of material that has gone into the current draft, that it benefits from the input of many, and has supported a transparent exposure process that has covered multiple iterations. Once things have settled down from the initial development of the GCC, we would recommend a substantial editing process take place to make the Instructions more concise, better organized, and clearer to all. This could be a joint project with industry, and if the GCC Working Group would support that approach, AHIP would be glad to participate.

On a more specific note about clarity, there is one issue that has caused some confusion recently among our members which pertains to the way in which the final GCC ratio is expressed. In the template, the final ratio is the percentage achieved of the 300% ACL Trend Test calibration level. For example, if a group had capital resources of \$400 and calculated capital of \$100, that would imply a ratio of 4:1 or 400%, but it is actually reported in the template as 133% (the group has achieved 1 1/3 X the 300% target calibration level). Whether the relevant point of comparison in this case is 133% or 400% makes a sizeable difference in any conversation about the GCC results.

* * * * *

Again, we thank you for this ongoing climate of cooperation, patience, and collaboration. We look forward to continuing to work with you as we all begin to see the light at the end of the tunnel.

Sincerely,

America's Health Insurance Plans
Bob Ridgeway
BridgeWay@AHIP.org
501-333-2621

Cc: Tom Finnell



Stephen W. Broadie
Vice President, Financial & Counsel

October 19, 2020

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

Re: Proposed Revisions to the Group Capital Calculation Instructions

Dear Commissioner Altmaier:

The American Property Casualty Insurance Association (APCIA) appreciates the opportunity to comment on the Group Capital Calculation (E) Working Group’s revised draft Group Capital Calculation (GCC) Instructions. APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. APCIA thanks the Working Group and NAIC staff for their continued efforts to advance this important project, and for the consideration you have already given our earlier comments.

Materiality Criteria

APCIA appreciates that the revised GCC Instructions include more detailed and principle-based guidance for determining whether a non-insurance entity poses material risk for purposes of the GCC’s Scope of Application. This new guidance is important because it will allow companies and their lead-state regulators to identify entities that do not pose material risk and therefore can be excluded from the Scope of Application, with consistency across groups and states.

However, we remain concerned that the “secondary considerations” in paragraph 15 include a reference to a materiality threshold of 5% of the broader group-wide equity or revenue. We strongly believe that strict or formulaic quantitative measures are an insufficient proxy for materiality. Instead, an individualized materiality assessment must be made based on the unique circumstances of the relevant entity and group. Although the “secondary considerations” are couched as factors that can be used to determine that material risk does not exist, we are nonetheless concerned that 5% will be used as a de facto threshold in lieu of the individualized materiality analysis that is otherwise contemplated in the proposed Instructions. This is particularly concerning because field testing has shown that a rigid materiality threshold is not easily determinable, and because there is no data to show how or why a 5% threshold would be an efficacious proxy for materiality.

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8700 W. Bryn Mawr Avenue, Suite 1200S, Chicago, IL 60631-3512 | 847-297-7800

Therefore, APCIA recommends deleting the bullet point regarding the 5% materiality threshold. It is worth noting that the two other “secondary considerations” are implicit in the “primary considerations” and do not need to be restated. As a result, the Working Group should consider deleting the other two “secondary considerations” in addition to the 5% materiality threshold.

In the alternative, if the 5% threshold remains in the Instructions as a secondary consideration, it should be caveated to prevent unwarranted reliance on a threshold with no grounding in data. We would suggest the following revision:

Whether the entity (or grouping of similar entities) comprises less than either 5% of the broader group-wide equity or broader groupwide revenue. This 5% threshold, however, is only one consideration, and, if the subject entity’s revenue or equity exceeds 5% of the corresponding group-wide amount, this would not prevent exclusion if other considerations when viewed holistically support a conclusion that the non-financial/non-insurance affiliate(s) do not present material risk to a group’s ability, to pay policyholder claims or make other policy related payments.

Debt Instruments

Make-Whole Provisions

Paragraph 67 of the proposed Instructions provides criteria for qualifying senior debt and hybrid debt instruments as additional capital. APCIA is concerned that the criteria, as currently drafted, could be read to inadvertently disqualify instruments that include standard “make-whole” provisions. These provisions, which we are told are present in most U.S. debt instruments, allow issuers to retire (for purposes of refinancing, usually) a debt instrument with a payment that is typically equal to the net present value of future payments required by the instrument. We understand that make-whole provisions are rarely exercised by issuers of debt, particularly in the recent interest rate environment where rates cannot get much lower, because the benefit of calling an instrument and refinancing is minimal. Any exercise of a make whole provision would also be subject to the requirement of subparagraph b. below, in instances where the debt is structurally subordinated.

To ensure instruments with these standard provisions are not disqualified by the GCC, we recommend the following revision to paragraph 67:

...For purposes of qualifying for recognition as additional capital, both of the following criteria must be met:

- a. The instrument has a fixed term (a minimum of five years at the date of issue or refinance, including any call options with the exception of standard make-whole provisions).
- 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.

Hybrid Debt

As noted above, paragraph 67 of the proposed Instructions provides criteria for qualifying senior debt and hybrid debt instruments as additional capital. The Instructions do not currently define the term “hybrid debt”. For clarity regarding the meaning of “hybrid debt” in the Instructions, we suggest the following modification to the second bullet of paragraph 67:

Subordinated Senior Debt (and Hybrid Debt, e.g., debt issuances that receive an amount of equity credit from rating agencies) issued – The outstanding value will be reported in Column 8. Recognition for structurally subordinated debt will be allowed to increase available capital...

Next Steps

APCIA appreciates that the NAIC is moving with the appropriate speed to develop the GCC and help incorporate it into state law within the timeframe established in the US-EU Covered Agreement. At the same time, we believe there is sufficient time to complete further field testing before the GCC Instructions are finalized. Many elements of the GCC are intertwined and therefore it is important to understand how the GCC will operate holistically prior to implementation. For example, calibration of the GCC ratio remains an open issue. Members have questioned the proposed calibration of 300% ACL because it is inconsistent with entity-level reporting. We believe further analysis is necessary to determine what calibration level is appropriate, with due consideration given to the totality of the GCC framework, and we remain engaged with our members on this issue. Furthermore, the Working Group should also consider whether the debt limit structure should be modified to account for any unintended volatility in GCC ratios during times of stress. We are confident that field testing and the consideration of remaining open issues can be completed with sufficient time to implement the GCC in accordance with the Covered Agreement.

We look forward to discussing our comments with you and the Working Group.

Sincerely,



Stephen W. Broadie

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

October 15, 2020

Re: Comments on Group Capital Calculation Working Group's GCC Instructions Document

Dear Commissioner Altmaier:

Our Coalition ("we"), which consists of American International Group, Inc., Global Atlantic Financial Group, Hannover Life Reassurance Company of America, Liberty Mutual Insurance Group, MetLife, Inc., Principal Financial Group, Protective Life Corporation, Prudential Financial, Inc., Reinsurance Group of America, Incorporated, Transatlantic Reinsurance Company, thank the Group Capital Calculation Working Group ("Working Group") for the opportunity to provide input on key elements of the GCC. We strongly support the development of the Group Capital Calculation ("GCC") as a tool to enhance state regulators' ability to protect policyholders and insurance markets. We also strongly support the Working Group's decision to *"build on existing legal entity capital requirements where they exist rather than developing replacement / additional standards."* As the Working Group has rightfully noted, such an approach strikes an ideal balance of *"satisfying regulatory needs while at the same time having the advantages of being less burdensome and costly to regulators and industry and respecting other jurisdictions' existing capital regimes."*

During the public call the Working Group held on September 29, you noted that development of the first iteration of the GCC is approaching the "fatal flaws" stage. With the fatal flaws stage on the horizon, our Coalition felt the need to collectively express the following shared perspectives:

- We view the proposal to "calibrate the GCC" using 300% Authorized Control Level ("ACL") Risk Based Capital ("RBC") – i.e., to use 300% ACL RBC as the denominator of the ratio – as a fatal flaw.
- We believe 2021 should serve as a period of study and analysis to ensure the various design elements come together in a coherent manner and enable the GCC to accomplish its objective of providing state regulators a *"panoramic, transparent view of the interconnectedness, business activities, and underlying capital support for an insurance group."*

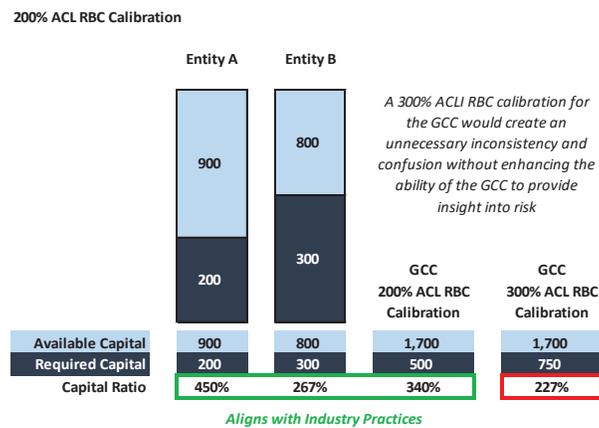
Calibration of the GCC

We believe the GCC should be calibrated using 200% ACL RBC in order to adhere to the considerations the Working Group has advised are guiding its efforts – i.e. develop a tool that provides state regulators greater insight into insurance groups in a manner that leverages and respects existing capital frameworks and practices and is less burdensome and costly. Calibrating the GCC at 300% ACL RBC would be inconsistent with longstanding industry norms for reporting and discussing solvency which use 200% ACL RBC. Further, it would also be inconsistent with state regulatory requirements for reporting and assessing capital adequacy and risks. State regulatory requirements for solvency reporting are based on 100% ACL RBC (i.e., what is filed in the Annual Statement).

Establishing an entirely new basis for reporting insurer solvency will create confusion and burden:

- Reporting processes (internal and external) would need to adapt to accommodate the inconsistency;

- Significant stakeholder education would be necessary to mitigate the confusion created by inconsistent reporting basis between entity and group level ratios, between companies that are and are not subject to the GCC, etc.;
- Market forces could lead to the establishment of 300% ACL RBC as a new basis for reporting and assessing the financial strength of insurers, and in doing so, impact existing capital management practices and expectations;
- It would create confusion over how state regulators assess and take action for solvency purposes – the ladders of intervention are anchored to 100% ACL RBC; and
- It would create a wider inconsistency between the aggregation based group capital framework developed by state regulators and the Federal Reserve Board.



More broadly, we do not believe the proposal to use 300% ACL RBC for calibration purposes would strengthen the ability of the GCC, or is necessary, to accomplish its objective of delivering state regulators transparency into insurance groups and protecting policyholders. Rather, we believe this decision would serve to undermine the time-tested practices of state regulators and the industry.

During the public call the Working Group held on September 29, NAIC staff had shared potential justifications for calibrating the GCC at 300% ACL RBC, which were mostly related to international considerations rather than the ability of the tool to accomplish its regulatory objective. In the annex to this letter, we provide our perspectives on these justifications.

Using 2021 as a period of study and analysis

While development of the GCC has been informed by a generous amount of public consultation and dialogue, quantitative study has been relatively limited (2 baseline exercises and 1 field test). In addition, consideration of the various design decisions has not been performed on the framework as a whole. We believe these factors raise the importance of using 2021 to perform a holistic review of the framework that is approved later this year to ensure the various design elements come together in a coherent manner and allow it to accomplish its regulatory objective. We believe this review should also include consideration of how the framework would perform in times of stress and any potential unintended consequences it could give rise to, including the potential for the proposed debt limit structure to create procyclicality. Following this analysis, the Working Group, in consultation with the industry, should implement any modifications determined to be necessary before approving a final version of the GCC.

We again thank the Working Group for seeking stakeholder input on key elements of the GCC and would welcome the opportunity to discuss the information included in this response should the Working Group or NAIC staff engaged in the GCC project wish to do so.

Sincerely,

American International Group, Inc.
Global Atlantic Financial Group
Hannover Life Reinsurance Company of America
Liberty Mutual Insurance Group
MetLife, Inc.
Principal Financial Group
Protective Life Corporation
Prudential Financial, Inc.
Reinsurance Group of America, Incorporated
Transatlantic Reinsurance Company

Annex
Perspectives on NAIC Staff Comments on GCC Calibration

During the public call the Working Group held on September 29, NAIC staff had shared a few potential justifications for calibrating the GCC at 300% ACL RBC, which were mostly related to international considerations rather than the ability of the tool to accomplish its regulatory objective. Below we offer our perspectives on why we believe the NAIC justifications are not sufficient or appropriate grounds for calibrating the GCC at 300% ACL RBC.

- **Calibrating to 300% ACL RBC would reinforce that the GCC is an analytical tool rather than a standard or requirement**

Coalition Perspective

We support the intent to reinforce the point that the GCC is an analytical tool as opposed to a standard however, we do not believe establishing a distinct calibration level is an effective or appropriate means for doing so and further that the point would be lost on most stakeholders. Rather than serving to reinforce the “tool versus standard” point, we believe establishing a new basis for solvency reporting in the U.S. would only serve as a source of confusion over how state based insurance supervision works by adding further complexity to the system. We believe framing of the GCC as a tool should be explicit in the GCC Instructions, the guidance to be included in the Financial Analysis Handbook, and other communications by the NAIC and state regulators.

- **300% ACL RBC has been used as a reference point in the Credit for Reinsurance Models and the Covered Agreements with the EU and UK**

Coalition Perspective

The Credit for Reinsurance Models and Covered Agreements establish a relationship between supervisory intervention points in different jurisdictions – specifically that the ability to apply the Trend Test at 300% ACL RBC, and subsequent actions that could be taken, aligns with the supervisor actions that may be pursued at 100% Solvency Capital Requirement (“SCR”) under Solvency II or 200% Solvency Margin Ratio (“SMR”) for Japan, etc. While these initiatives established relationships between intervention levels, they do not call for, or warrant, establishing a distinct calibration level for the GCC. Rather, we believe the initiatives reinforce the existing ladders of intervention approach that guides how state regulators assess insurer solvency and is anchored to a 100% ACL RBC calibration. As noted above, we believe establishing a distinct calibration basis for the GCC would only serve as a source of confusion over how state based insurance supervision works by adding further complexity system – including the inconsistency introduced between the GCC the Credit for Reinsurance Models and Covered Agreements.

More broadly, we believe it may be appropriate to consider the relationships the Credit for Reinsurance Models and Covered Agreements established when establishing scalars between the respective regimes that are encompassed by the various agreements.

- **300% ACL calibration may help with efforts to advance the Aggregation Method (“AM”) at the global level**

Coalition Perspective

We fully support the effort to advance the Aggregation Method at the global level and believe that, as the world’s largest insurance market, the International Association of Insurance Supervisors (IAIS) must recognize and accept the U.S. state based approach to assessing group capital adequacy. While the GCC and AM are related, we believe

they must be developed separately given differences in how they will be applied and their different time horizons for development.

Decisions on the design of the GCC should be guided by the objective of making sure it is appropriate for the U.S. market and will meet the needs of U.S. stakeholders – regulators, policyholders, insurers, etc. Where they exist, the time-tested frameworks and practices state regulators and U.S. insurers employ should serve as the foundation of the GCC. Deviations from these practices should be avoided unless there is a clear and objective rationale for how an alternative approach will better enable the GCC to provide state regulators insight into risks within insurance groups and protect policyholders. We believe it would be inappropriate to base GCC design decisions – especially for core elements – on what “could” help advance AM comparability discussions:

- Catering the design of the GCC to appease the views of foreign jurisdictions could result in a framework that does not best suit the U.S. insurance market; and*
- There are no assurances that decisions made today regarding the design of the GCC will secure support for the AM from non-U.S. IAIS members, many of whom continue to be skeptical of the AM.*

The design of the GCC should inform the NAIC’s work on the AM, which will continue after adoption and implementation of the GCC. Given that the AM is intended to serve as a framework that jurisdictions around the world could embrace, we recognize that collaboration and negotiations with these markets could result in a final AM that includes some differences from the GCC. However, the scope of such differences is impossible to predict at present and therefore consideration of the extent to which they would require tweaks to how the GCC has been implemented should be deferred until there is more clarity and certainty.

More broadly, it is important to reiterate that while items such as the Covered Agreements and Credit for Reinsurance Models have established relationships between intervention levels, they do not call for, or warrant, establishing a distinct calibration level for the GCC or AM. With respect to assessing comparability of the AM to the alternative approaches, the focus should be the ability of the tool to provide decision-useful insight into risks and protect policyholders as opposed to attempting to quantitatively align results to flawed benchmarks such as best efforts field test ratios or the intervention level assigned to the Market Adjusted Valuation (MAV) approach.



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

October 20, 2020

Re: Comments on Proposed Group Capital Calculation (GCC) Instructions

Dear Commissioner Altmaier,

The North American CRO Council (CRO Council) is a professional association of Chief Risk Officers (CROs) from leading insurers based in the United States, Canada, and Bermuda. Member CROs currently represent 32 of the largest Life and Property and Casualty (P&C) insurers in North America. The CRO Council seeks to develop and promote leading practices in risk management throughout the insurance industry and provide thought leadership and direction on the advancement of risk-based solvency and liquidity assessments.

The CRO Council supports the NAIC's decision to leverage existing solvency frameworks as the basis for its GCC framework. By leveraging existing solvency frameworks, the GCC will benefit from their proven ability to capture the unique risks across various lines of insurance and jurisdictional market specificities. More broadly, leveraging existing solvency frameworks will ensure continuity across existing supervisory tools, including those that are of greatest import to the CRO community.

Notwithstanding its basis in existing jurisdictional capital regimes, the GCC is an innovative – and therefore unprecedented – metric for assessing an insurance group's capital position. As CROs, we believe it is essential for any group capital metric to be designed and implemented in a manner that coherently assesses the interactive components of the underlying methodology, as well as the metric's quantitative impact and behavior across scenarios.

We recognize that the NAIC has been working diligently to finalize the GCC in advance of important international milestones in the recognition of US modalities for assessing risks at the group level. We commend the NAIC for both its high degree of transparency in developing the GCC methodology, as well as the care and deliberation it's taken in evaluating each of the component methodological issues. At this juncture, there are, rightly, several open issues that the NAIC is still considering, including treatment of senior debt, scalars, and calibration. As we approach a critical stage in the finalization of the GCC methodology, it is vital to ensure that the ongoing resolution of these and other methodology issues are also evaluated and tested collectively, to ensure that GCC provides a coherent and meaningful group measure.

In this vein, the CRO Council is concerned with the proposal to introduce a new regulatory tool for analyzing an insurer's capital adequacy and risks by calibrating the GCC at a level that is inconsistent with existing regulatory and industry practices even if a group's GCC would remain



confidential. We believe that, rather than better enabling the GCC to provide insight into risks, such a move would create risks. For example:

- It could undermine the market's perception of the solvency levels insurers are subject to at the entity level and stakeholders would be left to decipher why state regulators feel the need to assess risk at the group level in a manner that is different than the system they have developed for supervising the same risks at the entity level. Given the increased prominence of group capital assessments since the great financial crisis, we believe the GCC will receive broad interest and uptake by the stakeholder community and in turn, the disconnect will become a point of focus.
- Even though the GCC will serve as an analytical tool and results will remain confidential, introducing a new calibration level could undermine the market's perception of the capital adequacy of the sector. Stakeholders may interpret the move to increase the level of required capital regulators focus on for assessing capital adequacy and risks at the group level as an effort to promote more prudent capital levels across the sector, despite no change in the economics of the risks they are exposed to. This in turn could give rise to an unlevel playing field and arbitrage between insurers that are subject to the GCC, and the related heightened capital expectations it could create, and those that are not.
- It could result in misinterpretations. Stakeholders would be forced to learn a new scale for assessing risks despite no change in the underlying risk exposures.

When it comes to supervisory assessments of risks, regulatory clarity is vital for policyholders and the insurers that are subject to the assessment and tools. Actions that create uncertainty should be avoided unless they are anchored to a strong risk-based rationale. Thus, we strongly encourage the NAIC to calibrate the GCC at a level that is consistent with existing regulatory and industry tools and conventions.

The issue of calibration is inextricably linked with other facets of the GCC's overarching design and methodology, including the development of scalars. The treatment of scalars is, appropriately, the subject of ongoing in-depth study. By contrast, the choice of a target calibration - a decision with potentially more significant consequences than scalars - is being decided in fairly short order and with substantially less consideration of its interplay with the rest of the GCC framework or potential unintended consequences that may arise.

In addition, we note that the current debt limit structure could cause the GCC ratio to be more volatile than RBC ratios in recessionary environments. During times of stress, when solvency capital declines, the amount of admissible debt is expected to be reduced using the current guidelines. This would lead to a larger reduction in available capital in the GCC than under an RBC assessment and consequently a larger decline in the GCC ratio. Furthermore, the GCC debt limits would disincentivize insurers to raise capital through debt issuances during times of stress because only a fraction of the debt would be treated as capital under the GCC. We believe the heightened volatility and potential influence on capital management during times of stress are unintended consequences that should be remediated by raising the debt admissibility limits.



Finally, the CRO Council recommends that the NAIC perform additional voluntary GCC data calls and coherent analysis of its final methodological decisions prior to adopting and implementing a final version in late 2021. This work, which should include consideration of the framework's ability to deliver appropriate risk insights during stress events, would help to ensure the final product is fit for purpose and credible to end users.

Sincerely,

A handwritten signature in cursive script that reads "Alessandra C. Quane".

Chair of North American CRO Council



October 15, 2020

Lou Felice
Solvency and Capital Policy Advisor
National Association of Insurance Commissioners

Dear Mr. Felice,

Global Atlantic appreciates the opportunity to comment on the revised draft of the GCC instructions exposed for comment on September 29. Similar to our comment letter dated July 17, 2020 (which is attached) we are providing comments on the following issues:

Capital Calibration

We continue to have concerns with the current proposed approach of using the trend test level of 300% ACL as the capital calibration level. 300% ACL is inconsistent with the 200% ACL (or 100% CAL) calibration level widely used in the insurance industry for RBC. We believe this will lead to confusion and misunderstandings with comparing RBC to GCC, potentially undermining the current RBC standard. We request that the NAIC adopt a 200% ACL calibration level for the GCC.

Downstream Tracking of Debt

We support eliminating downstream tracking and replacing it with a simple comparison to paid-in capital and surplus. This appears to be the direction the NAIC is heading, and we support that direction.

Scalar Methodology

We support the Excess Relative Ratio approach for scaling available capital and required capital for non-U.S. entities for the reasons outlined in our July 17 letter. Since the GCC WG wants additional time to analyze various approaches to determine scalars before making a final decision, we don't have a concern with using no adjustment for scalars as a placeholder, and including the impact of the Excess Relative Ratio impact as a sensitivity test.

Scalar Formulation

As explained in our July 17 letter, we believe transparency of how the scalars are calculated is critical, regardless of which scaling methodology is selected.

Again, thanks for allowing us to provide our comments on the revised GCC instructions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Scott".

Lauren Scott
Head of Regulatory and Government Affairs
Global Atlantic Financial Group

Attachment



July 17, 2020

Lou Felice
Solvency and Capital Policy Advisor
National Association of Insurance Commissioners

Dear Mr. Felice,

Global Atlantic appreciates the opportunity to comment on the exposure draft of the revised GCC instructions and the revised GCC. Our comments address concerns with the following:

- Capital calibration
- Downstream tracking of debt
- Scalar methodology
- Scalar governance

We also seek guidance on whether GAAP equity values should include or exclude OCI when GAAP is used as the accounting method to determine the carrying value of an entity.

Capital Calibration

We have concerns with the current proposed approach of using the trend test level of 300% ACL as the capital calibration level. First of all, 300% ACL is inconsistent with the 200% ACL (or 100% CAL) calibration level widely used in the insurance industry for RBC. We believe this will lead to confusion and misunderstandings with comparing RBC to GCC, potentially undermining the current RBC standard. RBC ratios are typically in 350% to 450% range, but the GCC ratio will be much lower. For example, if the underlying RBC ratios of the companies in the group average 450% RBC, the resulting group capital ratio will be ~300%.

In addition, we believe the insurance industry's current reporting of two capital calibration levels, (100% ACL and 200% ACL or 100% CAL) results in confusion and frequent misinterpretation of reported ratios; adding a third calibration level for the GCC of 300% ACL will compound the problem. We believe this will lead to additional confusion and misunderstanding by users of financial information, including the regulatory, rating agency, and banking communities.

We strongly request that the NAIC adopt a 200% ACL calibration level for the GCC.

Downstream Tracking of Debt

The current instructions rely on downstream tracking in order to count debt proceeds as part of available capital. While downstreaming theory makes sense, the tracking method required is unclear and cumbersome. Developing criteria for downstream tracking will be difficult.

We are in favor of a proposal to eliminate downstream tracking logic and replacing it with a simple comparison to capital and surplus

- Much more reliable and efficient test for a company like Global Atlantic where the holding company is only 10 years old whereas the insurance companies have much longer histories.
- GA's Q419 financial supplement reports additional paid-in capital of \$2,451mm, which is sufficient to cover anticipated leverage levels; parent paid-in capital should be used for the metric to ensure consistency (many insurance companies have been acquired over time and paid-in capital could be quite inconsistent with that of the parent which is providing the financing)
- Approach avoids complications that could result from debt that has been refinanced by the parent as there would be no contribution of amount issued with contributed capital of insurance company

Scalar Methodology

We support the Excess Relative Ratio Approach for scaling Non-U.S. capital ratios to U.S. RBC. This method utilizes two anchor points for scaling:

1. The respective industry average capital ratio
2. The regulatory intervention level.

The alternative scaling approach, the Pure Relative Ratio, relies solely on the industry average capital ratio to translate a Non-U.S. capital ratio to U.S. RBC. It does not take in to account the regulatory intervention level. Since the Pure Relative Ratio approach adjusts required capital only, available capital is not adjusted, resulting in excess capital being distorted. Since the Excess Relative Ratio approach adjusts both available capital and require capital, excess capital is not affected.

Thus, the Pure Relative Ratio lacks a mechanism to ensure that a non-U.S. firm at the regulatory intervention level within it's respective country will be at the U.S. RBC intervention level once scaled. This is a material fault. Again, we support the Excess Relative Ratio Approach, and its ability to align regulatory intervention levels across jurisdictions.

Scalar Formulation

Transparency of how the scalars are calculated will be critical, regardless of which scaling methodology is selected. In order to appropriately manage capital under the group framework, firms must have a thorough understanding of how scalars behave. Many Non-U.S. countries rely on market-value based capital ratios, which have potential to behave differently than the book-value based RBC measure.

We believe the following themes should define the scalars:

Consistency – scalars should be calculated and applied consistently across all non-U.S. regimes.

Specificity – scalars should be discretely computed and applied amongst life, property casualty and health insurance companies.

Stability – the results of applying scalars to Non-U.S. capital ratios should not be volatile; for example, converting to U.S. RBC should not yield a significant headwind in one year, and a significant tailwind in the following year.

Additionally, we believe answers to the following questions are critical for firms to understand the impact of the scalars:

1. How is the country average computed? Is the concept of country average based on equal weighting each firm? Alternatively, is it size weighted, such that a large provider in Country Y may dominate the average of Country Y?
2. How frequently will the scalars be updated?
3. Will scalars derived from Year 20XX be applied to 20XX actual results, or will timing of filings and data availability create a lag?
4. Will scalars take in to consideration only a single year, or alternatively, will a rolling average mechanism be utilized?

GAAP Equity

The GCC instructions are silent on whether OCI should be included or excluded when GAAP equity is used as the carrying value of an entity. Companies typically report GAAP equity less OCI to lessen the amount of volatility that can arise when including market value adjustments of assets. Excluding OCI is also consistent with statutory accounting rules that generally do not reflect the market value of assets. We suggest that the GCC instructions include guidance on whether or not OCI should be included or excluded when reporting GAAP equity. Otherwise there could be inconsistencies in how companies report GAAP equity amounts.

Again, thanks for allowing us to provide our comments on the revised GCC instructions.

Sincerely,



Lauren Scott
Head of Regulatory and Government Affairs
Global Atlantic Financial Group



Dale Porfilio, FCAS, MAAA
Genworth Corporate Chief Actuary
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October 15, 2020

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

RE: **Company Confidential** Group Capital Calculation Scalars for Mortgage Insurance

Dear Commissioner Altmaier:

Genworth Financial, Inc. (Genworth) is thankful for the opportunity to comment on the NAIC's instructions and template for the Group Capital Calculation (GCC). Genworth is a Fortune 500 insurance holding company committed to helping families achieve the dream of homeownership and address the financial challenges of aging through its leadership positions in mortgage insurance (MI) and long-term care (LTC) insurance. Headquartered in Richmond, Virginia, Genworth traces its roots back to 1871 and became a public company in 2004. For more information, visit genworth.com.

Genworth has preliminarily completed the NAIC's GCC template (version dated July 6, 2020) for the first time using year-end 2019 data, and we are now trying to discern how regulators may interpret the results. Our primary insight is that Genworth's unique product mix may not be adequately captured by the industrywide GCC template. Genworth's GCC ratio is primarily influenced by our US Life Insurance (USLI) operating business and our two MI operating businesses.

The USLI business is dominated by our LTC block, alongside significant but smaller runoff blocks of Life Insurance and Annuity products. Like the rest of the LTC industry, Genworth's LTC block has financial challenges which caused the RBC ratio in our USLI flagship insurance company, Genworth Life Insurance Company (GLIC), to be 213% Company Action Level (CAL) at year-end 2019. The GCC ratio for our USLI business would have been below the 175% target at year-end 2019, as expected given the RBC was below 350% CAL.

Regarding our MI operating businesses, Genworth owns 100% of its US platform (USMI) and its flagship insurance company Genworth Mortgage Insurance Corporation. In Australia, Genworth owns 52% of the publicly traded Genworth Mortgage Insurance Australia Limited (GMA) which in turn owns 100% of its flagship legal entity Genworth Financial Mortgage Insurance Pty Limited. Genworth also has a MI business in Mexico, but it is not material to the GCC. Both of our material MI platforms have very strong capital positions relative to their respective MI capital standards. While each of their preliminary GCC ratios are above 175%, they are not nearly as far above as we expected given their strong financial strength. This leads us to consider if the US and Australia MI businesses' capital ratios may be undervalued in the GCC template.



For the MI industry in the United States, we understand the NAIC intends to use the new MI capital regime, which may address our concern. For now, USMI manages capital levels using the NAIC’s risk-to-capital metric (25:1 standard) and the Fannie Mae and Freddie Mac’s (collectively, the GSEs) Private Mortgage Insurer Eligibility Requirements (PMIERs). At year-end 2019, USMI had an RTC of 12.5:1 and PMIERs ratio of 138%, with its preliminary GCC at 203%. While the RTC and PMIERs metrics are very strong relative to the regulatory standards, the GCC ratio of 203% is only slightly above the NAIC’s stated action level of 175%.

As an interim solution until the NAIC’s new MI capital regime is finalized, we propose the NAIC consider adding a MI-specific scalar below 1.00 within the GCC template calibrated from the NAIC’s existing Risk-to-Capital (RTC) standard. A GCC scalar of 0.50 would be equivalent to the NAIC calibrating the GCC to their current MI RTC requirement of 25:1. The GSEs require a minimum RTC of 18:1 within PMIERs, which indicates a GCC scalar in the range of 0.65-0.70 could be appropriate. Genworth would consider either scalar to be more reflective of USMI’s strong capital position within the NAIC’s new GCC paradigm. Table 1 below demonstrates the effect of the scalars relative to the NAIC’s RTC metric.

Table 1 (USMI)

Scaling % (Calc 1)	Base (Scaled at Trend Test Level)			RTC
	Available Capital	Scaled Capital Calculation	GCC Ratio	
100%	3,642,278	1,797,955	203%	12.5
75%	3,642,278	1,349,841	270%	16.6
69%	3,642,278	1,248,580	292%	18.0
60%	3,642,278	1,078,773	338%	20.8
50%	3,642,278	901,728	404%	24.9

GMA is Genworth’s only business in Australia. Per the GCC template as of July 6, 2020, GMA receives the overall country scalar of 0.74 which was calibrated to apply to all product lines. (We understand this country scalar may be revised in the final GCC template.) GMA had a capital ratio of 191% on the Australian Prudential Regulation Authority’s Prescribed Capital Amount (PCA) metric at year end 2019, which is then scaled to 259% in the GCC template. The 191% PCA was well above the business’ targeted operating range of 132-144% and therefore may not be indicative of future levels. Table 2 below shows the GCC outcomes under different scalars (including the 100% shown in the GCC template released October 12, 2020) if the business operated closer to its targeted PCA range.



Table 2 (GMA)

GCC Ratio	GMA Prescribed Capital Amount (PCA)			
	Scaling % (Calc 1)	191%	144%	138%
100%	191%	144%	138%	132%
74%	259%	195%	187%	179%
70%	273%	206%	197%	189%
60%	318%	240%	230%	220%
50%	382%	288%	276%	264%

While the Australian scalar of 0.74 in the GCC template seems more appropriate for GMA than the current 1.00 for USMI, a comparable scalar in the range of 0.50-0.70 would better reflect the strong capital positions and capital requirements of both the US and Australian MI businesses. We recognize the GCC paradigm is still in development and MI is a comparatively small product line within the broader global insurance marketplace.

Given the sensitivities around individual companies preliminary GCC results, we ask that you treat this correspondence as confidential. Genworth would be happy to work with the NAIC as you consider appropriate GCC scalars for the MI industry.

Sincerely,

Dale Porfilio, FCAS, MAAA
 Genworth Corporate Chief Actuary

CC: Dan Daveline
 Lou Felice
 Ned Tyrrell



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October 15, 2020

Via Electronic Delivery

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

RE: Draft Instructions from the Chair of the Group Capital Calculation (E) Working Group
to the Chair of the Group Solvency Issues (E) Working Group

Commissioner Altmaier:

State Farm Mutual[®] Automobile Insurance Company and its affiliates ("State Farm"), appreciate the additional opportunity to submit comments concerning the Draft Instructions from the Group Capital Calculation (E) Working Group (the "Working Group"). State Farm also appreciates the cooperative approach and transparency the Working Group has utilized throughout the development process of the Group Capital Calculation (GCC) and the tremendous amount of patience that NAIC Staff have practiced.

State Farm's understanding is that the GCC provides an evaluation tool for domestic regulators to consider along with various other risk information already being provided by groups, such as the Own Risk Solvency Assessment ("ORSA") Report filing, and appreciates the draft's explanation of this purpose as noted in paragraphs 2 and 3. Specifically, to provide regulators an analytical tool to identify risks within the group that may impact the individual insurance entity ability to keep its promises to its policyholders. The following comments and concerns focus on this stated purpose and try to provide clarity consistent with that stated purpose throughout the Draft Instructions.

In various locations the Draft Instructions appear to veer from the clarity of this purpose due to word choice and lack of specificity. As an example of this in looking at paragraph 2 the draft provides:

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In this regard, the tool assists 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 supporting bsidizing the operations of non-

insurance entities, potentially undermining adversely impacting the insurance company's financial condition and/or placing upward pressure on premiums to the detriment of insurance policyholders. This calculation provides an additional analytical view early warning signal to regulators so they can begin working with a group company to resolve any concerns in a manner that will ensure that policyholders will be protected.

State Farm believes that the intent of these sentences is that once the regulator identify risks to an insurance entity within the group, the regulator will work with the impacted insurance entity to address those risks. However, the draft uses “group” in the last sentence which confuses the purpose. In order to match the prior sentence statement of purpose, to clarify the last sentence and to be consistent with the authority given state regulators, “group” should be replaced with “that insurance company”. State Farm’s position is that the GCC as an aggregation of individual legal entities’ capital does not create “group capital” or that there is now group capital that is fungible/available to be used to pay policyholder claims.

Additionally, and to this point that there is no group capital and individual legal insurance entity capital is not fungible, the group also does not issue the policy of insurance. In paragraph 15 concerning material risk, the draft provides:

Risk emanating from a non-insurance / non-financial entity not owned by an insurer that is of a magnitude that would adversely impact a group's ability, to pay policyholder claims or make other policy related payments (e.g. policy loan requests or annuity distributions).

The “group” does not pay policyholder claims. Rather it is an individual legal insurance entity that is in the group that is licensed, whose policy form and rates were approved by a state regulator, which pays its policyholder claim. Here, the suggested change is that “...impact an insurer’s ability within the group to...” should replace “...impact a group’s ability...” in order to clarify the material risk definition and be consistent with current state based regulation. This clarification between “group” versus “insurer” should be carried out throughout the bulleted “Primary Considerations” portion of this paragraph.

Finally, in one location there seems to be outright inconsistency with the stated purpose of the GCC and comments recently made that the GCC is not creating a group capital standard with intervention points. In paragraph 36 the following highlighted statement appears:

Except as noted in on the Inventory tab, equity method investments that are accounted for based upon SSAP. No. 48 (Joint Ventures, Partnerships, and Limited Liability Companies)

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are not required to be de-stacked (separately listed) in Schedule 1, i.e. their value would be included in amounts reported by the parent insurer within the calculation. The basis for this approach is predicated on the purpose of the entire group capital calculation which is to produce an expected level of capital and a corresponding actual level of available capital.

The available capital for such Joint Ventures, Partnerships, and Limited Liability Companies is already considered in Schedule 1 but its inclusion in its parent's financial statements amounts and can thus be excluded from an inventory (not separately listed) since the parent already receives a corresponding capital charge within its RBC.

Not only is this statement contrary to the stated purpose in paragraphs 2 and 3 and more recent comments on the GCC purpose of not establishing required capital or intervention points, it is violative of the state based regulatory system. As noted previously, the GCC is simply an aggregation of individual legal entities' capital within a group, it does not create capital that is held by the group, it doesn't make the capital held by the legal entities used in the calculation now fungible or available, and it does not change the state based regulatory structure. State Farm does not have a suggestion to correct this sentence and simply suggest it be deleted.

Again, State Farm appreciates all of the Working Group's work on the GCC and the efforts of the NAIC staff.

State Farm would be happy to discuss these requests for clarification and others not noted in these comments if that would be desirable, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Feinen".

Chuck Feinen
State Farm Mutual Automobile Insurance Company

UNITEDHEALTH GROUP

Corporate Finance – Actuarial Services Division
185 Asylum Street, CityPlace I • Hartford, CT 06103

October 15, 2020

Hon. David Altmaier
Commissioner
Florida Office of Insurance Regulation
Chair, Group Capital Calculation Working Group
The Larson Building
200 East Gaines Street
Tallahassee, FL 32399-0305

Via electronic mail to Lou Felice

Re: Comments on GCC Instructions

Dear Commissioner Altmaier:

We write today on behalf of UnitedHealth Group, one of the nation's largest managed care and healthcare services companies, which, through its UnitedHealthcare business platform, administers and provides healthcare benefits to more than 48 million medical members across the U.S. and South America. UnitedHealth Group's Optum business segments provide health services, including pharmacy services, health care delivery, population health management, collaborative care delivery, information technology, and health care financial services to 92 million individuals with more than 100,000 clinical professionals in physician practices and other health care facilities nationwide. We thank you for the opportunity to provide comments on the revised draft version of the Group Capital Calculation ("GCC") instructions that was exposed for comment on September 29, 2020.

We would like, first, to address the extent to which the revisions have resolved the key concerns stated in our July 20, 2020 comment letter on the previous version of the instructions and template; second, to note some new concerns that have arisen in connection with these revisions; and third, to revisit some of the additional concerns that we raised in the July 20 letter. To open each comment, we will reference both the relevant paragraph in the latest revision of the instructions and the corresponding paragraph in the previous version, as cited in the July 20 letter.

Key Concerns (from the 7/20/20 comment letter)

Key Concern #1: Calibration Level

VI.59 and VI.60 (previously VI.57 and VI.58): We appreciate the opportunity to again express our concerns about the calibration level of the GCC. We continue to believe that there is no sound justification for calibrating the GCC to 150% of the Risk-Based Capital Company Action Level (RBC CAL).

On your Working Group's September 29, 2020, conference call, it was suggested that a high calibration level for the GCC is appropriate because it is intended as an analytical tool, rather than a capital requirement. That is to say, it is appropriate to trigger additional analysis of a group at a higher capital level than the level that would trigger regulatory intervention for any specific insurance entity within the group. We disagree with this rationale for two reasons.

First, the level at which review is triggered should be addressed in the Financial Analysis Handbook, rather than in the structure of the GCC itself. This is how the matter is handled for RBC, with the Handbook calling for additional review at a level well above CAL. To build that additional conservatism into the GCC would almost certainly lead to misinterpretation of the GCC ratio, through the natural inference that a ratio below 100% is automatically "bad." Such misinterpretation should be avoided by addressing the review trigger point in the Handbook, not through conservatism in the GCC itself.

Second, it has not been established that a calibration at 150% of CAL is appropriate even for review. As we discussed at length in our July 20 comment letter, even 100% of CAL may be excessive, at least for large groups, because of the benefits arising from the diversity of businesses in such large, heterogeneous groups. Such considerations likewise can be more easily addressed by guidance in the Handbook than by attempting, without sufficient discussion, to establish a permanent benchmark within the structure of the GCC. If the GCC itself is too conservative, the Handbook review threshold might have to be something less than 100% of the GCC, which might also be confusing.

Therefore, we strongly recommend that the GCC be calibrated to 100% of CAL. Any desired conservatism in the use of the GCC is best addressed in the Financial Analysis Handbook.

IV.42 (previously V.A.40): As noted in our July 20 letter, we have in the past provided mathematical demonstrations of a problem with the approach that was then being used to calculate "scalars" [sic] for alien insurers. Subsequent to the September 29 conference call, we sent materials to NAIC staff providing additional details of that analysis. We have applied the same analysis to the Excess Relative Ratio approach that is currently being considered, and that approach also fails the test. Again, the problem is that the approach does not explicitly take into account the level of reserves that is being held by alien companies, versus the level being held by U.S. companies. Any method that fails to incorporate the total assets held for both reserves and capital will not produce a correct result.

Key Concern #2: Definition of "Financial Entity"

II.9 (previously IV.22): Our concerns about the definition of "Financial Entity" have mostly been addressed by the significant narrowing of the definition that has occurred. We have one remaining concern, regarding the final sentence of the definition, which is:

In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through products or transactions such as a mortgage, other credit offering, a derivative, and intra-group cross support mechanisms (as defined below).

Intra-group cross support mechanisms are appropriately considered when deciding whether a particular entity should be within the scope of the GCC, but they should not be considered when determining whether an entity is a "Financial Entity." The risk charges that will apply to Financial Entities will be

appropriate for the types of activities that such entities are engaged in. The existence of a cross-support mechanism does not mean that the operations of the entity are as risky, with the same potential for large losses, as those of true Financial Entities.

This is particularly a concern because the current definition of “Cross Support Mechanism” (as we discuss below under “New Concerns,” paragraph II.20) could pull in a wide variety of interaffiliate relationships. Attributing a higher degree of risks to such relationships would penalize integrated groups relative to groups that have similar relationships with non-affiliates, whereas, as we pointed out in our July 20 letter, the interaffiliate relationships are actually likely to present less risk because of greater regulatory oversight.

In light of the foregoing, we recommend that “intra-group cross support mechanisms” be deleted from that final sentence.

Key Concern #3: Intangible Assets

VI.81 (previously VI.83): We continue to question the rationale for singling out intangible assets for special consideration, to the exclusion of other assets that might be considered illiquid (such as real estate, plant and equipment, and airplanes). NAIC staff, in response to our concerns, has stated, “staff believes that there is some value in quantifying the extent that group capital is comprised of illiquid non-physical assets.” However, there has been no explanation of why “non-physical” illiquid assets are more of a concern than “physical” illiquid assets. Apparently, there is some concern beyond illiquidity, but what that may be has never been explicitly stated. Our comments on this point in the July 20 letter explained in detail why any particular concern about intangible assets, in contrast to illiquid physical assets, is unwarranted. The singling out of intangible assets implies an unsupported derogation of such assets.

We note that NAIC staff also stated, “It is not intended that the value of intangibles allowed under GAAP, SAP or another accounting basis should be excluded.” However, the only foreseeable use of this information will be to recalculate the GCC excluding intangible assets. Again, the implication is that intangible assets represent a problem that is somehow distinct from mere illiquidity.

Accordingly, we again request that intangible assets not be subject to special reporting that is deemed unnecessary for other illiquid assets.

Key concern #4: Use of the GCC

I.A.2 (the same previously): Most, but not all, of our concerns about this paragraph have been addressed by the revisions. We still question the emphasis on whether “insurance companies may be supporting the operations of noninsurance entities, potentially adversely impacting the insurance company’s financial condition.” We reiterate our comment from the July 20 letter, that whether or not all or any of the insurance companies in a group are “supporting” other operations within the group is not relevant to the insurance company’s financial condition. As we pointed out, insurance regulators are already empowered to monitor and restrict the flow of capital out of the insurance entities, by means of restrictions on dividends, oversight of transactions with affiliates, and application of the statutory provisions regarding hazardous financial condition, among other methods. If there are serious flaws in all of those other regulatory tools, the GCC is neither a proper nor an effective means to correct those flaws. Therefore, we again request that the reference to “supporting” (previously “subsidizing”) the non-insurance entities be deleted from this paragraph.

I.A.3 (the same previously): Again, most but not all of our concerns about this paragraph have been addressed. We have two comments to offer regarding the following sentence:

It was also noted that a group capital calculation could serve as a baseline quantitative measure to be used by regulators in [sic] to compliment the view of group-specific risks and stresses provided by the Own Risk and Solvency Assessment (ORSA) Summary Report filings and in Form F filings that may not be captured in legal entity RBC filings.

Our primary comment is that, as we previously suggested, the reference to RBC filings should be deleted. RBC is not a group solvency measure, and its introduction into this discussion could confusingly suggest that the GCC is relevant to the financial condition of individual insurance entities, as RBC is. Also, we suggest deleting the word “in” before “to compliment”.

New Concerns

II.15: A new definition has been provided for “Material Risk.” It is important to clarify that the phrase “adversely impact a group’s ability, to pay policyholder claims or make other policy related payments” refers to an impact that is non-trivial, and that affects the insurers within the group broadly. Situations that affect insurers individually must be dealt with through the domiciliary states’ oversight of interaffiliate agreements and transactions. The GCC is intended to address the group as a whole, and only those risks that affect the group broadly, rather than individual insurers separately, should be considered “material risks.” Materiality must be measured with reference to the group as a whole, never to the smallest insurance entity within the group.

II.20: The new definition of “Cross Support Mechanism” appears overly broad. In particular, we object to the phrase “other agreements or transactions that create a financial interdependence or link between entities in the group.” Any kind of agreement or transaction creates a “link,” and any payment by an insurer for any service whatsoever could be deemed to create “financial interdependence.” Cross Support Mechanisms should be limited to arrangements that create a legally enforceable obligation on the part of an insurer to make payments to an affiliate outside of the ordinary course of business. Therefore, we recommend that the foregoing phrase be replaced with “other agreements or transactions that create a legally enforceable guarantee from one or more insurance entities to one or more non-insurance entities within the group other than for goods and services.”

We will point out again that this definition as currently written, in conjunction with the current definition of “Financial Entity” (see our comments above under “Key Concern #2,” paragraph II.9), would penalize integrated groups relative to groups that have arguably riskier arrangements with unaffiliated vendors. We continue to believe that this is an inappropriate outcome, and recommend that both definitions be modified as we have suggested.

Additional Concerns (from the 7/20/20 comment letter)

I.A.7 (the same previously): Although this paragraph was edited to correct a previous wording error, the correction is not complete. In the second-to-last sentence, we suggest the following additional corrections:

The GCC instructions and template are intended to be modified, improved and maintained by the NAIC in the future ~~similar~~ as are the *Accounting Practices and Procedures Manual*, the *Annual Statement Instructions* and the Risk-Based Capital formula and Instructions.

Additionally, we still believe that the final sentence of the paragraph should be deleted. Since, as noted in that sentence itself, other possible items such as stress testing have not yet been considered, it is premature and misleading to discuss them in the GCC instructions.

II.10 (previously IV.23): The definition of “Insurance Group” is still too broad. As currently defined, the “Insurance Group” is not limited to the insurers within a group and their own subsidiaries. Merely being owned by the same intermediate holding company that happens to own the insurers in the group is enough to make a non-financial entity part of the insurance group. This does not seem reasonable. The “Insurance Group” should be defined to exclude any non-financial entities that are not actually owned by the insurers.

III.E.29 (previously II.E.17): We reiterate our comments from our July 20 letter. The definition of Insurance Group (as noted in our comment on paragraph II.10, above) appears to include all subsidiaries of any holding company that has an insurance subsidiary, regardless of whether such subsidiaries have any operational or financial connection with the insurance business. Yet a non-financial entity that is part of the Insurance Group must automatically be included within the scope of the GCC, while an otherwise identical entity that is not part of the Insurance Group may be excluded. In fact, it appears that even the Ultimate Controlling Person could be excluded from the GCC scope, despite its influence in the group on corporate governance and capital allocation, while an entity with no influence at all on the insurance operations would have to be included because of its ownership by a particular intermediate holding company. The GCC should not incorporate preferential treatment for a particular type of group organizational structure, absent any genuine financial impacts. Either the definition of Insurance Group must be changed as we suggest above, or the requirement that all members of the Insurance Group must automatically be in scope must be removed.

VI.56 (previously VI.54): The revised instructions still call for the reporting of all dividends paid within the group. As we indicated previously, this is significant—and, in the context of a balance-sheet-oriented calculation, unnecessary—additional burden. We note that in many cases, a dividend may pass through one or more holding companies before it reaches its final destination (e.g., from insurer to intermediate holding company to ultimate controlling person). Seeing the same dividend being recorded multiple times is very likely to create confusion. We suggest it would be more useful to show, for each entity, only the net of dividends paid and dividends received. In that case, the columns for Dividends Paid and Dividends Received could be collapsed into a single column.

Also, it is not clear that the Yes/No response in the Dividends Received and Not Retained column is useful, as it relies on what is “expected” rather than what is certain; a better approach might be to include dividends declared but unpaid in the column for dividends.

The revised instructions include a drafting note that the data item for “Capital Contributions from Debt Proceeds” may be eliminated. We recommend that this be done. As we described in our July 20 letter, it is not straightforward to determine whether a capital contribution is in fact funded from debt proceeds; and, since cash is fungible, it does not seem worthwhile to try to ascribe a capital contribution to any particular funding source.

VI.58 (previously VI.56): We again point out that intra-group guarantees, solvency reinsurance, and capital maintenance agreements typically do not have notional values, and that the triggering of these arrangements has historically been very unlikely. In an earlier communication from the NAIC on this subject, the estimated notional value was weighted by expected utilization. This weighted approach should be used here.

VI.81 (previously VI.83): In our July 20 letter, we noted that there is a great deal of information requested for the template that is not being used in the calculation of the GCC ratio and is merely informational. As a particularly onerous example, we would like to point to the section of paragraph VI.81 labeled "Accounting Adjustments." Where an entity has a different equity value under its local accounting regime than under its immediate parent's accounting regime, the instructions require the reporting not only of the general reason for the difference (e.g., U.S. GAAP vs. U.S. SAP), but also of the individual types of adjustments (of which there could be several) and the dollar amount associated with each adjustment. This could require the reporting of numerous immaterial amounts, which would be extraordinarily burdensome for filers while providing no real value to their lead-state regulators. It would be preferable to eliminate the automatic reporting of these details, leaving the subject as a matter for additional questions from the lead state if the GCC analysis showed the accounting adjustments to be material.

As always, we appreciate the opportunity to provide our input on this subject. We hope that all of the concerns that we have raised will be given careful consideration, as we believe that our recommendations will improve the usefulness of the GCC to regulators and reduce its burden on insurers.

Sincerely,



James R. Braue
Director, Actuarial Services
UnitedHealth Group

cc: Kathryn Belfi, Vice-Chair, Group Capital Calculation Working Group
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Comment Summary - GCC Template and Instructions
October 30, 2020

Issue 1	Commenter	Essence of Comment	Primary Rationale
Calibration Level	<p>ACLI Global Atlantic Coalition</p> <p>AHIP</p>	<p>Adopt a 200% ACL calibration level for the GCC. In addition, calibrations of other factors and regimes should be based on 200% ACL level RBC as well. Coalition considers 300% calibration a fatal flaw. Should the GCC ratio be expressed as the percentage achieved of the 300% ACL Trend Test calibration level. For example, if a group had capital resources of \$400 and calculated capital of \$100, that would imply a ratio of 4:1 or 400%, but it is actually reported in the template as 133% (the group has achieved 1 1/3 X the 300% target calibration level).</p> <ul style="list-style-type: none"> • CRO Council is concerned with introducing a new regulatory tool for analyzing an insurer's capital adequacy by calibrating the GCC at a level that is inconsistent with existing regulatory and industry practices even if a group's GCC would remain confidential. • The issue of calibration is linked with other facets of the GCC, including the development of scalars. 	<p>The coalition letter incorporates the rationale stated by the other two commenters</p> <p>Whether the relevant point of comparison in this case is 133% or 400% makes a sizeable difference in any conversation about the GCC results.</p>
	North American CRO Council	<ul style="list-style-type: none"> • It could undermine the market's perception of the solvency levels insurers are subject to at the entity level and the market's perception of the capital adequacy of the sector. • Actions that create uncertainty should be avoided unless they are anchored to a strong risk-based rationale. 	
	United Health Group	<p>There is no sound justification for calibrating the GCC to 150% of the Risk-Based Capital Company Action Level (RBC CAL).</p>	<p>The GCC trigger level should be addressed in the Financial Analysis Handbook, rather than in conservatism of the GCC itself for two reasons: First, the natural inference that a ratio below 100% is automatically "bad." Such misinterpretation should be avoided by addressing the review trigger point in the Handbook. Second, even 100% of CAL may be excessive, at least for large groups, because of the benefits arising from the diversity of businesses in such large, heterogeneous groups.</p>

NAIC Staff Recommendation: Staff continues to support reporting of a 300% calibration level for a group-wide analytical tool that compliments entity-based RBC. However, staff offers a possible compromise as indicated below. Staff believes a decision on the reporting levels to be included in the GCC Template is necessary to before adopting the template.

Many of the comments relate to the interpretation of the ratio as potentially resetting the regulatory view of solvency. Some comments contend that 200% x ACL RBC represents the U.S. solvency measure. It does represent a solvency measure in the sense that it is defined solvency point for insurance entities, but it not intended to be an overall assessment of solvency, particularly at the group level, but rather a means for regulators to take defined action at the insurance entity level. Overall solvency is measured in multiple ways using multiple means including a significant reliance on analysis. In addition, RBC is applied to virtually all U.S. insurance entities with a limited group view extended to subsidiaries of insurers. The RBC ratio is the sole determinant of specified regulatory responses for insurance entities. The GCC will have a broader overall scope that looks at the entire group but allows flexibility to apply to only to those entities not owned by insurers in the group that pose material risk to the insurers. In addition, lead-State regulators will have significant leeway to exempt some groups from filing or to limit the data included in the filing. Finally, the GCC will incorporate allowances for debt and ultimately scalars that would not be reflected in the RBC action level calculations.

The analytical benchmark for the GCC ratio is currently set at 100% of a 300% calibration. Yes, that is calibrated at a higher level than 100% x ACL, but the GCC does not authorize any action and will be viewed within the context of other data in the GCC template and other groupwide information available to the lead-State regulator. Furthermore, stress tests were initially contemplated for the GCC. However, the current calibration with non-binding sensitivity analysis can be considered as representing a reasonable stress scenario in lieu of specific stress tests.

Although considerations related to the AM – ICS being proposed by Team USA are not primary drivers in developing a domestic GCC there are major pieces of the GCC such as the clear intent to incorporate reasonable scalar and potential for significant capital allowances for senior and hybrid debt were include largely as a response to international capital initiatives and might not otherwise be relevant to the U.S regulatory framework.

The current template incorporates summary reporting of the GCC ratio at 100%, 200% and 300%, but the calculation uses the 300% level.

Staff continues to support careful coordination between the GCC Template, and the analysis guidance as regards the purpose, level, and use of the GCC ratio. Staff notes that industry representatives are assisting in revising and reviewing the analysis guidance.

See further staff comments under Issue 5 – Data Collection

Regarding the AHIP question... The denominator of the ratio is set at the calibration level, so the ratio is expressed relative to that calibration ratio. See proposal below which would show results at multiple calibration levels.

<p>Possible compromise staff recommendation:</p> <ul style="list-style-type: none"> • Calculate and report GCC at 200% x ACL calibration. • Show 100% x ACL an informational basis as a familiar RBC-type reference point for regulators). • Include the GCC @ 300% x RBC as a sensitivity analysis • Capital calculations for all entities which are currently calibrated based on RBC in the CCC would be reported at the 200% level and then multiplied by 1.5 for the sensitivity test. • Entities not currently calibrated based on RBC (i.e. financial entities with prescribed capital requirements) would be reported at the same amount for both base and sensitivity levels. These include foreign insurers at 100% of jurisdictional PCR (subject to eventual application of scalars at each level) and banks. • Eventual scalars would be calculated at 200% level and adjusted upward for sensitivity analysis. <p>The FAHB would provide / adjust guidance to lead State Regulators in assessing the revised level and sensitivity analysis.</p> <p>Staff acknowledges that a 300% calibration may be necessary for the AM-ICS, subject to G committee deliberations. However, the proposed compromise leaves flexibility to select the calibration level to advocate for in the AM-ICS.</p>			
Issue 2	Commenter	Essence of Comment	Primary Rationale
Scalars	ACLI Global Atlantic	<ul style="list-style-type: none"> • We support the Excess Relative Ratio approach for scaling available capital and required capital for non-U.S. entities. OK with using no adjustment for scalars as a placeholder and including the impact of the Excess Relative Ratio impact as a sensitivity test. • We encourage the Working Group and NAIC to consider how scalars will be evaluated over the course of the coming year. • Consider scalar for Mortgage Insurance 	Self-explanatory.
<p>Genworth</p>			
<p>NAIC Staff Recommendation: No change. (See further staff comments under Issue 5 – Data Collection).</p> <p>Staff agrees that an appropriate scalar should be explored and incorporated into the GCC and that reporting the results based on the Excess Relative Ratio method will provide a good comparable as other methods are evaluated. Additional nuances on scalars such as those suggested by Genworth should be addressed by the working group, but further analysis is required.</p>			

Issue 3 Allowance for Debt	Committer	Essence of Comment	Primary Rationale
ACLI	Limits (15% and 30%) on senior and hybrid debt will make it harder for companies to counteract periods of economic stress.	<ul style="list-style-type: none"> Because the individual limit is directly tied to available capital levels, the amount of debt a group can receive credit for will naturally decline when available capital decreases creating a procyclical effect 	<ul style="list-style-type: none"> For purposes of parity, we request the GCC Working Group also increase the proxy allowance to reduce the impact of the artificial restrictions created by the initially suggested limits.
AHIP	<ul style="list-style-type: none"> During times of stress, when solvency capital declines, the amount of admissible debt is expected to be reduced using the current guidelines. This would lead to a larger reduction in available capital in the GCC than under an RBC assessment and consequently a larger decline in the GCC ratio. 	<ul style="list-style-type: none"> The GCC debt limits would disincentivize insurers to raise capital through debt issuances during times of stress because only a fraction of the debt would be treated as capital under the GCC. 	Downstream tracking requirements are difficult to implement, especially if the debt has been refinanced by the parent or if the date of the down-streaming does not align with the borrowing date.
North American CRO Council	Eliminate the down-stream tracking (Repeat Comment)	Remove the call option criteria, because the exercise of a call option is typically followed by refinance of the instrument which supports its permanence and structural subordination. (Repeat comment)	Relative to the 5-year term, the presence of call options should not prevent a capital instrument's inclusion as a qualifying instrument. Call options are a common feature of U.S. issued capital instruments.
ACLI GAFG United Health Care	APCIA is concerned that the criteria, as currently drafted, could be read to inadvertently disqualify instruments that include standard "make-whole" provisions. We understand that make-whole provisions are rarely exercised by issuers of debt, particularly in the recent		These provisions, which we are told are present in most U.S. debt instruments, allow issuers to retire (for purposes of refinancing, usually) a debt instrument with a payment that is typically equal to the net present value of future payments required by the

<p>Allowance for Debt (cont.)</p>	<p>APCIA</p>	<p>interest rate environment where rates cannot get much lower, because the benefit of calling an instrument and refinancing is minimal.</p> <p>Define hybrid Debt as: <i>Senior Debt (and Hybrid Debt, e.g. debt issuances that receive an amount of equity credit from rating agencies) issued.</i></p>	<p>instrument. Any exercise of a make whole provision would also be subject to the requirement of subparagraph b. below, in instances where the debt is structurally subordinated.</p> <ul style="list-style-type: none"> Rating agencies treat subordinated debt issued by a parent company as "hybrid debt" if it is long-dated and has provisions to defer interest payments for a period.
<p>NAIC Staff Recommendation: 1. Eliminate Tracked Downstream; 2. Incorporate APCIA alternative into the calculation or as part of Sensitivity Analysis; 3: No other changes to the Debt allowance calculation. (See further staff comments under Issue 5 – Data Collection).</p> <p>Staff supports eliminating tracked down-stream and replacing it with the suggested method put forth by APCIA either as part of the allowance test or as a sensitivity analysis. Some adjustments to that methodology may be suggested.</p> <p>The main argument supporting inclusion of an allowance for debt is the concept of structural subordination. In addition to paid in capital and surplus or the APCIA alternative approach, the proxy approach is intended to provide a reasonable estimate of the amount of qualifying senior and hybrid debt that is structurally subordinated to the regulatory process. It is not intended to be a driver of capital management or to represent the rating agency view of appropriate leverage or to guarantee that all qualifying debt count as capital. Thus, the argument for the proxy approach is largely theoretical. Increasing the proxy allowance may stretch that argument to a breaking point. The increase in the overall limit to 75% of TACV was reasoned in the argument that GAAP equity is lost in TACV, thus compressing the view of available capital. This rationale does not easily apply to the proxy limits since the value of the qualifying debt is added to TACV for purposes of applying the limit. Therefore, in times of stress additional debt is added to the TACV which may offset, at least in part, the impact of a reduction in TACV resulting from the stress. If debt is issued for the purpose of shoring up capital in regulated entities and is contributed to the entities, then the subordination metric of Paid in and Contributed Capital would increase potentially allow more debt to be counted.</p> <p>Staff has added the suggested clarity provided to better describe hybrid instruments.</p> <p>Although open to the suggestions, reflecting the impact of call options adds complexity to the calculation in order to segregate the call feature from the maturity date. In addition, it seems that additional conditions around supervisory approval may be required support structural subordination.</p> <p><i>The instrument has an initial maturity of at least five years with its effective maturity date defined to be the earlier of the first call date, together any incentive to redeem the instrument or the contractual maturity date fixed in the instrument's terms and conditions."</i></p> <p><i>A requirement for supervisory approval of such a call within certain timeframes (e.g. the first five years from the date of issue can be fulfilled through the exercise of supervisory controls and supervisory review).</i></p> <p>However, this issue along with the comment on make whole provisions can be further explored as potential future tweaks to the GCC template.</p> <p>Allowance for Debt as additional capital is an area of <u>potential divergence</u> between the GCC and AM- ICS.</p>			

Issue 4	Treatment / Charges Financial Entities	Commenter	Essence of Comment	Primary Rationale
	ACLI		<ul style="list-style-type: none"> Additional guidance on risk gradation will be necessary to ensure that the capital requirement measures are determined consistently. We welcome further clarification on the treatment of entities subject to certain capital requirements, like those applied by FINRA or the SEC, are categorized in the GCC. The framework for identifying “material risk” should also consider the applicable sectoral regulatory regime (in the case of a regulated entity) treats the financial entity. 	<ul style="list-style-type: none"> It is difficult for us to evaluate this proposal without a more complete understanding of what entities fall into which “risk” bucket. We presume that such entities should be treated as subject to a regulatory capital requirement such that the GCC would apply that securities-related requirement in calculating required capital for the de-stacked entity pursuant to paragraph 62,
	AHIP		<ul style="list-style-type: none"> Our concern on material risk principles is that this distinction between primary and secondary. Remove 5% threshold. 	<ul style="list-style-type: none"> Distinctions may be lost on many users and regulatory analysts. So as a practical matter, some analysts may treat some of the secondary considerations as primary. The working group has not agreed on a material risk threshold.
	APCIA		<ul style="list-style-type: none"> Remove 5% threshold from material risk principles 	<ul style="list-style-type: none"> We are concerned that 5% will be used as a de facto threshold in lieu of the principles-based analysis that is otherwise contemplated in the proposed Instructions.
<p>NAIC Staff Recommendation: No change other than removal of the 5% criteria from the material risk principle and other clarifying edits.</p> <p>if changing to 200% x ACL calibration, adjust High / Medium / Low risk charges for financial entities without regulatory capital requirements from 15% / 6% / 3% x 3 yr. avg. revenue to 10% / 5% / 2.5% respectively.</p> <p>The working group could not agree on objective thresholds for the buckets. The material risk guiding principles are intended to be applied by the filer to assign a risk bucket and reviewed by the lead-State for comfort with that determination. The instructions can be modified to allow a “medium” risk designation if no clear determination can be made after applying the material risk principles.</p> <p>If there are risk-based (i.e. not a simple stated dollar capital) standards applied to entities that are overseen by FINRA or SEC, they should be provided and the working group can consider their use for the applicable entity type. It is not clear how the “regulatory regime” can be applied in a group context to determine material risk to other entities within the group.</p> <p>Staff is ok with removing the 5% threshold, changing “secondary considerations to “Other Considerations” and adding a clarification that Other Considerations come into play if a risk level determination is not clear after applying the Primary Considerations.</p>				

Issue 5	Next Steps / Data collection	Commenter	Essence of Comment	Primary Rationale
		ACLI	<p>We urge the Working Group to commit to performing additional quantitative analysis of how the elements of the GCC perform holistically, under different scenarios. It would also be helpful if the Working Group would articulate a clear and transparent process for future revisions to the GCC elements and instructions.</p>	<p>It is likely that some elements may interact with each other and it would be useful to understand how they will interact under different economic stresses.</p>
		AHIP	<p>AHIP is curious about the way the GCC, once implemented, will be maintained.</p>	<p>What group will oversee that, what data will it have at its disposal, what protections will exist over that data, and what processes will there be for stakeholder engagement (etc.)?</p>
		APCIA	<p>We believe there is sufficient time to complete further field testing before the GCC Instructions are finalized. We are confident that field testing and the consideration of remaining open issues can be completed with sufficient time to implement the GCC in accordance with the Covered Agreement.</p>	<p>Many elements of the GCC are intertwined and therefore it is important to understand how the GCC will operate holistically prior to implementation. Further analysis is necessary to determine what calibration level is appropriate, with consideration given to the totality of the GCC framework, and to consider whether the debt limit structure should be modified to account for any unintended volatility in GCC ratios during times of stress.</p>
		Coalition	<p>Supports using 2021 to perform a holistic review of the framework that is adopted later this year including consideration of how the framework performs in times of stress and to ensure the various elements come together in a coherent manner to accomplish its regulatory objective. Following this analysis, the Working Group, in consultation with the industry, should implement any modifications determined to be necessary before approving a final version of the GCC.</p>	<p>Understanding any potential unintended consequences, including the potential for the proposed debt limit structure to create procyclicality and to ensure the various design elements come together in a coherent manner and allow it to accomplish its regulatory objective.</p>
		North American CRO Council	<p>The CRO Council recommends that the NAIC perform additional voluntary GCC data calls and coherent analysis of its final methodological decisions prior to adopting and implementing a final version in late 2021.</p>	<p>This work, which should include consideration of the framework's ability to deliver appropriate risk insights during stress events, would help to ensure the final product is fit for purpose and credible to end users.</p>

<p>Staff Recommendation: Support data collection in 2021</p> <p>There is a distinction between adoption and implementation. Full implementation can only occur once the revised Model Law and Regulation are adopted. Of the 3 remaining major issues, reporting related to calibration should be addressed now (see staff proposal) while scalars and debt are further evaluated via potential future data collection in 2021. The scalar issue is under review with a sensitivity analysis for an industry supported method included. An alternative for debt as suggested by the APCI has been substituted for down-streamed debt in the Capital Instruments Tab.</p> <p>Staff will run the field test data through the agreed upon version of the template as a first step.</p> <p>Staff supports data collection in 2021 to continue exploring appropriate scalars for foreign insurer capital and the impact of the current debt allowance structure and limits, as well as other minor clarifications. It is noted that all applicable groups will have the opportunity to fill in the adopted template and provide feedback to the Working Group via the lead-State.</p> <p>Transfer of responsibility for maintenance of the GCC Template can be discussed at a future date.</p>			
<p>Issue 6</p> <p>Other Technical Comments, Language Edits, Clarification requests and Second Tier Concerns</p>	<p>Commenter</p> <p>ACLI AHIP GAFG State Farm United Health</p>	<p>Essence of Comment</p> <p>THESE WERE ADDRESSED VIA EDITS OR TECHNICAL ADJUSTMENTS. Revised instructions and template (where applicable) are attached</p>	<p>Primary Rationale</p>

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**NAIC GROUP CAPITAL CALCULATION
INSTRUCTIONS**
(REVISED OCTOBER 30, 2020)

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I. Background

A. Work Performed Up Through 12/31/15

1. In 2015, the NAIC ComFrame Development and Analysis (G) Working Group (CDAWG) held discussions regarding developing a group capital calculation (GCC) tool. The discussions revealed that developing a GCC was a natural extension of work state insurance regulators had already begun, in part driven by lessons learned from the 2008 financial crisis which include better understanding the risks to insurance groups and their policyholders. While insurance regulators currently have authorities to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist regulators in identifying risks that may emanate from a holding company system.
2. More specifically, the GCC and related reporting provides more transparency to insurance regulators regarding the insurance group and make risks more identifiable and more easily quantified. In this regard, the tool assists 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 supporting the operations of non-insurance entities, potentially adversely impacting the insurance company's financial condition or policyholders. This calculation provides an additional analytical view to regulators so they can begin working with a group to resolve any concerns in a manner that will ensure that policyholders of the insurers in the group will be protected. The GCC is an additional reporting requirement but with important confidentiality protections built into the legal authority. State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to provide lead-State regulators with further insights to allow them to reach informed conclusions on the financial condition of the group and the need for further information or discussion.
3. 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, they do not have the benefit of a consolidated statutory accounting system and financial statements to assist them in these efforts. It was noted prior to development that a consistent method of calculating group capital for typical group risks would provide a very useful tool for state financial regulators to utilize in their group assessment work. It was also noted that a group capital calculation could serve as a baseline quantitative measure to be used by regulators in to compliment the view of group-specific risks and stresses provided by the Own Risk and Solvency Assessment (ORSA) Summary Report filings and in Form F filings that may not be captured in legal entity RBC-filings.
4. During the course of several open meetings and exposure periods, CDAWG considered a discussion draft which included three high level methodologies for the group capital calculation: an RBC aggregation approach, a Statutory Accounting Principles (SAP) consolidated approach, and a Generally Accepted Accounting Principles (GAAP) consolidated approach. On September 11, 2015, the CDAWG members unanimously approved a motion to move forward with developing a recommendation for a group capital calculation and directed an appropriate high-level methodology for the recommendation.

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5. At a CDAWG meeting on September 24, 2015, pros and cons for each methodology were discussed, and a consensus quickly developed in support of using an RBC aggregation approach if a group capital calculation were to be developed. The NAIC Executive/Plenary ultimately adopted the following charge for the Financial Condition (E) Committee:

“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.”

6. The RBC aggregation approach is intended build on existing legal entity capital requirements where they exist rather than developing replacement/additional standards. In selecting this approach, it was recognized as satisfying regulatory needs while at the same time having the advantages of being less burdensome and costly to regulators and industry and respecting other jurisdictions’ existing capital regimes. In order to capture the risks associated with the entire group, including the insurance holding company, RBC calculations would need to be developed in those instances where no RBC calculations currently exist.
7. In early 2016, the Financial Condition (E) Committee formed the Group Capital Calculation (E) Working Group (Working Group), who began to address its charge and various details of the items suggested by the CDAWG. The instructions included herein represent the data, factors, and approaches that the Working Group believed were appropriate for achieving such an objective. The GCC instructions and template are intended to be modified, improved, and maintained by the NAIC in the future as are the *Accounting Practices and Procedures Manual*, the *Annual Statement Instructions* and *Risk-Based Capital formula and Instructions*. This includes but is not limited to future disclosure of additional items, such as stress testing, which was originally developed or referred by other NAIC Working Groups supported by the CDAWG but has not yet been considered.

II. Definitions

8. **Broader Group:** The entire set of legal entities that are controlled by the Ultimate Controlling Person of insurers within a corporate group. When consider the use of this term, all entities included in the Broader Group should be included in Schedule 1 and the Inventory, but only those that are denoted as “included” in the Schedule 1 will be considered in the actual group capital calculation.
9. **Financial Entity:** A non-insurance entity that engages in or facilitates financial intermediary operations (e.g., accepting deposits, granting of credits, or making loans, managing, or holding investments, etc.). Such entities may or may not be subject to specified regulatory capital requirements of other sectoral supervisory authorities. The primary examples of financial entities are commercial banks, intermediation banks, investment banks, saving banks, credit unions, savings and loan institutions, swap dealers, and the portion of special purpose and collective investment entities (e.g., investment companies, private funds, commodity pools, and mutual funds) that represents the Broader Group’s aggregate ownership in such entities, whether or not any member of the Broader Group is involved in that entity’s management responsibilities (e.g., via

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investment advisory or broker/dealer duties) for those entities. For purposes of this definition, a subsidiary of an insurance company whose predominant purpose ~~in the aggregate for all such subsidiaries,~~ is to manage or hold investments or act as a broker / dealer for those investments on behalf of the insurance company and its affiliated insurance (greater than 90% of all such investment subsidiaries' assets under management or held are owned by or for the benefit of these insurance affiliates) should NOT be considered a Financial Entity. However, in the case of collective investment entities (e.g., investment companies, private funds, commodity pools, and mutual funds) the 90% will be measured in the aggregate for all affiliated entities within each subtype (e.g., investment companies, private funds, commodity pools, and mutual funds). In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through the offering of products or transactions outside the group such as a mortgage, other credit offering, or a derivative, ~~and intra-group cross support mechanisms (as defined below).~~

10. Insurance Group: For purposes of the GCC, a group that is comprised of two or more entities of which at least one is an insurer, and which includes all of the insurers in the Broader Group. Another (non-insurance) entity may exercise significant influence on the insurer(s), i.e. a holding company or a mutual holding company; in other cases, such as mutual insurance companies, the mutual insurer itself may be the Ultimate Controlling Person. The exercise of significant influence is determined based on criteria such as (direct or indirect) participation, influence and/or other contractual obligations; interconnectedness; risk exposure; risk concentration; risk transfer; and/or intragroup agreements, transactions and exposures. An Insurance Group may include entities which facilitate, finance or service the group's insurance operation, such as holding companies, branches, non-regulated entities, and other regulated financial institutions. An insurance Group is thus comprised of the head of the Insurance Group 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 could be headed by:

- an insurance legal entity;
- a holding company; or
- a mutual holding company.

An Insurance Group may be:

- a subset/part of bank-led or securities-led financial conglomerate; or
- a subset of a wider group.

An Insurance Group is thus comprised of the head of the Insurance Group and all entities under its direct or indirect control.

11. Insurance Subgroup / U.S. Operations: Refers to all U.S. insurers within a broader group where the groupwide supervisor is in a non-U.S. jurisdiction. It includes all the directly and indirectly held subsidiaries of those U.S. insurers. For purposes of subgroup reporting, capital instruments, loans, reinsurance, guarantees would only include those

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that exist within the U.S. insurers. Amounts included for the U.S. insurers shall include all amounts contained within the financial statements of those entities included in the subgroup reporting, whether those amounts are directly attributable or allocated to a company in the subgroup from an affiliate outside of the U.S. insurers and its direct or indirect subsidiaries.

11.12. Lead State Regulator: as defined in the NAIC's Financial Analysis Handbook, i.e., generally considered to be the one state that "takes the lead" with respect to conducting group-wide supervision within the U.S. solvency system.

12.13. Reciprocal Jurisdiction: as defined in the Model Law for Credit for Reinsurance.

13.14. Entity not Subject to A Regulatory Capital Requirement: This is a financial entity other than an entity that is subject to a specified regulatory capital requirement.

14.15. Scope of Application: Refers to the entities that meet the criteria listed herein for inclusion in the GCC ratio. The application of material risk criteria may result in the Scope of Application being the same as, or a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s). Please note, U.S. Branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S. insurance regulator, otherwise in as much as they are already included in a reporting legal entity, they are already in the scope of application and there is no need for any additional reporting.

15.16. Material Risk: Risk emanating from a non-insurance / non-financial entity not owned by an insurer that is of a magnitude that would adversely impact the financial stability of the group as a whole such that the ability of insurers within a group to pay policyholder claims or make other policy related payments (e.g. policy loan requests or annuity distributions) may be impacted.

To determine whether an entity within the Broader Group poses material risks to the Insurance Group, the totality of the facts and circumstances must be considered. The determination of whether risk posed by an entity is material requires analysis of various aspects pertaining to the subject entity. A determination that a non-insurance / non-financial entity does not pose material risk allows the filer to request exclusion of that entity from the calculation of the GCC ratio in the Inventory Tab. A number of items as listed below should be considered in making such a determination, to the extent they apply Caution is necessary, however. The fact that one or more of these items may apply does not necessarily indicate risk to the Insurance Group is, or is not, material. The group should be able to support its determination of material risk if requested by the lead-State regulator. This should not be used as a checklist or as a scorecard. Rather, the list is intended to illuminate relevant facts and circumstances about a subject entity, the risk it poses, how the Insurance Group might be exposed to that risk and means to mitigate that risk."

Primary Considerations:

- Past experience (i.e., the extent to which risk from the entity has impacted the Insurance Group over prior years/cycles).
- The degree to which capital management across the Broader Group has historically relied on funding by the Insurance Group to cover losses of the subject entity.
- The existence of intra-group cross support mechanisms (as defined below) between the entity and the Insurance Group.

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- The means by which risk can be transmitted, i.e., the existence of sufficient capital within the entity itself to absorb losses under stress and/or if adequate capital is designated elsewhere in the Broader Group for that purpose.
- The degree of risk correlation or diversification between the subject entity and the Insurance Group. (e.g., where risks of one or more entities outside the Insurance Group are potentially offset (or exacerbated) by risks of other entities) and whether the corporate structure or agreements allow for the benefits of such diversification to protect the Insurance Group.
- The existence and relative strength or effectiveness of structural safeguards that could minimize the transmission of risk to the Insurance Group (e.g., whether the corporate shell can be broken).

~~Other~~~~Secondary~~ Considerations (If primary considerations suggest exclusion may be reasonable, these can be used to further support exclusions):

- The location of the entity in relation to the Insurance Group within the Broader Group's corporate structure and how direct or indirect the linkage, if any, to the Insurance Group may be.
- The activities of the entity and the degree of losses that the entity could pose to the group under the current economic environment or economic outlook
- ~~Whether the entity (or grouping of similar entities) comprises less than either 5% of the broader group wide equity or broader groupwide revenue.~~

The guidance above recognizes that there are diverse structures and business models of insurers that make it impracticable to apply a one-size-fits-all checklist that would work for materiality determinations across all groups. Strict or formulaic quantitative measures based on size of the entity or its operations of a non-insurance affiliate are an insufficient proxy for materiality of risk to the insurance operations. The GCC Instructions thus consider the unique circumstances of the relevant entity and group and uses an interactive process whereby the group brings forward its suggestions as to entities that should be excluded from the scope of application for a discussion with the lead state, ultimately culminating in an agreement on the scope of application. The guidance in this section helps to facilitate that process and discussion with criteria for cross support mechanisms that can potentially transmit material risk, as defined, to the insurance group as well as safeguards that can mitigate such risk or its transfer.

~~16.17.~~ **Cross Support Mechanism:** For purposes of evaluating material risk, depending on the nature of the transaction and the specific circumstances, these may include corporate guarantees, capital maintenance agreements (regulatory or ratings based), letters of credit, intercompany indebtedness, bond repurchase agreements, securities lending or other agreements or transactions that create a financial interdependence or link between entities in the group.

~~17.18.~~ **Ultimate Controlling Person:** As used in the NAIC's Insurance Holding Company System Regulatory Act (Model #440). This the entity that exercises control directly or indirectly over all entities within the broader group.

~~18.19.~~ **Control:** As used in the NAIC's Insurance Holding Company System Regulatory Act., the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the

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management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K of Model #440 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

19.20. Affiliate: As used in the NAIC's Insurance Holding Company System Regulatory Act., an "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For purposes of the GCC, affiliates will NOT include those affiliates reported on Schedule A or Schedule BA, EXCEPT in cases where there are financial entities reported as or owned indirectly through Schedule A or Schedule BA affiliates. In general Schedule A and Schedule BA affiliates will otherwise remain as investments of a parent insurer will be reported as parent of the value and capital calculation of the parent insurer. Any entities that would otherwise qualify as Schedule BA affiliates as described above but are owned by other entities (e.g. foreign insurers or other type of Parent entity) should be treated in the same way.

20.21. Person: As used in the NAIC's Insurance Holding Company System Regulatory Act., a "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

III. Exemptions & Scope

A. Groups Exempted from the GCC

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21-22. These instructions do not address groups that are exempt from completing the GCC; those matters are addressed instead within proposed changes to the *Insurance Holding Company System Regulatory Act* (Model #440).

B. Scope of the Broader Group & Scope of Application

22-23. When considering the scope of application, preparers of the GCC must first understand the information to be included in Schedule 1 of the template. When developing an initial inventory of all potential entities, the preparers of the GCC shall complete Schedule 1, which, except in the case of an Insurance Subgroup (as defined in Section II), requests data for all of the entities directly or indirectly owned by the Ultimate Controlling Person (including the Ultimate controlling Person) that are listed in the insurer's most recent Schedule Y or in relevant Holding Company Filings. This will require the preparers of the GCC to complete basic information about each such entity in Schedule 1, including its total assets, and total revenue and net income for this specific year identified, and the initial filing will require the same information for the prior year. The primary purpose of the Schedule 1 is to 1) assist the lead-state in making an assessment on the entities within the group that should be included in the Scope of Application; and 2) provide the lead state with valuation information to better understand the group. This valuable information produces various ratios and other financial metrics that will be used in the analysis of the GCC and the group by the lead state for their holding company analysis.

23-24. To assist the Lead State Regulator in assessing the Scope of Application, the Schedule 1 and the Inventory Tab of the template will be completed by each preparer to provide information and certain financial data on all the entities in the group. Each preparer will also use the include / exclude column in Schedule 1 to request its own set of entities to be excluded from the calculation after applying criteria for material risk (as defined in Section II herein) which will be described in the template and evaluated by the Lead State Regulator. A second column will be used by the regulator to reflect entities that the regulator agrees should be excluded.

24-25. Although all entities must be listed in Schedule 1 and in the Inventory tab, the preparer is allowed to group data for certain financial entities not subject to a regulatory capital requirement and certain non-insurance and non-financial entities. Thus, while the Schedule 1 would include the full combined financial results/key financial information (for all entities directly or indirectly owned by the Ultimate Controlling Person, such data may be reported based upon major groupings of entities to maximize its usefulness and allow the Lead State Regulator to better understand the group, its structure, and trends at the sub-group as well as group level. Prior to completing the GCC annually, the Insurance Group should determine if the proposed grouping is satisfactory to the lead state or if there are certain non-insurance and non-financial entities (such entities are required to be broken out and reported separately) that should be broken out and reported separately.

C. General Process for Determining the Scope of Application

25-26. The starting point for "Scope of Application" (i.e., for purposes of the GCC specifically) is the entire group except in the case of an Insurance Subgroup (as defined in Section II).

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However, in the case of groups with material diverse non-insurance / non-financial activities isolated from the financial / insurance group and without cross support mechanisms as defined in Section II, the preparer may request a narrower scope starting at the entity that controls all insurance and financial entities within the group, (i.e., comprise a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s) (Broader Group)). However, the adjustments as to the Scope of Application suggested by the preparer in consultation and in agreement with the Lead State Regulator should include consideration of guidance in Paragraph 9 (“Identify and **Include** all Financial Entities”) the totality of the facts and circumstances, as described in paragraph 15 (“Definition of Material Risk”). The rationale and criteria applied in allowing the reduced scope should be documented and made available to non-lead states if requested.

The fundamental reason for state insurance regulation is to protect American insurance consumers. Therefore, the objective of the GCC is to assess quantitatively the collective risks to, and capital of, the entities within the Scope of Application. This assessment should consider risks that originate within the Insurance Group along with risks that emanate from outside the Insurance Group but within the Broader Group. The overall purpose of this assessment is to better understand the risks that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims consistent with the primary focus of insurance regulators.

D. Guiding Principles and Steps to Determine the Scope of Application

26-27. For most groups, the Scope of Application is initially determined by the preparer in a series of steps, listed here and then further explained as necessary in the text that follows:

- Develop a full inventory of potential entities using the Inventory of the Group template (Schedule 1)
- Denote in Schedule 1 for each non-financial entity whether it is to be “included in or excluded from” the Scope of Application” using the criteria below in the section “Identify Risks from the Broader Group”
- All entities, whether to be included in or excluded from the Scope of Application are to be reported in the Inventory Tab of the template. Information for excluded entities will be limited to Schedule 1B and the corresponding columns in the Inventory Tab.
- Non-financial entities may qualify for grouping on this Inventory Tab as described elsewhere in these instructions.

E. Steps for Determining the Scope of Application

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27.28. Identify and ~~list~~ include all Entities in the Insurance Group or Insurance Subgroup (where required)

~~Include in the Scope of Application~~ all entities that meet the definition of an affiliate in Section II, above, below and that fit the criteria identified in the definition of the Insurance Group or Insurance Subgroup (if applicable), in Section II, above, below, except as modified in Paragraph 30 (Identify Risks from the Broader Group), below. All insurance entities and entities owned directly or indirectly by the insurance entities in the group shall be included in the Scope of Application and denote as such (i.e., included in the Scope of Application) and reported in the Schedule 1 and Inventory of the Group template. Other non-insurance/ nonfinancial entities within the Insurance Group may be designated as "exclude" as described in Paragraph 30, below. Said differently, all insurance entities and entities owned directly or indirectly by the insurance entities in the group shall be included in the Scope of Application.

28.29. Identify and Include all Financial Entities

Financial Entities (as defined in Section II, herein) within the Inventory of the Group template shall be included in (i.e. may not be designated as "excluded from") the Scope of Application regardless of where they reside within the Broader Group.

As learned from the 2008 financial crisis, U.S. insurers were not materially impacted by their larger group issues; however, materiality of either equity or revenue of an entity might not be an adequate determinant of potential for risk transmission within the group. Furthermore, risks embedded in financial entities are not often mitigated by the activities of the insurers in the group and may amplify their (the insurers') risks.

Any discretion in evaluating the ultimate risk generated by a defined financial entity that is not subject to a regulatory capital requirement should be applied via review of the material risk definitions/ principles included in Paragraph 15 to set the level of risk as low, medium or high and **not** to exclude such entities from the calculation. The rationale should be documented, and all data required in Schedule 1 must be provided for the entity for purposes of analysis and trending.

29.30. Identify Risks from the Broader Group

An Insurance Group or Insurance Subgroup may be a subset of a Broader Group, such as a larger diversified conglomerate with insurance legal entities, financial entities, and non-financial entities. In considering the risks to which the Insurance Group or Insurance subgroup is exposed, it is important to take account of those material risks (as defined in Section II) to the Insurance Group from the Broader Group within which the Insurance Group operates. All non-insurance / non-financial entities included within the Insurance Group or Insurance Subgroup that pose material risk to the insurers in the group should be included within (i.e. may not be designated as "excluded from") the Scope of the Application. Non-financial entities within the Broader Group but outside the Insurance Group that pose material risks to the Insurance Group should be included within (i.e. may not be designated as "excluded from") the Scope of Application; non-material non-insurance / non-financial entities within the Broader Group or within the Insurance Group (as both terms are defined in Section II, herein) ~~others~~ than those entities owned by entities subject to a specified regulatory capital requirement should be reported as "excluded". However, no entities outside an Insurance Subgroup (as defined in Section II) should be included

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in the GCC. When determining which non-financial entities from the broader group to include in the Scope of Application, the preparer must include any entity that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims or provide services to policyholders consistent with the primary focus of insurance regulators.

30.31. Review of Submission

The Lead State Regulator should review the Inventory of the Group template to determine if there are entities excluded by the preparer using the criteria above that the Lead State Regulator agrees do not pose material risk to its insurance operations. Additional information may be requested by the Lead State Regulator to facilitate this analysis. For entities where the lead-state regulator agrees with the request to exclude, the group capital calculation may exclude the data for such entities. Ultimately, the decision to include or exclude entities from the GCC will occur based on the Lead-State regulator's knowledge of the group and related information or filings available to the Lead-State and whether they believe an applicable entity would not adversely impact the entities within the Scope of Application to pay policyholder claims.

~~DRAFTING NOTE:~~ A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested, but not approved for exclusion by the lead-State.

31.32. The preparer, together with the Lead State Regulator, would use the above steps, which includes considering the Lead State Regulator's understanding of the group, including inputs such as Form F, ORSA, and other information from other involved regulators, to determine the reasonableness of the suggested Scope of Application.

32.33. Updating the Scope of Application

The Scope of Application could be re-assessed by the preparer and the Lead State Regulator each successive annual filing of the GCC provided there has been substantial changes in corporate structure or other material changes from the previous year's filing. Any updates should be driven by the assessment of material risk and changes in group structure as they impact the exclusion or inclusion of entities within the Scope of Application based on material risk considerations.

IV. General Instructions

33-34. The NAIC Group Capital Calculation Template consists of a number of tabs (sections) within one workbook. The following provides general instructions on each of these tabs. IV.

34-35. **Attestation:** This tab is intended to work similar to the Annual Statement and RBC attestations, which are both intended to give the regulator greater comfort that the company has completed in accordance with its (these) instructions.

35-36. **Input 1-Schedule 1:** This tab is intended to provide a full inventory of the group, including the designation by the filer of any non-financial entities to be included in, or excluded from, the Scope of Application and include sufficient data or information on each affiliated entity (See Schedule A and Schedule BA exception) within the group so as to allow for analyzing multiple options for scope, grouping and sensitivity criteria, as well as, allowing the lead state regulator to make a determination as to whether the entities to be included in the scope of application or excluded from the scope of application meet the aforementioned criteria. This tab is also used to maximize the value of the calculation by including various information on the entities in the group that allow the lead state to better understand the group as a whole, the risks of the group, capital allocation, and overall strengths and weaknesses of the group.

36-37. Except as noted in on the Inventory tab, equity method investments that are accounted for based upon SSAP. No. 48 (Joint Ventures, Partnerships, and Limited Liability Companies) are not required to be de-stacked (separately listed) in Schedule 1, i.e. their value would be included in amounts reported by the parent insurer within the calculation. The basis for this approach is predicated on the purpose of the entire group capital calculation which is to produce an expected level of capital and a corresponding actual level of available capital that are derived by aggregating the amounts reported of capital of the individual entities under the GCC methodology. The available capital for such Joint Ventures, Partnerships, and Limited Liability Companies is already considered in Schedule 1 but its inclusion in its parent's financial statements amounts and can thus be excluded from an inventory (not separately listed) since the parent already receives a corresponding capital charge within its RBC.

37-38. **Input 2-Inventory:** This tab is intended to be used by the consolidated group to provide information on the value and capital calculation for all the entities in the group before any de-stacking of the entities. While some of this information is designed to "pull" information from Schedule 1, other cells (blue cells) require input from the group. This tab will include the adjustments for investment in subsidiary other than were an exception is described in these instructions and adjust for intra group arrangements. This tab is set up to subtract those adjustments from capital and therefore should be entered as a 1) positive figure if the adjustment currently has a positive impact on the available capital or the capital calculation; or as a 2) negative figure if the adjustment currently has a negative impact on the available capital or the capital calculation. It will also be used to add relevant entities included as equity investments in Schedules A and BA and to aggregate the resulting adjusted values for use in the actual group capital calculation.

38-39. **Input 3-Capital Instruments:** This tab is intended to be used to gather necessary information to that will be used to calculate an allowance for additional available capital based on the concept of structural subordination applied to senior or other subordinated debt issued by a holding company. It will also provide information on all Debt issued within the group

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- 39.40. Input 4 – Analytics:** In recognizing a primary purpose of the GCC is to enhance group-wide financial analysis, this tab includes or draws from entity-category-level inputs reported in the Tab or elsewhere in the GCC template to be used in GCC analytics. Separate guidance for lead-State regulators to reference in analysing the data provided in the GCC Template (reference applicable location of the guidance - e.g. Financial Analysis Handbook).
- 40.41. Input 5 – Sensitivity Analysis and Inputs:** This tab includes inputs and / or describes informational sensitivity analysis for other than XXX / AXXX business; captives, permitted & prescribed practices, debt designated as “Other”, unscaled foreign insurer values and other designated sensitivity analysis. The inputs are intended to simply be a disclosure, similar to the disclosure required under Note 1 of the statutory financial statements. The analysis will be applied in the Summary 2 Tab.
- 41.42. Input 6 – Questions and Other Information:** This tab will provide space for participants to describe or explain certain entries in other tabs. Examples include the materiality method applied to exclude entities in Schedule 1 and narrative on adjustments for intra group debt and adjustments to available capital or capital calculations that are included in the “other adjustment” column in the Inventory Tab.
- 42.43. Calc 1 – Scaling (Ins):** This tab list countries predetermined by NAIC and provides the necessary factors for scaling available and required capital from non-US insurers to a comparable basis relative to the US Risk-based Capital figures. It also allows for set scaling options (that vary by insurance segment such as life, P/C, and health).
- 43.44. Calc 2 – Scaling (Non-Insurance):** This tab is used to determine calculated capital for non-insurance entities.
- 44.45. Summary 1 - Entity Category Level:** This tab provides a summary of available capital and calculated capital for each entity category before the application of capital instruments.
- 45.46. Summary 2 - Top Level:** This tab calculates various informational GCC ratios resulting from applying “on top” and entity level adjustments to adjusted carrying value and adjusted calculated capital and are described in the Sensitivity Inputs and Analysis Tab section. These “what if” scenario analysis will not be part of the GCC ratio.
- 46.47. Summary 3 – Analytics:** Provides a summary of various GCC analytics.
- 47.48. Summary 4 - Grouping Alternatives:** This tab currently calculates and displays a grouping option that was submitted by an interested party.
- 48.49.** All cells in the template are color-coded based on the chart below Inputs should only be made in blue cells. Do not add/delete rows, columns, cells or change the structure of the template in any way. If there appears to be an error in the formulas in the template, contact the NAIC.

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The following set of colors is used to identify cells:	<i>Colors used</i>
Parameters	
Input cells	
Data from other worksheets	
Local calculations	
Results propagated	

VI. Detailed Instructions

Input 1 – Schedule 1

49-50. ‘Schedule 1A’ is a small table at the top for identification of the filer. Enter the ‘Name of Group’, name of the person the Template is ‘Completed by’ and the ‘Date Completed.’ Indicate the version number of the template if there are updates or multiple persons completing the template. All figures (in all tabs) should be converted to \$’000s. For example, a book value of \$123,450 should be entered as 123.45 in the template.

50-51. More detailed information on each legal entity should be reported in Schedule 1B-1E. The order of the entries in Schedule 1 should match that in the Inventory Tab. The first entity listed should be the ultimate controlling party.

51-52. U.S. Branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S insurance regulator. They should be reported under the appropriate entity category in [Sch 1B Col 6].

52-53. Entries are required for every entity within the scope of the group. However, while recognizing that lead-State regulators retain the discretion to ask for greater detail, the following simplifications may be applied as long as information for every entity is listed in Schedule 1B:

- A single numerical entry for like Financial Entities would be allowed at the intermediate holding company level, assuming that the like entities are owned by a common parent that does not own other entity types, all use the same accounting rules (e.g., all GAAP), and are at least consistent with the way the group manages their business. The entity at which the total data is provided must be assigned an “Entity Category” in Schedule 1 that corresponds to the instructed carrying value and capital calculation for which the entry is made (e.g. an entity that would otherwise be categorized as a non-operating holding company but holds asset managers would be categorized as an asset manager). Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as “included”.
- In addition, a single numerical entry would be allowed for all included non-insurance / non-financial entities at the intermediate holding company level assuming that the intermediate holding company owns only non-insurance / non-financial entities assuming that the entities are owned by a common parent that does not own other entity types, all use the

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same accounting rules (e.g., all GAAP), and are at least consistent with the way the group manages their business. This and would include any positive residual value of the holding company itself. Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as “included”.

DRAFTING NOTE: ~~A grouping option similar to what is applied to financial entities as described in the first bullet, is suggested.~~

- Values for, non-insurance / non-financial subsidiaries of U.S. RBC filers may remain with their Parent insurers and will not be de-stacked. Entries for these individual entities in the grouping will be reported in Schedule 1B only as “included”.
- Mutual Insurance Groups may use the amount of required capital from the top-level Insurer’s RBC Report ~~adjusted to at 2300%~~ X ACL RBC and further adjusted to de-stack foreign insurers and other financial entities owned directly or indirectly (on a look-thru basis) via RBC filing subsidiaries. Such foreign insurance subsidiaries or other financial subsidiaries shall be reported at the carrying values and capital calculations as described later herein.
- Data for U.S. Branches of Foreign insurers may be omitted from Schedule 1 if they are otherwise included in the entries, values, and capital requirements of a foreign insurer.

These simplifications will be treated in a similar manner in Input 2 – Inventory.

~~53.54.~~ Any financial entity owned by a Parent insurer and listed in Schedule A or Schedule BA, any insurance or financial entity that is owned indirectly through a Schedule BA affiliate, ~~or any Schedule A or BA affiliate that represents greater than X% of total group adjusted capital~~ should be listed in Schedule 1 and in the Inventory and assigned the appropriated identifying information (See also the instructions for Part B of the Inventory). These entities will be de-stacked from the values for the Parent insurer. The same treatment for these entities will be afforded when they owned by a foreign insurer or other non-insurance entities.

~~54.55.~~ Schedule 1B contains descriptions of each entity. Make selections from drop down menu where available.

- **[Sch1B Col 1] Include / Exclude (Company)** – This column is to select entities where a request is made for exclusion. The filer will indicate which non-insurance / non-financial entities not owned directly or indirectly by an insurer that should be excluded from the GCC as not posing material risk to the group. The filers definition of material risk will be reported in the Other Information Tab
- **[Sch1B Col 2] Include / Exclude (Supervisor)– Column** to be filled in by supervisor. These are entities where the Supervisor agrees with the filer’s assessment of material risk and these entities will be excluded from the group capital calculation and may be included in a sensitivity analysis later in the template.

DRAFTING NOTE: This Column may also be completed by the filer after advance consultation with the lead-State regulator.

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- **[Sch1B Col 3] Include / Exclude (Selected)**– Formula to determine treatment of tab for later sensitivity analysis. If supervisor has made a determination of include/exclude in the prior column, that will be used. If not, company’s selection will be used.
- **[Sch1B Col 4] Entity Grouping** -The column denotes whether this is an insurance or non-insurance / non-financial entity and is also automatically populated based on the entry in Column 8.
- **[Sch1B Col 5] Entity Identifier** – Provide a unique string for each entity. This will be used as a cross reference to other parts of the template. If possible, use a standardized entity code such as NAIC Company Code (“CoCode”) or ISO Legal Entity Identifier. CoCodes should be entered as text and not number (e.g. if CoCode is 01234, then the entry should be “01234” and not “1234”). If there is a different code that is more appropriate (such as a code used for internal purposes), please use that instead. If no code is available, then input a unique string or number in each row in whatever manner is convenient (e.g. A, B, C, D, ... or 1, 2, 3, 4...). Do not leave blank.
- **[Sch1B Col 6] Entity Identifier Type** – Enter the type of code that was entered in the ‘Entity Identifier’ column. Choices include “NAIC Company Code”, “ISO Legal Entity Identifier”, “Volunteer Defined” and “Other”.
- **[Sch1B Col 7] Entity Name** – Provide the name of the legal entity.
- **[Sch1B Col 8] Entity Category** – Select the entity category that applies to the entity from the following choices (all US Life Captives shall select the option for RBC Filing Captive, complete the calculation using the Life RBC formula in accordance with instructions below regarding “Additional clarification on capital requirements where a US formula (RBC) is not required” whether the company is required by their captive state to complete the RBC formula or not). Insurers or financial entities that are de-stacked from and insurer’s Schedule A or BA should be assigned the corresponding insurer or financial entity category:

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Non-Insurer Holding Company	U.K. Solvency II - Life	Indonesia
RBC Filing U.S. Insurer (Life)	U.K. Solvency II - Composite	Thailand
RBC Filing U.S. Insurer (P&C)	Australia - All	Barbados
RBC Filing U.S. Insurer (Health)	Switzerland - Life	Regime A (Participant Defined)
RBC Filing U.S. Insurer (Other)	Switzerland - Non-Life	Regime B (Participant Defined)
U.S. Mortgage Guaranty Insurers	Hong Kong - Life	Regime C (Participant Defined)
U.S. Title Insurers	Hong Kong - Non-Life	Regime D (Participant Defined)
Other Non-RBC Filing U.S. Insurers	Singapore - All	Regime E (Participant Defined)
RBC filing (U.S. Captive)	Chinese Taipei - All	Bank (Basel III)
Canada - Life	South Africa - Life	Bank (Other)
Canadian - P&C	South Africa - Composite	Financial Entity with a Regulatory Capital Requirement
Bermuda - Other	South Africa - Non-Life	Asset Manager/Registered Investment Advisor - <u>High Risk</u>
Bermuda - Commercial Insurers	Mexico	<u>Asset Manager/Registered Investment Advisor - Medium Risk</u>
Japan - Life	China	Other Financial Entity without a Regulatory Capital Requirement - <u>High Risk</u>
Japan - Non-Life	South Korea	<u>Other Financial Entity without a Regulatory Capital Requirement - Medium Risk</u>
Japan - Health*	Malaysia	<u>Other Financial Entity without a Regulatory Capital Requirement - Low Risk</u>
Solvency II - Life	Chile	Other Non-Ins/Non-Fin with Material Risk
Solvency II -- Composite	India	Other Non-Ins/Non-Fin without Material Risk
Solvency II - Non-Life	Brazil	Non-operating Holding Co.
Solvency II - Non-Life	Argentina	<u>Schedule A and BA Directly or Indirectly Owned Financial Affiliates</u>
U.K. Solvency II - Non- Life	Colombia	

*If the GCC group's Japanese insurer Health business (referred to as Third Sector) is greater than 60% of total Life (referred to as First Sector) and Health business combined, as

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reflected by annualized premium for the year reported, then that group may elect to use the Japan Health scalar set rather than the Life scalar.

All U.S. captives are required to complete the applicable RBC formula template. In addition, any insurer, other than U.S. Captive, that submits an RBC filing to either the State of domicile or the NAIC will be considered an RBC filer.

- **[Sch1B Col 9] Alternative Grouping** – This is an optional input field. This field should be used if you wish to show similar entities aggregated into a single line on the "Grouping Alternative Exhibit". For example, if you have a dozen small dental HMO businesses, you may wish to show them as a single line called "Dental HMOs", as opposed to listing each entity separately. This is a level of granularity below 'Entity Category' but above individual entities. No entity should be put in the same 'Alternative Grouping' as its parent. It is fine to put only one entity in a grouping. If any entries are left blank then, in column 17, the 'Entity Name' will be selected as the grouping. This will not impact the order of the entities for which data is entered in Schedule 1 or the Inventory tab.
- **[Sch1B Col 10] Parent Identifier** – Provide the 'Entity Identifier' of the immediate parent legal entity for each entity, as applicable. If there are multiple parents, select the parent entity with the largest ownership percentage. Only include one entry. For the top holding company, enter "N/A".
- **[Sch1B Col 11] Parent Name** – This will be populated by a formula, so input is not required.
- **[Sch1B Col 12] % Owned by Parent** – Enter percentage of the entity that is owned by the Parent identified earlier in the worksheet. Percentages of ownership should be based on the percentage of voting class securities (unless ownership is maintained other than by control of voting securities) consistent with what is reported pursuant to State holding company regulation filings (Form B or equivalent).
- **[Sch1B Col 13] % Owned within Group Structure** – Enter percentage of the entity that is owned by all entities within the Group.
- **[Sch1B Col 14] State/Country of Domicile** – Enter State of domicile for US insurance entities and country of domicile for all other entities (Use reference that are consistent with those use on Schedule Y where available).
- **[Sch1B Col 15] Zero Valued and Not Admitted Entities— Report for U.S. Insurers Only.** Select the treatment of the entity from following options— 'Zero Valued for RBC or 'Non-Admitted for Accounting and RBC (Direct or Indirect)'. Zero Valued for RBC are affiliated insurance and financial entities that are otherwise reported in the RBC filer's annual statement at their accounting value (i.e. per Statutory Accounting Principles) but are reported at zero value and zero capital requirements for RBC purposes. Examples include non-Canadian foreign insurers directly owned by U.S. Life RBC filers. The carrying value and capital calculation specified in these instructions for the specific insurance or financial entity type should be reported in Inventory B, Column 2 and Inventory C, Column 2, respectively. DO NOT REPORT ZERO VALUES IN COLUMN 2 OF INVENTORY B AND INVENTORY

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C FOR THESE AFFILIATES. Only RBC filing entities with this type of affiliate will report in this column.

Non-admitted for Accounting and RBC (Direct or Indirect) are insurance or other financial affiliates that owned directly indirectly by an RBC filer via a downstream non-financial entity or holding companies that are reported at zero value per SAP and are also reported at zero value and zero capital requirements for RBC purposes. Examples include U.S. insurers indirectly owned by a U.S. RBC filer thru a not-admitted holding company that has not been subject to an independent audit. The carrying values and capital calculations specified herein associated with the specific insurance or financial indirectly owned entity type should be reported Inventory B, Column 2 and Inventory C, Column 2, respectively. DO NOT REPORT ZERO VALUES IN COLUMN 2 IN INVENTORY B AND INVENTORY C FOR THESE AFFILIATES. Only RBC filing entities with this type of affiliate will report in this column. The excess value in the not-admitted Parent entity may be reported at zero value.

No entry is required in this column for any non-admitted directly or indirectly owned non-insurance / non-financial subsidiary. Report zero for these affiliates in Column 2 of Inventory B and Inventory C.

- **[Sch1B Col 16] Is Affiliates on Schedule A or Schedule BA** – This Column is meant to identify an entity with a financial ~~or a material non-financial~~ entity identifier in Col 8 that is otherwise reported on Schedules A or BA but is being moved to this Schedule. Provide a “Y” response where that is applicable. ~~Also provide a “Y” response for any identified in column 16 as a material non-financial Schedule A or BA affiliates.~~ Otherwise leave blank.
- **[Sch1B Col 17] Selected Alternative Grouping** – This will be populated by a formula, so input is not required. If there are any blank entries in Column 9 (Alternative Grouping) this column will set them equal to the name of the entity.

~~55,56.~~ Schedule 1C contains financials for each entity:

- **[Sch1C Col 1] Basis of Accounting** – Enter basis of accounting used for the entity’s financial reporting.
- **[Sch1C Col 2 & 3] Gross and Net Written Premium – Report for all U.S. and non-U.S. insurers** (Use applicable entity Annual Statement data source for US insurers - Life – P/C and Health). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Schedule 1C, Col 4] Reinsurance Assumed from Affiliates** – Report for all U.S and non-U.S. insurers. Use applicable entity Annual Statement data source for US insurers (assumed premiums from P/C Schedule F Part 1 and Life and Health Schedule S Part 1 Section 1 and 2). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Schedule 1C, Col 5] Reinsurance Ceded to Affiliates** - Report for all U.S and non-U.S. insurers. Use applicable entity Annual Statement data source for US insurers (assumed premiums from P/C Schedule F Part 3 and Life and Health Schedule S Part 3 Section 1 and 2). Use equivalent local source for non-U.S. insurers or company records when available.

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- **[Sch1C Col 6] Book Assets** - This should be valued based on the applicable basis of accounting reported under the entity's local regime and represents the total assets as reported in the basic financial statements before eliminations (since that is presumed to be less burdensome on the insurance holding company). Other financial data should similarly be prepared using financial data before eliminations. However, insurance holding companies are allowed to present such figures after eliminations if they do so for all figures and consistently for all years.
- **[Sch1C Col 7] Book Liabilities** - This should be valued based on the applicable basis of accounting reported under the entity's local regime and represents the total liabilities as reported in the basic financial statements.
- **[Col 8] Gross Paid-in and contributed Capital and Surplus – For U.S insurers report the current year end amounts from Annual Statement Page 3 as follows:**
 - a. **Life Insurers: lines 29, 30 and 33**
 - b. **P&C Insurers: lines 30, 31 and 34**
 - c. **Health Insurers: lines 26 - 28**

56.57. Generally, Schedule 1D will include entries from regulatory filings or entity specific GAAP financial statements as of the reporting date. The amounts reported should be the entity value on a stand-alone (fully de-stacked) or grouped basis (where applicable). This may require use of company records in certain cases. The amounts should be reported at 100% for the entity listed. Any required adjustments for percentage of ownership will be applied later if necessary, to calculate a capital charge.

- **[Sch1D Column 1] Prior Year Entity Identifier** – Report the Legal Entity Identifier, NAIC company code or other identifier used for the entity in the prior year GCC filing for the prior calendar year.
- **[Sch1D Col 2] Prior Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone Balance Sheet. This will generally be the same as what is reported in the current year column in the prior year GCC filing. Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance / non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance / non-financial entity is included in the capital charges for the Parent entity.
- **[Sch1D Col 3] Net Income** - **The final reported income figure from the income statement, and therefore is the figure reported after interest, taxes, extraordinary items, etc. For entities with accounting and reporting requirements that specify that dividends received will be part of “net income”, report the dividends received in this column.** Report dividends to policyholders here as a reduction to net income if required by local accounting or reporting requirements.
- **[Sch1D Col 4] Dividends Paid and Received (Net)** – All entity types report the net amount of dividends paid and received in reporting year to a parent (or affiliate) shareholder, public

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shareholders, or policyholders (if not required to be a reduction in net income by local accounting or reporting requirements). All entity types that are subject to accounting and reporting requirements that specify that dividends received will be reported as a surplus adjustment, will report dividends received in reporting year from affiliates in this column.

~~• [Sch1D Col 5] Dividends Received – All entity types that are subject to accounting and reporting requirements that specify that dividends received will be reported as a surplus adjustment, will report dividends received in reporting year from affiliates in this column.~~

• ~~[Sch 1D Col 56] Capital and Surplus Contributions Received from Affiliates~~ - All entity types. Report sum of Capital Contribution (other than via surplus notes) during the reporting year received from any affiliated entity.

• [Sch 1D Col 67] **All Other Changes in Capital and Surplus.** Include total for all adjustments not listed above. This would include any investment income not already reported in Column 3 or Column 5. Also, report all stock repurchases or redemptions in this column.

DRAFTING NOTE: Greater detail may ~~either be added to the template or made available on request.~~

• [Column 78] **Current Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone Balance Sheet for the current year. This will generally be the same as what is reported for the entity in the Inventory B, Column 2 Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance / non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance / non-financial entity is included in the capital charges for the Parent entity.

• ~~[Sch 1D Col 89] Capital and Surplus Contributions Paid to Affiliates~~ - All entity types report the total of capital contributions (other than via surplus notes) during the reporting year paid to any affiliated entity.

• [Sch1D Col 9] Dividends Declared and Unpaid – For all applicable entities report the amount of dividends declared or approved but not yet distributed.

• [Sch1D Col 10] **Dividends Received and Not Retained** –All holding companies, insurers and financial entities with regulatory capital requirements indicate by “Y” or “N” if part or all of dividends received reported in Column 5 ~~have are expected to been~~ paid (passed thru) to a Parent company, to public shareholders, or used to repurchase or redeem shares of stock ~~after the reporting date used for the GCC.~~

~~• [Sch1D Col 11] Capital Contributions from Debt Proceeds – All insurers and financial entities with regulatory capital requirements indicate by “Y” or “N” if part or all of capital contributions received were from proceeds of debt issued by a Parent or affiliate.~~

Commented [FL1]: Consider deleting if Tracked Down-streamed Debt is eliminated.

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Input 2 – Inventory

57-58. Columns in Inventory A are being pulled from Schedule 1:

- [Column 1] Insurance/Non-Insurance.
- [Column 2] Entity Identifier
- [Column 3] Entity Identifier Type
- [Column 4] Entity Name –
- [Column 5] Entity Category
- [Column 6] Parent Identifier
- [Column 7] Parent Name
- [Column 8] Basis of Accounting

Columns Requiring Input

58-59. Enter information on adjustments to carrying value. Considerations specific to different types of entities are located at the end of this subsection.

- **[Inv B Col 1] Carrying Value (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, carrying values utilized should represent the 1) the subsidiary valuation required by the insurance or other sectoral regulator if the Parent is a regulated entity; or 2) in the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then a subsidiary valuation based US GAAP or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements.

The value in this column will include a zero value for entities not admitted per SAP or other jurisdictional regulatory rules. A single entry for all entities that qualify under the grouping exceptions described herein may be made in lieu of individual entries on the line for the affiliate that holds the qualifying entities. This column will include double counting.

The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group.

- **[Inv B Col 2] Carrying Value (Local Regime)** – Record the carrying value recognized by the legal entity's jurisdictional insurance or other sectoral supervisor. This will include the value of capital instruments (e.g. U.S. insurer issued surplus notes) that are specifically recognized by statute, regulation or accounting rule and included in the carrying value of the entity. In the case where the entity is not subject to insurance or other sectoral regulatory valuation, then US GAAP equity (including OCI) or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements. If an agreed upon change in local carrying value should become effective by 2019, Volunteer

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Groups are expected to report on that basis. If the group is comprised entirely of U.S based entities under a U.S based Parent company, the entries in this column will be the same as in Column 1 except in cases where the Parent owns not admitted (or otherwise zero valued financial affiliates that would be reported as not admitted in the Parent Regime column but fully admitted (per SAP valuation) in the Local Regime column (see instructions for Schedule 1B, Column 15). However, if such an entity has been listed in the [Sch1B Col 2] Include / Exclude (Supervisor) column, indicating that the lead-State regulator agrees that the entity does not pose material risk, then a value will be reported here, but the ultimate calculation will show the results without the excluded entity's value. The carrying value for affiliates that are U.S. RBC filers, the value will be the amount reported TAC on entity's RBC report. This column will include double counting. The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group. The entry here should generally be the same as the value reported in Inventory B, Column 1, except where TAC for RBC filers differs from BACV. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries.

DRAFTING NOTE: A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested but not approved for exclusion by the lead-State.

Parent Entity	INVENTORY C - Capital Calculation to be Applied			Parent Entity Line Inv C, Column 3
	Entity	Inv B, Column 1	Inv B, Column 2	
U.S. RBC filer	U.S. RBC filer	RBC ACL (excl. op Risk) x 2	RBC ACL x 2	RBC ACL (excl. op Risk) x 2
U.S. RBC filer	Other U.S. Insurer	Per RBC	Per GCC Entity Instructions	Per RBC
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per RBC	Jurisdictional or Sectoral PCR Level Capital Reqmt	Per RBC
U.S. RBC filer	Financial w/o Capital Reqmt	Per RBC	Per risk level factor x 3-year avg revenue	Per RBC
U.S. RBC filer	Non-Financial	Per RBC	No entry Required	No entry Required - Do not de-stack
Other U.S. Insurer	U.S. RBC filer	Zero	RBC ACL x 2	Zero
Other U.S. Insurer	Any Other Entity Type	Zero	Per GCC Entity Instructions	Zero
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Capital Reqmt	RBC ACL x 2	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Capital Reqmt	Per GCC Instructions	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Capital Reqmt	Jurisdictional or Sectoral PCR Level Per Local Capital	Foreign Insurer or Other Regulated w/ Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Capital Reqmt	Per risk level factor x 3-year avg revenue	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Capital Reqmt	No entry Required	No entry Required - Do not de-stack
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Zero	RBC ACL x 2	Zero
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Zero	Per GCC Entity Instructions	Zero
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Zero	Jurisdictional or Sectoral PCR Level Capital Reqmt	Zero
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Zero	Per risk level factor x 3-year avg revenue*	Zero
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Zero	Per GCC Instructions*	Zero

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In cases where a U.S. Life RBC filer owns a foreign insurer and the BACV value reported for the foreign insurer in the Parent U.S. insurers financial statement is adjusted to zero for RBC purposes, then report zero in Inventory B Column 1, and Column 3 for that foreign insurance entity.

- **[Inv B Col 3] Investment in Subsidiary** – Enter an adjustment to remove the investment carrying value of any directly owned subsidiary(ies) from parent’s carrying value. This is intended to prevent from double counting of available capital when regulated entities are stacked. The carrying value to be removed should be the investment value carried by the Parent from which the entity is being de-stacked (i.e. the value in Column 1 in Inventory Section B adjusted for ownership percentage). Thus, there will be no adjustment to the Parent’s value in this column for entities that are reported at zero value by the parent. Where entities are owned partially by entities outside of the group, then the Parent’s percentage of ownership will be calculated based on the value owned within the group. Generally, all non-financial affiliates, Schedule A and Schedule BA assets will remain in the value of the Parent insurer and not entered in this column unless they meet the exceptions described herein. For indirectly owned Schedule A or BA financial entities, only the value of that entity will be included in this column and the remaining value of the downstream BA Parent will remain with the Parent insurer. Similarly the carrying value of U.S. Branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the value of the foreign insurer so that the parent entity may eliminate double counting of that available capital which will now be reported by the stand-alone Branch listed in the inventory. The ‘Sum of Subsidiaries’ column may provide a useful check against this entry, but it will not necessarily be equal.

When utilizing public accounting (e.g. GAAP) equity values that differ from regulatory values (e.g. SAP), it is the GAAP equity of the insurers must be eliminated from the GAAP Parent in this column, not the SAP (regulated capital). This is necessary in order to allow the calculation to appropriately represent SAP capital of regulated entities and GAAP equity of non-regulated entities. Data on the accounting differences between Parent and Local carrying values will be collected in Column 9 and further detail provided in the Questions and Other Information Tab.

Note: Values for Schedule A and Schedule BA affiliates that are required to be reported in the Inventory Tab will be adjusted out of the value reported by the U.S. insurer in this column

- **[Inv B Col 4] Intra-group Capital Instruments** – This column is automatically calculated from inputs to the ‘Capital Instruments’ Tab. It reflects an adjustment to remove carrying value for intra-group financial instruments that that are treated as capital by the issuer and consequently create additional capital within the group upon issuance (most notably U.S. Surplus Notes). Example for Surplus Notes – In both intra-group and unaffiliated transactions, 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 in this column. 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 in the corresponding adjustment column for the capital calculation. No adjustments are made for any intragroup capital instrument that is treated as a liability by the issuer.

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- **[Inv B Col 5] Reported Intra-group Guarantees, LOCs and Other** – Enter an adjustment to reflect the notional value weighted for expected utilization for reported intra-group guarantees (including solvency insurance and capital maintenance agreements). Enter the notional value for letters of credit, or other intra-group financial support mechanisms. Explain each intra-group arrangement in the Questions and Other Information Tab.
- **[Inv B Col 6] Other Intra-group Assets** – Enter the amounts to adjust for and to remove double counting of carrying value for other intra-group assets, which could include intercompany balances, such as (provide an explanation of each entry in the Questions and Other Information Tab):
 - a. loans, receivables, and arrangements to centralize the management of assets or cash;
 - b. derivative transactions;
 - c. purchase, sale, or lease of assets; and
 - d. other (describe).
- **[Inv B Col 7] All Other Adjustments** – Include a brief explanation in the “Description of ‘Other Adjustments’” in the Other Information Tab.
- **[Inv B Col 8] Adjusted Carrying Value** - Stand-alone value of each entity per the calculation to eliminate double counting. This value includes permitted and prescribed practices.
- **[Inv B Col 9] Accounting Adjustments (e.g. GAAP to SAP)** – Report the total difference between the carrying value reported in Column 1 (and Column 3) and the value reported in Column 2. This column will apply to Regulated entities where the stand-alone carrying value is based on regulatory accounting (e.g. SAP) while the value reported for that entity by the Parent is carried at a financial accounting (e.g. GAAP) value. Further detail is reported in the Questions and Other Information Tab.
- **[Inv B Column 10] Gross Revenue 2nd Prior Year (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Column 11] Gross Revenue Prior Year (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **Inv B, Col 12] Gross Revenue Current Year (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Col 13] Average Revenue over 3-years (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** – This column is populated from data in Columns 10, 11 and 12.

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DRAFTING NOTE: This column will support the capital calculation for asset managers, broker dealers and other Financial Entities without Regulatory Capital Requirements ~~only~~.

59,60. 'Adjusted Capital Calculation' is reported in a similar manner to the 'Adjusted Carrying Value above'. The columns are in the same order though it is likely that fewer entries will be needed for Columns 4 -7. Further guidance is below.

- **[Inv C Col 1] Entity Required Capital (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, entity required capital should represent the capital requirements of the Parent's insurance or other sectoral regulator. 1) for subsidiaries of foreign insurers or other non-U.S. financial entities, the unscaled capital required by the Parent's regulator of the regulated entity based upon the equivalent of a Prescribed Capital Requirement (PCR) level; 2) for subsidiaries, including applicable Schedule A and Schedule BA subsidiaries, of U.S. insurance entities that are subject to RBC, except where the subsidiary is also an RBC filer, the entry should be equivalent of what would be required in the Parent's RBC, adjusted for covariance where applicable (calculated by the preparer) reported at company action level a level of one and a half times company action level RBC (or 23 times authorized control level RBC) for that entity ~~(i.e. 1.5 times the RBC requirements included in the Parent's RBC report on a post-covariance basis)~~. Where the subsidiary is also an RBC filer, then the amount reported will be at one and a half times company action level RBC (or 23 times authorized control level RBC) AFTER COVARIANCE; 3) for subsidiaries of U.S. insurers that do not file RBC, report the actual amount of capital required in the Parent's capital requirement (if any) for the subsidiary entity; 4) in the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then use zero where applicable. This column will include double counting. The values recorded for all subsidiaries should be the 100% of the specified capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group. A single entry for all entities that qualify under the grouping exceptions described herein may be made on the line for the affiliate that holds the qualifying entities in lieu of individual entries.
- **[Inv C Col 2] Entity Required Capital (Local Regime)** – Enter required capital for each de-stacked entity, as applicable entity description below. For U.S. RBC filing subsidiaries under a U.S. RBC filing parent the amounts will be the same in both the Parent and Local Regime columns except where the RBC filing subsidiary is subject to an operational risk charge. In such cases the amount reported in this column for the subsidiary will include the operational risk charge while the amount reported in Column 1 will exclude the subsidiary's operational risk charge. However, for some entity types this will result in entries for the entities under a U.S. based insurance parent to be different from what U.S. RBC would dictate. In addition, where a U.S. insurer directly or indirectly owns not admitted (or otherwise zero valued) financial affiliates, those affiliates would be reported with zero value in the Parent Regime column but at the specified regulatory value described below for that financial entity type in this column. However, if such an entity has been listed in **Sch1B Col 2] Include / Exclude (Supervisor column)**, indicating that the lead-State regulator agrees that the entity does not pose material risk, then report the capital calculation in accordance with entity instructions, but the ultimate calculation will show the results without the excluded entity's capital calculation. Directly or indirectly owned non-financial entities that were not admitted

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or otherwise carried at a zero value in the Parent Regime, may be carried at zero value in this column. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries. This column will include double counting. The values recorded for all subsidiaries should be the 100% of the capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group.

60-61. For financial entities without a regulatory capital requirement and for non-insurance / non-financial entity types where additional options are noted below, the options are shown here for informational purposes only and the calculations are described in the tabs where the relevant data and calculations reside

Additional clarification on capital requirements where a formula is required:

- U.S. RBC filing Insurers – Report RBC at Company Action Level (~~2300%~~ x ACL)
- Foreign Insurance Entities – The local capital requirement as specified below for each jurisdiction should be reported, by legal entity, at a Prescribed Capital Requirement (PCR) level, ~~or the equivalent of one and a half times company action level RBC (or 3 times authorized control level RBC). The amounts reported will be subject to sealing later in the calculation. Sealed values will be included in the GCC capital calculation (see Sealing Tab).~~ This treatment is different than what U.S. Risk-based Capital (RBC) would require and recognizes other regulators view of adequate capital for insurers within another jurisdiction. It is more reflective of risk within the group context. ~~A sensitivity analysis will be included in the Sensitivity Analysis Tab using 100% of the jurisdictional PCR scaled per the Excess Relative Ratio method (i.e. unsealed See Appendix 1) for insurers in foreign jurisdictions that are subject to scaling.~~
- Subsidiaries based in the European Union should use the Solvency II Solo SCR (Solvency Capital Requirement) as the PCR.
- For US subsidiaries, the RBC Company Action Level of each insurer should be ~~reported re-calibrated to the point at which regulatory action can be taken in any state based on RBC alone, i.e., the point at which the trend test begins, which is one and a half times company action level.~~
- For Australian subsidiaries, the PCR is the target capital as set by the insurer/group in accordance with APRA requirements. Effectively, this would be "Target capital under ICAAP". PCR is not a set multiple of MCR.
- For Bermudian subsidiaries, the Legal Entity PCR in Bermuda for medium and large commercial insurers is called the "Enhanced Capital Requirement" (ECR) and is calibrated to TailVaR at 99% confidence level over a one-year time horizon.
- For Hong Kong subsidiaries, under the current rule-based capital regime, if applied similar to the concept of PCR, the regime's PCR would be 150% of MCR for life insurers and 200% of MCR for non-life insurers.

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- For Japanese subsidiaries, the PCR is the solvency margin ratio of 200%.
- For Korean subsidiaries, the PCR is 100% of risk-based solvency margin ratio.
- For Singaporean subsidiaries, the PCR is 120% of total risk requirement (i.e. capital requirement).
- For Chinese Taipei subsidiaries, the PCR is 200% of RBC ratio.
- For Canadian life entities, the baseline PCR should be stated to be “100% of the LICAT Base Solvency Buffer”. Carrying value should include surplus allowances and eligible deposits. For property/casualty entities, the PCR should be the MCT capital requirement at the target level.
- For South Africa subsidiaries, the PCR is 100% of the SAM SCR.
- For any entities that cannot be mapped to the above categories, scaling will be at 100%

61-62. Additional clarification on capital requirements where a US formula (RBC) is not required:

- For those U.S. insurers that do not have an RBC formula, the minimum capital per state law should be used as the basis for what is used for that insurer in the group capital calculation. This may differ from what U.S. Risk-based Capital (RBC) would require. It is more reflective of the regulatory view of risk in the group context. The following requirements should be used in other specified situations where an RBC does not exist:
- **Mortgage Guaranty Insurers:** The minimum capital requirement shall be based upon the NAIC’s requirements set forth in the Mortgage Guaranty Insurance Model Act (#630).
- **Financial Guaranty Insurers:** The minimum capital requirement shall be based upon the NAIC’s requirements set forth in the Financial Guaranty Insurance Guideline (Guideline 1626), specifically considering Section 2B (minimum capital requirements) and Section 3 (Contingency, Loss and Unearned Premium Reserves) and the other requirements of that guideline that impact capital (e.g. specific limits).
- **Title Companies:** The minimum capital requirement shall represent ~~23~~300% of the required level of reserves carried by the insurance company.
- **Other Companies:** A selected basis for minimum capital requirements derived from a review of state laws. Where there is a one-off treatment of a certain type of insurer that otherwise would file RBC (e.g., HMOs domiciled in California), the minimum capital required by their respective regulator could be considered in lieu of requiring the entity to complete an RBC blank
- **Captives-** US insurers that have captives should complete the applicable RBC formula regardless of whether the captive is required to complete it in their captive state. The amounts input into RBC by the captive shall be based upon the actual assets and liabilities utilized in the regulatory reporting used by the captive. Captives used exclusively for self-insurance

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(either by US life insurers or any other type of insurer) or insurance provided exclusively to its own employees and/or its affiliates, should not complete an RBC calculation and the entire entity should be treated as non-insurers and receive the same charge as a non-regulated entity.

62.63. Non-insurance Financial Entities Subject to a Specified Regulatory Capital Requirement:

- All banks and other depository institutions – the unscaled minimum required by their regulator. For U.S. Banks that is the OCC Tier 1 or other applicable capital requirement. This is understood to be consistent with how the Federal Reserve Board would apply its Building Block Approach.
- Any other financial entity that is subject to a specified regulatory capital requirement will bring that requirement in the GCC at the first level of regulator intervention (if applicable).
- This differs from what U.S. Risk-based Capital (RBC) would require. It recognizes the sectoral regulator's view of risk for a particular financial entity type. It is more reflective of risk in the group context.

63.64. Non-insurance Financial Entities NOT Subject to a Specified Regulatory Capital Requirement:

- All asset managers and registered investment advisors and all other financial entities as defined in Section II.- Capital required by their sectoral regulator. If no specified capital requirement, then use the capital calculation specified below based the level of risk assigned to the entity by applying the material risk principles defined in Section II herein. However, asset managers and investment affiliates (not qualifying the be treated as non-financial entities per paragraph 9, in Section II herein) will be reported at either medium or high risk. In certain cases, these entities may be subject to a layer of regulation (e.g. S.E.C. or FINRA) but are not generally subject to a specified capital requirement.

High Risk: 10% x 3-year average revenue

DRAFTING NOTE: a Basel Charge of 15% will be used for the IAIS ICS

Medium Risk: 5.0% x 3-year average revenue. This represents Basel charged operational risk charge

Low Risk: 2.5% x 3-year average revenue

DRAFTING NOTE: Medium risk could be used as a starting point while the stratified methodology is further developed

64.65. Other Non-Insurance, Non-Financial Entities with Material risk

- Non-insurance, non-Financial Entities may not be as risky as Financial Entities. For entities not owned by RBC filers or other entities where there is a regulatory capital charge for the

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entity in the capital formula, use an equity charge of 10.56% (post tax) for predominantly life insurance groups 9.544% for predominantly P/C insurance groups and 3.5% for predominantly health insurance groups x BACV. If the entity is not subject to a capital charge or is included in the capital charge of another financial entity, then enter zero in Column 1 and the charge specified in this paragraph in Column 2. These factors are based on average after covariance RBC charges for the respective insurer types and are calibrated at 2300% x ACL RBC. This is meant to be consistent with how the entity would be treated if owned by an RBC filer while recognizing that the entity may be excluded from the GCC if it does not pose material risk to the insurers in the group.

Non-insurance / non-financial entities owned by RBC filing insurers (or owned by other entities where a regulatory capital charge applied to the non-insurance / non-financial affiliate) is will remain in the Parent's capital charge and reported at that value in Column 1. but will be reported as zero in Column 2. These non-financial entities may not be excluded from the GCC.

One additional informational capital calculation for all non-financial entities will be applied using current year gross revenue from the Inventory B, Column 12 with the calculation occurring and results available in the Calc 2 Tab as follows:

5% of reporting year gross revenue based on a medium level risk for a financial entity.

65.66. Non-operating Holding Companies

- Non-operating holding companies will be treated the same as other non-insurance / non-financial entities with material risk. Unless reported on a grouped basis (see paragraph 52, above), for purposes of applying the capital calculation, the carrying value of stand-alone positive valued and negative valued non-operating holding companies will be netted. If the net value is zero or less (floored at zero for purposes of applying a charge), the charge applied will be zero. If the filer chooses to designate the non-operating holding company as a non-insurance / non-financial entity without material risk and requests exclusion, then no allowance for debt issued by that holding company may be included in the calculation.

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INVENTORY C - Capital Calculation to be Applied					
Parent Entity	Entity	Inv B, Column 1	Inv B, Column 2	Inv C, Column 3	Parent Entity Line
U.S. RBC filer	U.S. RBC filer	RBC ACL (excl. op Risk) x 3	RBC ACL x 3	RBC ACL (excl. op Risk) x 3	
U.S. RBC filer	Other U.S. Insurer	Per RBC	Per GCC Entity Instructions	Per RBC	
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per RBC	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Per RBC	
U.S. RBC filer	Financial w/o Capital Reqmt	Per RBC	12% x 3-year avg revenue	Per RBC	
U.S. RBC filer	Non-Financial	Per RBC	No entry Required	No entry Required - Do not de-stack	
Other U.S. Insurer	U.S. RBC filer	Zero	RBC ACL x 3	Zero	
Other U.S. Insurer	Any Other Entity Type	Zero	Per GCC Entity Instructions	Zero	
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Capital Reqmt	RBC ACL x 3	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Capital Reqmt	Per GCC Instructions	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Capital Reqmt	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Capital Reqmt	12% x 3-year avg revenue	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Capital Reqmt	No entry Required	No entry Required - Do not de-stack	
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Zero	RBC ACL x 3	Zero	
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Zero	Per GCC Entity Instructions	Zero	
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Zero	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Zero	
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Zero	12% x 3-year avg revenue*	Zero	
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Zero	Per GCC Instructions*	Zero	

* Subject to grouping exception in GCC instruction

Capital Calculation Adjustments:

- [Inv C Col 3] Investment in Subsidiary** – Enter an adjustment to remove the required capital of the directly owned subsidiary(ies) from parent’s required capital. The capital requirement to be removed should be the capital requirement carried by the Parent from which the entity is being de-stacked (i.e. the value reported in Column 1 in Inventory Section C adjusted for ownership percentage). Thus, there will be no adjustment to the Parent’s value in this column for entities that are reported at zero value by the parent. This is intended to prevent double counting required capital when regulated entities are stacked. [Example: When de-stacking an RBC filer from another RBC filer, the amount entered on the Parent line would be the RBC of the subsidiary. When de-stacking financial entities that are subject to diversification in a capital formula (e.g. RBC) the amount entered on the Parent line is the post-diversified capital requirement as calculated by the preparer (which is also the amount to be reported for the de-stacked entity on the entity’s line. Generally the capital requirements for Schedule A and BA affiliates and other non-financial affiliates will remain in the capital requirements of the Parent insurer and not entered in this column, except that the capital requirements for any financial entity reported in a Parent’s Schedule A and BA, any financial entity indirectly owned through another Schedule A or BA affiliate listed in Schedule 1 and in this section should be entered in this column in the row of the entity that directly or indirectly owns that Schedule A and BA affiliate so that the parent entity may eliminate double counting of that capital requirement capital which will now be reported by the stand-alone Schedule A or BA affiliate listed in the inventory. For indirectly owned Schedule A and BA financial entities, only the capital requirements for that entity will be included in this column and the remaining capital requirement of the downstream BA Parent will remain with the Parent insurer. Similarly the capital requirement for any U.S. Branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the capital requirement of the foreign insurer so that the parent entity may eliminate double counting of that capital requirement which will now be reported by the stand-alone Branch listed in the inventory. The amounts entered in this

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column for a Parent must correspond to the capital required by the parent entity which is being de-stacked from that Parent.

DRAFTING NOTE: Capital calculations for Schedule A and Schedule BA indirectly owned **financial entities** that are owned by Schedule A or Schedule BA assets are reported in the Inventory Tab affiliates and will be adjusted out of the value reported by the U.S. insurer in this column (since the non-financial direct parent Schedule A or BA affiliate is not listed in the Inventory Tab).

In the Questions and Other Information Tab, a capital requirement should be reported for the indirectly owned entity based on the insurers Schedule A or Schedule BA charge rather than a charge (which would be zero) attributable to the Schedule A or BA entity that directly owns the financial entity.

- **[Inv C Col 4] Intra-group Capital Instruments** –This column would generally be used if there is potential double counting of capital requirements (e.g. RBC charges on surplus notes purchased by an affiliated U.S. insurer from a U.S. insurer issuer).
- **[Inv C Col 5] Reported Intra-group Guarantees, LOCs and Other** –This column would generally be used if there is potential double counting of capital requirements (e.g. RBC charges on guarantees or LOCs).
- **[Inv C Col 6] Other Intra-group Assets** –This column is not intended to be used for required capital but is included in case a volunteer believes it is necessary from reporting an inaccurate required capital figure.
 - a. loans, receivables, and arrangements to centralize the management of assets or cash.
 - b. derivative transactions.
 - c. purchase, sale, or lease of assets.
 - d. Other (describe in “Questions and Other Information Tab”)
- **[Inv C Col 7] All Other Adjustments** – Include a brief explanation in the “Description of ‘Other Adjustments’” in the Questions and Other Information Tab. Use this column is for adjustments related to required capital that correspond to adjustments in Inventory B, Column 7 and in cases where a volunteer believes it’s necessary to adjust an inaccurate regulatory required capital figure [Example: RBC calculation applied as a permitted practice.

DRAFTING NOTE: Consider whether this column should be used rather than Column 2 for zero value entities.

- **[Inv C Col 8] Adjusted Capital Calculation Stand-alone capital calculation for each entity per the calculation to eliminate double counting.** This value includes the impact of permitted and prescribed practices
- Inventory D is for ‘Reference Calculations Checks’. These are calculations that can serve as checks on the reasonability/consistency of entries.

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- a. **[Inv D Col 1 – 3] Sum of Subsidiaries (Carrying Value)** – This automatically generated column calculates the value of the carrying value of the underlying subsidiaries. It is provided for reference when filling out the ‘Investment in Subsidiary’ column. This sum will often, but not always, be equal to the ‘Investment in Subsidiary’ column.
- b. **[Inv D Col 4 – 6] Sum of Subsidiaries (Calculated Capital)** – Similar to above but for calculated capital.
- c. **[Inv D Col 7-8] Carrying Value / Adj Calc Cap** – This is a capital ratio on the adjusted and unadjusted figures. Double-check entities with abnormally large/small/negative figures to make sure that adjustments were done correctly.

DRAFT

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Input 3 – Capital Instruments

66-67. Provide all relevant information pertaining to paid-up (i.e. any receivables for non-paid-in amounts would not be included for purposes of calculating the allowance) financial instruments issued by the Group (including senior debt issued by a holding company), except for common or ordinary shares and preferred shares. This worksheet aims to capture all financial instruments such as surplus notes, senior debt, hybrid instruments and other subordinated debt. Where a Volunteer Group has issued multiple instruments, the Volunteer Group should not use a single row to report that information; one instrument per row should be reported (multiple instruments issued under the same terms may be combined on a single line). All qualifying debt should be reported as follows.

67-68. Debt issued by US led groups:

- Surplus Notes – Report the outstanding value of all surplus notes in Column 8 whether issued to purchasers within or outside the group. The outstanding value of Surplus notes issued to entities outside the group and that is already recognized by State regulators and reported 100% as capital in the carrying value of U.S insurer issuers in Section B of the **inventory tab and will not be included in the additional capital allowance**. Surplus notes issued within the group generally result in double counting and will not be included in the additional capital allowance. See instructions below.
- Subordinated Senior Debt (and Hybrid Debt e.g., debt issuances that receive an amount of equity credit from rating agencies) issued – The outstanding value will be reported in Column 8. Recognition for structurally subordinated debt will be allowed to increase available capital. For purposes of qualifying for recognition as additional capital, both of the following criteria must be met:
 - a. The instrument has a fixed term (a minimum of five years at the date of issue or refinancing, 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.
 - c. “Other” Debt - The outstanding value will be reported in Column 8 and will be further described in the Other Information Tab and will be reported in a manner that is consistent with Senior Subordinated Debt as described above. Such Debt will not initially be included in the additional capital allowance for the GCC. An additional allowance of this debt as additional capital will be calculated in this Tab and reported as a sensitivity analysis in the Summary 2 Tab, subject to future determination on whether it will become part of the GCC calculation.
- Foreign Debt - Report the outstanding value of Non-U.S. senior debt issued to entities outside the group in Column 8. Debt specifically recognized by statute, regulation or accounting rule as additional capital resources by the lead jurisdiction based on contractual subordination or where a regulatory regime proactively enforces structural subordination through appropriate regulatory / supervisory controls over distributions from insurers in the group **will not be included in the calculation of an additional capital allowance** if it is already reported as

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capital in the carrying value of the issuer in Section B of the **inventory tab**. **It will be included in the calculation of an additional capital allowance if recognized by the local jurisdiction and NOT already included in the value of the issuer** in Section B of the **inventory tab**. b. Cases where the value of debt instruments issued to purchasers outside the group has not been recognized by the legal entity's insurance or other sectoral supervisor **will not be included in the additional capital allowance**.

~~68,69.~~ Please fill in columns [in Section 3A](#) as follows for all capital instruments—

- **[Column 1] Name of Issuer** – Name of the company that issued the capital financial instrument. ¹Will populate automatically from the ‘Entity Identifier’ column in this subsection’.
- **[Column 2] Entity Identifier** – Provide the reference number that was input in Schedule 1.
- **[Column 3] Type of Financial Instrument** – Select type from dropdown. Selections include Senior Debt, Surplus Notes (or similar), Hybrid Instruments and “Other” Subordinated Debt.
- **[Column 4] Instrument Identifier** – Provide a unique security identifier (such as CUSIP). ALL debt instruments must include an internal identifier if not external identifier is available.
- **[Column 5] Entity Category** – Links automatically to selection made on ‘Inventory Tab’ worksheet.
- **[Column 6] Year of Issue** – Provide the year in which the financial instrument was issued or refinanced.
- **[Column 7] Year of Maturity** – Enter the year in which the financial instrument will mature.
- **[Column 8] Balance as of Reporting Date** – Enter the principal balance outstanding as reported in the general-purpose financial statements of the issuer.
- **[Column 9] Intragroup Issuance** – Select whether the instrument was issued on an intra-group basis (that is, issued to a related entity within the group). This column will be used to remove “double counting”. This column is a dropdown box with options “Y” and “N”
- **[Column 10] Treatment in Inventory B** – Select option that applies:
 - a. **Capital** - This instrument is recognized or credited as capital in local regulatory regime and reported as part of the adjusted carrying value of the issuer and was not purchased by an affiliate— This includes the value of qualifying senior and hybrid debt instruments (if recognized as capital) and U.S. surplus notes (or similar local regime instruments) that are issued to entities outside the group recognized in the Inventory B Tab The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital.
 - b. **Liability** – This instrument is reflected by the issuer as a liability in the adjusted carrying value in the Inventory B Tab and was not purchased by an affiliate. - This

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would apply to all qualifying senior and hybrid debt issued to purchasers outside the group that is not recognized as capital by the local regulator that are issued to entities outside the group recognized in the Inventory B Tab. The value will be included in the calculation of a proxy allowance for additional capital.

- c. **Liability designation** would also apply to all non-qualifying senior and hybrid instruments and all debt categorized as “Other” issued to purchasers outside the group that is not recognized as capital by the local regulator. The value of these instruments will **NOT** be included in the calculation for the in the calculation of a proxy allowance for additional capital.
- d. **Intragroup** – This would apply to all qualifying instruments purchased by an affiliate within the group. The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital. If the financial instrument is recognized or credited as part of the issuer’s available capital in Inventory B, then an adjustment for intra-group capital instruments is made in Inventory B, Column 4 and Inventory C adjustments(if necessary to eliminate an associated capital requirement). If the financial instrument is treated as a liability by the issuer, then no intra-group capital instrument adjustment is required in Inventory B or Inventory C.
- e. The outstanding value of all non-qualifying senior and hybrid instruments and financial instruments categorized as “Other Debt” whether issued to purchasers inside or outside the group will not be included in the calculation of a proxy allowance for additional capital and no other adjustments are required in the template. However, in the unlikely event that the instrument is treated as available capital to the issuer in Inventory B, an adjustment in Inventory B, Column 4 to remove the available capital would be required.

Additional information on instruments categorized as “Other Debt” in the Type of Financial Instrument Column will require additional information to be provided in the Questions and Other Information Tab.

- **[Column 11] Intragroup Purchaser Identifier** – Enter the entity identify for the affiliate entity that purchased the instrument.
- **[Column 12] Description of Other Debt Instruments** – Provide a description of instruments designated as “Other”
- **[Column 13] Base**– This column is calculated automatically using data ON THE ENTRIES IN Columns 3, 8 and 10. It represents the amount of qualifying debt that will be used for in the calculation of a proxy allowance for additional capital.

For intra-group surplus notes, the adjustment will impact the carrying value and associated capital calculation of the purchasing affiliated entity.

- **[Column 14] Amount Down-streamed** - The total ~~reported as tracked down-streamed will be compared to the total~~ amount of gross paid-in or contributed capital and surplus reported by the insurance entities within the group as reported in Section 3C schedule 1 will be compared to the alternate subordination calculation in Section 3C. The greater value will be

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carried into the calculation for an additional capital allowance. No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

69.70. Section 3C will be auto filled

- [Column 1, Line 1] Total Paid-In and Contributed Capital and Surplus – This is the amount reported on Page 3 of the Annual Statement submitted to regulators by a U.S. insurer.
- [Column 1, Line 2] Alternate Subordination Calculation – This is the excess of qualifying debt over liquid assets reported in the consolidate financial statements [+ the carrying value of unregulated entities] held by the issuing consolidated holdco.

Commented [FL2]: Exclude this for now, but collect data.

Proxy Calculation for Additional Capital Allowance – A calculation will be made in this Tab in Section 3B that will apply 30% of available capital plus the value of all qualifying debt to become part of the proxy allowance for additional capital for qualifying senior subordinated. An additional amount of 15% of available capital plus the value of all qualifying debt will be calculated to become part of a proxy allowance for additional capital be for hybrid debt.

No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

70.71. The greater of the proxy calculation or the larger of paid in capital or alternate subordination calculation will be allowed as additional capital. However, an overall limit of no more than 75% of the total adjusted carrying value in Inventory B will be applied. Adjustments to increase available capital will be calculated from data on this page. The summary results of the components of the calculation (paid in capital and surplus, proxy calculation and limitations) are populated as titled in the calculation columns beyond Column 14. The additional capital allowance calculated for capital instruments will be shown as an “on-top” adjustment in the Summary 1 – Entity Level

71.72. **Informational Proxy calculation for “Other Subordinated Debt”** – A sensitivity analysis will be applied in a designated calculation column on this Tab and carried into the Summary 2 Tab to adjust the amount of additional capital in the proxy calculation by the amount of “Other Debt” reported in Column 8 of this Tab issued to purchasers outside the group. This informational sensitivity analysis will include an additional allowance for such debt up to 15% of available capital plus the value of all qualifying debt including qualifying “Other” Debt subject to the same limitations noted for the proxy allowance in general.

Input 4 – Analytics

72.73. The entity type information supporting analytics summarized in Summary 3 - Analytics are pulled into this tab from data or information reported in other Tabs in the GCC template. That data is exported into summaries in the Summary 3 – Analytics Tab. Only 2020 data is currently to be populated. However, it is contemplated that going forwards, data for prior years will also

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be populated such that it will provide the lead-State regulator with metrics to identify trends over time.

Input 5 - Sensitivity Analysis and Inputs

~~73-74.~~ The sensitivity analysis is calculated in the Summary 2 Tab. Most inputs for the analysis are populated from other Tabs as described below and carried into the analysis which are reported in the Summary 2 Tab. However certain analysis requires inputs from this Tab. Inputs are required in this Tab for Analysis 2, 3, 8, and 9. Sensitivity Analysis are intended to provide the lead-state regulator additional information that helps them better understand the financial condition of the group. Similar to the sensitivity analysis included in the legal entity RBC, it provides the regulator with additional information and allows them to consider “what-if” scenarios to better understand the impact of such items. The results of these analysis will not impact the GCC ratio.

- **[Analysis 1]: GCC Overall sensitivity analysis – No additional data is needed in the Tab.** The overall GCC ratio will be presented at 300% x ACL level. This calculation will increase the calculated capital for most entity types by a factor of 1.5. However, entities with existing regulatory capital requirements (e.g. foreign insurers and banks) will be reported at the same level specified in these instructions for both the GCC and the sensitivity analysis (i.e. at 100% of the jurisdictional or sectoral PCR requirements).
- **[Analysis 24]: Excluded non-insurance / non-financial entities without material risk –** No additional data is needed in the Tab. The data for entities where exclusion has been requested and the lead-State does not agree will be populated based on entries in Schedule 1B, Column 3 and data in Inventory B, Column 2 and Inventory C, Column 2. This analysis will be applied and reported in the Summary 2 Tab. It will provide the regulator with the impact of excluding non-agreed upon entities on the GCC ratio.
- **[Analysis 32 and 43]: Permitted practices –** This information shows the amount of US permitted practices as described in the Preamble of the NAIC Accounting Practices & Procedures Manual and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position and their impact on the GCC ratio.
- **Prescribed practices –** This information to be entered on this Tab shows the amount of US prescribed and prescribed practices as described in the Preamble of the NAIC Accounting Practices & Procedures Manual and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position and their impact on the GCC ratio. This analysis will be applied and reported in the Summary 2 Tab.

Permitted and Prescribed Practices - Report Values from Annual Statement Note 1 (excluding those pertaining to XXX/AXXX captives)

- a. Entity Identifier
- b. Value of permitted practice
- c. Capital Requirement attributable to permitted practice (if any)
- d. Description of permitted practice
- e. Value of prescribed practice

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- f. Capital requirement attributable to permitted practice (if any)
- g. Description of prescribed practice

- **[Analysis 54]: Foreign Insurer Capital Requirements Scaled** – No additional data is needed in the Tab. This information shows the amount of foreign insurer capital calculations scaled by applying scalars using the Excess Relative Ratio approach at a 200% x ACL RBC calibration level at 100% of full value for all non-U.S. jurisdictions where scalar data is available (See Appendix 1). The sensitivity analysis allows the state to understand the impact of scaling on the GCC ratio. This information is populated from the Scalar Tab. This analysis will be applied and reported in the Summary 2 Tab.
- **[Analysis 65]: Debt Classified as “Other”** – No additional data is needed in the Tab. The analysis data will be populated from the Capital Instruments Tab and the analysis and will be applied and reported in the Summary 2 Tab.
- **[Analysis 76]: Alternative capital Calculation for Financial Entities without Regulatory Capital Requirements** – No additional data is needed in the Tab. The values reported will represent the alternative values for capital calculation that is being captured in the template. The data will be populated from Schedule 1 and Inventory B and the analysis will be applied and reports in the Scaling Non – Insurance Tab (Calc 2)
- **[Analysis 87]: Alternative capital Calculation for Non-Financial Entities** - No additional data is needed in the Tab. The values reported will represent the alternative values for capital calculation that is being captured in the template. The data will be populated from Schedule 1 and Inventory B and the analysis will be applied and reported in Scaling Non – Insurance Tab (Calc 2).

Commented [FL3]: May consider deleting if consensus is reached on treatment of these entities

74.75. **[Analysis 98]** For Captives other than XXX/AXXX, all other US captives shall 1) make an asset adjustment similar to that described below;

Asset Impact

75.76. For the asset impact, it is ONLY required for the assets included in a captive or an entity not required to follow the statutory accounting guidance in the NAIC *Accounting Practices & Procedures Manual*. It is not required for assets for those groups that retain such business in a non-captive traditional insurance company(ies) that is already required to follow the NAIC *Accounting Practices & Procedures Manual*. Please note, variations for state prescribed and permitted practices are captured in the separate sensitivity analysis.

76.77. The asset impact amount shall be determined based upon a valuation that is equivalent to what is required by the NAIC *Accounting Practices & Procedures Manual* (NAIC SAP). For this purpose, “equivalent” means that, at a minimum the listed adjustments (as follows) be made with the intent of deriving a valuation materially equivalent to what is required by the NAIC *Accounting Practices and Procedures Manual*, however, without requiring adjustments that are overly burdensome (e.g. mark-to market bonds used by some captives under US GAAP, vs full SAP that considers NAIC designations). To be more specific, the asset impact shall be developed by accumulating the impact on surplus because of an accumulation of all the following in paragraphs 79 and 80 combined. Please note that Letters of Credit or other financial instruments that operate in a manner like a letter of credit, which are not designated as an asset under either

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NAIC SAP or US GAAP and are required to be adjusted out of the available assets (i.e. the asset reduction is recorded as a negative figure in the template).

~~77.~~78. To achieve the above, accumulate the effect of making the following impact and record as a negative figure in the template, an asset adjustment for all the following explicit assets not allowed to be admitted under NAIC SAP:

~~78.~~79. Assets specifically not allowed under NAIC *Accounting Practices and Procedures Manual* in accordance with paragraph 9 of *Statement of Statutory Accounting Principles No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*:

- SSAP No. 6—*Uncollected Premium Balances, Bills Receivable for Premiums, and Amounts Due From Agents and Brokers*
- SSAP No. 16R—*Electronic Data Processing Equipment and Software*
- SSAP No. 19—*Furniture, Fixtures, Equipment and Leasehold Improvements*
- SSAP No. 20—*Nonadmitted Assets*
- SSAP No. 21—*Other Admitted Assets* (e.g., collateral loans secured by assets that do not qualify as investments are nonadmitted under SAP)
- SSAP No. 29—*Prepaid Expenses*
- SSAP No. 105—*Working Capital Finance Investments*
- *Expense costs that are capitalized in accordance with GAAP but are expensed pursuant to statutory accounting as promulgated by the NAIC in the Accounting Practices and Procedures Manual (e.g., deferred policy acquisition costs, pre-operating, development and research costs, etc.);*
- *Depreciation for certain assets in accordance with the following statutory accounting principles:*
 - SSAP No. 16R—*Electronic Data Processing Equipment and Software*
 - SSAP No. 19—*Furniture, Fixtures, Equipment and Leasehold Improvements*
 - SSAP No. 68—*Business Combinations and Goodwill*
 - *The amount of goodwill of the SCA more than 10% of the audited U.S. GAAP equity of the SCA's last audited financial statements*
 - *The amount of the net deferred tax assets (DTAs) of the SCA more than 10% of the audited U.S. GAAP equity of the SCA's last audited financial statements.*
 - *Any surplus notes held by the SCA issued by the reporting entity*

~~79.~~80. In addition, record as a negative figure, an asset impact for any assets that are not recognized as an admitted asset under the principles of SSAP No. 4—*Assets and Nonadmitted* including:

- *Letters of credit, or other similar instruments, that operate in a manner like a letter of credit and therefore do not meet the definition of an asset as required under paragraph 2.*

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- *Assets having economic value other than those which can be used to fulfill policyholder obligations, or those assets which are unavailable due to encumbrances or other third-party interests should not be recognized on the balance sheet and are therefore considered nonadmitted.*
- *Assets of an insurance entity pledged or otherwise restricted by the action of a related party, the assets are not under the exclusive control of the insurance entity and are not available to satisfy policyholder obligations due to these encumbrances or other third-party interests. Thus, such assets shall not be recognized as an admitted asset on the balance sheet.*
- **[Analysis 109]: Other Regulator Discretion** – This analysis is designed to reflect other regulator adjustments including for transactions other than XXX / AXXX reinsurance where there are differences in regulatory regimes exist and there is a desire to fully reflect U.S. Statutory Accounting treatment or to reflect the lead-states view of risk posed by financial entities without specified regulatory capital requirements or risk posed by non-insurance / non-financial entities that have been included in the GCC. This will be a post-submission item completed by the lead-state regulator. Enter the following information here:
 - a. Entity Identifier
 - b. Amount of adjustment
 - c. Description of regulatory issue

DRAFTING NOTE: This Column may also be completed by the filer after advance consultation with the lead-State regulator.

Input 6 – Questions and Other Information

90.81. This tab provides space for participants to describe or provide greater detail for specified entries in other tabs (as noted in the instructions for the columns in those tabs) or additional relevant information not captured in the template. Examples include the materiality method applied to exclude entities in Schedule I; adjustments for intra group debt, description of permitted practices; scalars proposed / supporting information for jurisdiction without a prescribed scalar; and adjustments to available capital or capital calculations that are included in the “other adjustment” column in the Inventory Tab. Specified items are included in the Tab. Other information that the filer believes is relevant should be added freeform in this tab.

Information or Detail for Items Not Captured in the Template

- Materiality Standard for Non-Financial entities - Describe the methodology used to “exclude” non-financial entities as not posing material risk.
- Intercompany Guarantees– Provide requested information

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- a. Entity Identifier issuing the guarantee
- b. Entity Identifier of entity or entities that are covered by the guarantee
- c. Indicate the notional or fixed value of the guarantee
- d. Describe the nature of the guarantee

- Capital Maintenance Agreements – Provide requested information
 - a. Entity Identifier obligated under the agreement
 - b. Entity Identifier for entity or entities that are covered by the guarantee
 - c. Indicate the notional or fixed value of the agreement
 - d. Describe the nature of the agreement

Information or Detail for Items Captured in the Template

- Value of intangible assets included in non-insurance Holding Companies – Provide the requested information for all entities designated with a holding company entity type.
 - a. Entity Identifier
 - b. Total value of intangible assets included in local carrying value column in Inventory B*
 - c. Description and amount of each intangible asset

*Auto populated

- Currency Adjustments –Provide requested information only for entities where the amount reported for an entity in Inventory B Column 2 is different than the amount in Inventory B, Column 1 due to currency conversion.

- a. Entity Identifier
- b. Currency Type reported in Inventory B Column 1 and Inventory C, column 1 (Foreign currency)
- c. Conversion rate applied
- d. Source of conversion rate applied

Commented [FL4]: Consider whether guidance on sources of conversion rates should be provided in the FAHB guidance

- Intra-group Assets - Description of Adjustments for intra-group assets reported in Inventory B, Column 7 and Inventory C, Column 7. Provide the following information:

- a. Entity Identifier
- b. Amount reported in Inventory B, Column 7*
- c. Description of adjustment

* Auto populated

- Other Adjustments - Description of adjustments reported in Inventory B, Column 8 and Inventory C, Column 8. Provide the following information:

- a. Entity Identifier
- b. Amount reported in Inventory B, Column 7*
- c. Description of adjustment

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* Auto populated

- Accounting Adjustments– Provide requested information only for entities where the amount reported for an entity in Inventory B Column 1 is different than the amount in Inventory B, Column 2 due to differences in accounting basis
 - a. Entity Identifier
 - b. Value reported in Inventory B Column 1*
 - c. Value reported in Inventory B Column 2*
 - d. Total Amount of Adjustments related to difference in accounting basis*
 - e. Nature of Adjustment (e.g. GAAP to SAP)
 - f. ~~Description and amount of the Adjustments (e.g. treatment of deferred acquisition cost; reserve valuation; treatment of intangible assets)~~

Commented [FL5]: Delete and reference in Analysis guidance

*Auto populated

- The tab also includes a listing of all Schedule A and Schedule BA affiliates along with the following information:
 - a. Parent identifier (if available) this is the same information as is included in Schedule 1 (Sch. 1B, Col 3) as would be entered for non-Schedule A / BA affiliates
 - b. Parent Name – Enter the Name of the Parent
 - c. Is Parent a Schedule A or BA Asset? - This column is only required for financial entities that are Directly owned by a Schedule A or BA Affiliate. No other downstream affiliates owned by Schedule A or BA entities need to be listed. These entities are not normally independently reported in Schedules A and BA so are extra entries.
 - d. Financial ~~or material non financial~~? (Y/N) - if the entity meets the criteria as being a financial entity, indicate with a “yes” response. A “no” response is not required for other entities listed. “Yes” entries should correspond to “yes” entries in Schedule 1(Sch. 1B, Col 17)
 - e. Carrying Value of Immediate Parent – Report the value listed in Schedule A and BA of the Parent insurer. For those cases where an indirect financial entity is reported use the value used by the direct Parent
 - f. Capital Requirement for Immediate Parent - Report the value listed in the RBC report of the Parent insurer (pre-tax where applicable). For those cases where an indirect financial entity is listed, report the value of the capital requirement attributable to the Insurer rather than the direct non-financial Schedule BA parent. The capital requirement reported in this column for the immediate Schedule BA parent should be adjusted to deduct the amount moved to Schedule 1 and Inventory C.

Calc 1 – Scaling (Insurance Entities)

81.82. All entries in this tab are calculation cells populated using data from within the tab or using data from elsewhere in the template. Scaled values for calculated capital will become part of the GCC ratio. The calculated values will be summarized by entity type in Summary 1 – Entity Level Tab. The concept of a scalar was first introduced to address the issue of comparability of

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accounting systems and capital requirements between insurance regulatory jurisdictions. The idea is to scale capital requirements imposed on non-U.S. insurers so as to be comparable to an RBC based requirement. Two approaches for scaling related to foreign insurers were presented, and others are being explored and will be reviewed. A decision on the scaling methodology to be adopted into the GCC Template will be made at the end of the review. In the interim a scalar of 100% of the jurisdictional PCR will be applied to all jurisdictions where a risk sensitive capital requirement is in place.

82.83. Information on the Excess Relative Ratio (ERR) scalar methodology will be collected and applied in the Sensitivity Analysis Tab

SEE APPENDIX 1 FOR MORE INFORMATION AND EXAMPLES ON HOW THE ERR SCALARS ARE CALCULATED.

83.84. For jurisdictions without risk sensitive capital requirements a 100% charge will be applied to adjusted carrying value.

~~Scalars developed by volunteers for jurisdictions where there is only 100% included in the Tab or which are not listed at all should not be included in this Tab. Include the scalars in the Questions and Other Information Tab along with supporting rationale for the scalar.~~

Calc 2 – Capital Calculations for Non-insurance Entities

84.85. All entries in this tab are either calculation cells using data from within the tab or using data populated from elsewhere in the template. Calculated capital for all entities except insurers will be reported in this Tab. The calculated values will be summarized by entity type in Summary 1 – Entity Level Tab.

85.86. In addition, one informational option for calculated capital for financial entities without an existing regulatory capital requirement and one informational option for calculated capital for non-financial entities will be reported in this tab. Those calculation will not be carried into the Summary 1 – Entity Level Tab and will not be part of the GCC ratio.

86.87. Only amounts for entities that the filer and the lead- State regulator agree should **not** be excluded (See Schedule 1B, Column 2) will be brought into the calculation in this Tab and Summary 1 – Entity Level. Entities where the Lead-State does not agree with the filer's request to exclude an entity will be part of the GCC ratio.

Summary 1 - Entity Level GCC Summary

87.88. Summarized results by entity type for the GCC ratio will be reported in this tab. An on top adjustment for debt allowed as additional capital will be added at the bottom of the table. All informational sensitivity analysis will be reported in Summary 2 and will not impact the GCC ratio.

Summary 2 – Informational Sensitivity Tests

88.89. Summary results for each informational sensitivity analysis described in the Sensitivity Analysis Inputs Tab will be shown here. Each sensitivity analysis will be shown on a stand-alone

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basis. It is expected that each informational sensitivity analysis will run automatically in the background and the results for each displayed in this Tab. The results for the informational sensitivity analysis will not be included in **Summary 1 - Entity Level**.

Summary 3 – Analytics

89.90. Summary results for metrics described in the Analytics Guidance **[insert attachment or appendix reference]** and utilizing data collected in the Input 4 – Analytics Tab or other Tabs in the GCC will be calculated and presented here.

Summary 4 - Alternative Grouping Option(s) (a.k.a. Cigna Illustration)

90.91. One sample alternative structure for grouping entities in the GCC calculation is displayed based on a suggested method. It can be modified, or other suggestions can be accommodated based on combining of data from **Schedule 1 and the Inventory** in to be defined ways.

This tab is intended to be an additional analytical tool. The tool summarizes the GCC based upon how a reporting entity views its organization, and provides regulators that view, to align it with regulatory information, other than what is reported elsewhere in the GCC Template, that the reporting entity has submitted such as current filings, communications, etc. In this summary view, entities are organized into like regimes and multiple entities may be grouped together, in order to create a view of capital that is easy to review and analyze within each grouping. The intent of this approach is to provide an additional analytical tool designed to enhance dialogue between the lead regulator and the company contemplated by the GCC filing. This view is transparent (no scalars, no adjustments, no de-stacking) so that financial information may be cross-walked to other financial submissions such as RBC filings.

91.92. The results are dependent on how the reporting entity populated. Input 1 - Schedule 1, Column H, [7] Alternative Grouping. For example, if you have a dozen small dental HMO businesses, you may wish to collapse the results to a single line called "Dental HMOs", by populating Input 1 - Schedule 1, Column H, [7] Alternative Grouping for each dental HMO as "Dental HMOs". Then "Right-click" and select "Refresh" to see the results with the "Dental HMOs" combined.

92.93. For your reference, the data for the Summary 4 -Grouping Alternative is from Calc 1 - Scaling (Ins. Bank) which is fed by the inputs you have made in Input 1 - Schedule 1, Input 2 – Inventory, etc.

Appendix 1 – Explanation of Scalars

93.94. The concept of a scalar is to equate the local capital requirement to an adjusted required capital level that is comparable to U.S. levels. The purpose of a scalar is to address the issue of comparability of accounting systems and capital requirements between jurisdictions. The following provides details

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on how the scalars were calculated by the NAIC, or how they are to be used when the NAIC has not developed a scalar for a country due to lack of public data.

Excess Relative Ratio Approach

94-95. Included below are various steps to be taken in calculating the excess relative ratio approach to developing jurisdiction-specific scalars. In order to numerically demonstrate how this approach could work, hypothetical capital requirements and financial amounts have been developed for Country A. Based on preliminary research that has been performed by NAIC staff, it appears that the level of conservatism built into accounting and capital requirements within a jurisdiction may differ significantly for life insurers and non-life insurers. Therefore, ideally each jurisdiction would have two different scalars based on the type of business. The example below includes information related to life insurers in the U.S. and Country A.

1. Understand the Jurisdiction’s Capital Requirements and Identify the First Intervention Level

- a. The first step in the process is to gain an understanding of the jurisdiction’s capital requirements. This can be done in a variety of ways including reviewing publicly available information on the regulator’s website, reviewing the jurisdiction’s Financial Sector Assessment Program (FSAP) reports and discussions with the regulator.

In Country A, assume that the capital requirements for life insurers are based on a capital ratio, which is calculated as follows:

$$\text{Capital ratio} = \frac{\text{Total available capital}}{\text{Base required capital (BRC)}}$$

In the U.S., capital requirements are related to the insurer’s risk-based capital (RBC) ratio. For purposes of the Relative Ratio Approach, an Anchor RBC ratio is used and calculated as follows:

$$\text{Anchor RBC ratio} = \frac{\text{Total adjusted capital}}{100\% \text{ Company Action Level RBC*}}$$

* 100% Company Action Level RBC is equal to the Total RBC After Covariance, without adjustment or 200% Authorized Control Level RBC.

- b. Similar to legal entity RBC requirements in the U.S., Country A utilizes an early intervention approach by establishing target capital levels above the prescribed minimums that provide an early signal so that intervention will be timely and for there to be a reasonable expectation that actions can successfully address difficulties. Presume that this target capital level is similar to the U.S.’s Company Action Level (CAL) event, both of which can be considered the first intervention level in which some sort of action—either on the part of the insurer or the regulator—is mandated. For simplification purposes, NAIC staff is not considering the RBC trend test in this memo.
- c. For Country A, the target capital level is presumed to be a capital ratio of 150%. That is, the insurer’s ratio of total available capital to its BRC should be above 150% to avoid the first level of regulatory intervention. Again, this is similar to the U.S.’s CAL event, which

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is usually represented as an RBC ratio of 200% of Authorized Control Level (ACL) RBC (ignoring the RBC trend test.). In the Relative Ratio approach, the Anchor RBC ratio represents the Company Action Level event (or first level of regulatory intervention) as 100% CAL RBC (instead of 200% ACL RBC), because CAL RBC is the reference point that is used to calibrate against other regimes. The Anchor RBC Ratio (Total Adjusted Capital ÷ 100% CAL RBC) tells us how many “multiples of trigger level capital” that the company holds. Conceptualizing the CAL event as 100% CAL RBC allows the consistent definition of local capital ratios that are calibrated against a “multiples of the trigger level” approach, to ensure an apples-to-apples comparison².

2. Obtain Aggregate Industry Financial Data

95.96. The next step is to obtain aggregate industry financial data, and many jurisdictions include current aggregate industry data on their websites. Included below are the financial amounts for use in this exercise.

<p><i>U.S. Life Insurers – Aggregate Data</i> Total Adjusted Capital = \$495B Authorized Control Level RBC = \$51B Company Action Level RBC = \$102B</p> <p><i>Country A Life Insurers – Aggregate Data</i> Total Available Capital = \$83B BRC = \$36B</p>
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3. Calculate a Jurisdiction’s Industry Average Capital Ratio

96.97. To calculate a jurisdiction’s average capital ratio, the aggregate total available capital for the industry would be divided by the minimum or base capital requirement for the industry in computing the applicable capital ratio. In Country A, this would be the BRC. In the U.S., this base or minimum capital requirement is usually seen as the ACL RBC, but because the Relative Ratio Approach is using 100% CAL RBC as a reference point to calibrate other regimes to, the Relative Ratio formula uses 100% CAL RBC as the baseline and the first-intervention level to calculate the Average Capital Ratio and Excess Capital Ratio. As a result, the scaled ratio of a non-U.S. company should inform regulators how many multiples of first-intervention level capital the non-U.S. company holds. Included below is the formula to calculate a jurisdiction’s industry average capital ratio:

<p><i>Calculation of U.S. Industry Average Capital Ratio – Life Insurers</i></p> <p><u>\$495B (Total Adjusted Capital)</u></p>
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While it is mathematically equivalent to use 200% ACL RBC as the denominator, the Approach is designed to use the representation of first-intervention level capital levels as the conceptual underpinning of the Relative Ratio Approach, where 100% CAL RBC is the reference point to calibrate against other regimes.

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\$102B (CAL RBC)	= 485%
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<i>Calculation of Country A Industry Average Capital Ratio – Life Insurers</i>	
\$83B (Total Available Capital)	
\$36B (BRC)	= 231%

4. Calculate a Jurisdiction’s Excess Capital Ratio

97,98. The next step is to understand the level of capital the industry is holding above the first intervention level. Therefore, to calculate a jurisdiction’s excess capital ratio, one would first need to calculate the amount of the capital ratio carried in excess of the capital ratio required at the first intervention level. This amount would then need to be divided by the capital ratio required at the first intervention level.

<i>General Excess Capital Ratio Formula</i>	
<u>Average Capital Ratio – Capital Ratio at the First Intervention Level</u>	
Capital Ratio at the First Intervention Level	

98,99. Based on the formula above and information provided in Steps #2 and #3, included below are how to calculate each jurisdiction’s excess capital ratio. Note: The first intervention level in the U.S. is defined in the Relative Ratio Approach as 100% CAL RBC, while the first intervention level in Country A is a capital ratio of 150%.³

<i>Calculation of U.S. Excess Capital Ratio – Life Insurers</i>	
485% (Average Capital Ratio) – 100% (Capital Ratio at the First Intervention Level)	
100% (Capital Ratio at the First Intervention Level)	= 385%

<i>Calculation of Country A Excess Capital Ratio – Life Insurers</i>	
231% (Average Capital Ratio) – 150% (Capital Ratio at the First Intervention Level)	
150% (Capital Ratio at the First Intervention Level)	= 54%

³ 100% CAL RBC translates to an ACL RBC level of 200%, but for conceptual purposes, the Relative Ratio Approach refers to the U.S. first intervention level as 100% CAL RBC, as 100% CAL RBC is the reference point to which the Relative Ratio Approach calibrates other regimes. In other words, 100% CAL RBC ensures that the scaled ratio of Country A results in a ratio that determines how many multiples of first-intervention level capital that the company in Country A is holding.

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5. Compare a Jurisdiction's Excess Capital Ratio to the U.S. Excess Capital Ratio to Develop the Scalar

99:100. Based on the information above, the U.S. excess capital is 385%. In other words, life insurers in the U.S. carry approximately 385% more capital than what is needed over the first intervention level. Country A's excess capital ratio is 54%. That is, life insurers in Country A carry approximately 54% more capital than what is needed over the first intervention level.

100:101. To calculate the scalar, one would divide a jurisdiction's excess capital ratio by the U.S. excess capital ratio. Therefore, the calculation of Country A's scalar for life insurers would be $54\% \div 385\% = 14\%$. Therefore, Country A's scalar for life insurers would be 14%.

6. Apply to the Scalar to the Non-U.S. Insurer's Amounts in the Group Capital Calculation

101:102. In order to demonstrate how the calculation of the scalar works, it would be best to provide a numerical example. For purposes of this memo, assume that a life insurer in Country A reports required capital of \$341,866 and total available capital of \$1,367,463. (These are the amounts previously used in a hypothetical calculation example that was discussed by the Working Group during its July 20, 2016, conference call.) As noted previously, the above information and calculation suggests that U.S. life insurers carry capital far above the minimum levels, while life insurers in Country A carry capital far closer to the minimum. Therefore, in order to equate the company's \$341,866 of required capital, we must first calibrate the BRC to the first regulatory intervention level by multiplying it by 150%, or Country A's capital ratio at the first intervention level. The resulting amount of \$512,799 is then multiplied by the scalar of 14% to get a scaled minimum required capital of \$71,792.

102:103. Further, the above rationale suggests that the available capital might also be overstated (since it does not use the same level of conservatism in the reserves) by the difference between the calibrated required capital of \$512,799 and the required capital after scaling of \$71,792, or \$441,007. Therefore, we should now deduct the \$441,007 from the total available capital of \$1,367,463 for a new total available capital of \$926,456. These two recalculated figures of required capital of \$71,792 and total available capital of \$926,456 is what would be included in the group's capital calculation for this insurer. These figures are further demonstrated below.

Calculation of Scaled Amounts for Group Capital Calculation

Amounts as Reported by the Insurer in Country A

Total available capital = 1,367,463

Minimum required capital (BRC) = 341,866

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<p><u>Calibration of BRC to 1st Regulatory Intervention Level</u></p> <p>341,866 (BRC) * 150% = 512,799</p> <p><u>Scaling of Calibrated Minimum Required Capital</u></p> <p>512,799 (Calibrated BRC) * 14% (Scalar) = 71,792 (Difference of 441,007)</p> <p><u>Scaled Total Available Capital</u></p> <p>1,367,463 (Total Available Capital) – 441,007 (Difference in scaled required capital) = 926,456</p>

~~103.104.~~ Given these scaled amounts, one can calculate the numerical effect on the company's relative capital ratio by using the unscaled and scaled amounts included below.

	<i>Unscaled Amounts from Table Above</i>	<i>Scaled Amounts from Table Above</i>
Total Available Capital	1,367,463	926,456
<u>Base Required Capital</u>	<u>341,866</u>	<u>71,792</u>
Capital Ratio (= TAC / BRC)	400%	1290%

~~104.105.~~ Considering the fact that life insurers in Country A hold much lower levels of capital over the first intervention level as compared to U.S. life insurers, the change in the capital ratio from 400% (unscaled) to 1290% (scaled) appears reasonable and consistent with the level of conservatism that we understand is built into the U.S life RBC formula driven primarily from the conservative reserve valuation.

Draft: 11/4/20

Group Capital Calculation (E) Working Group
Virtual Meeting
October 20, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met Oct. 20, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair (CT); Kim Hudson and Susan Bernard (CA); Philip Barlow (DC); Carrie Mears (IA); Susan Berry and Vincent Tsang (IL); Roy Eft (IN); John Turchi and Christopher Joyce (MA); Steve Mayhew (MI); Barbara Carey (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Bill Carmelo and Bob Kasinow (NY); Dale Bruggeman (OH); Trey Hancock (TN); Melissa Greiner and Kimberly Rankin (PA); Jamie Walker (TX); David Smith (VA); and Amy Malm (WI).

1. Discussed Further Proposed Changes to Model #440 and Model #450

Commissioner Altmaier stated that the purpose of this conference call is to discuss the comments received (Attachment Three-B1) on the Working Group's previously exposed proposed changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). He stated that his intent is for the Working Group to adopt revisions to each of these models during a Nov. 4 conference call of the Working Group and subsequently present these to the Financial Condition (E) Committee during a Nov. 19 conference call of the Committee. To achieve that, the Working Group would make final decisions today and expose a final fatal flaw version of each model that incorporates the decisions made during the conference call.

a. County Mutual Language

Commissioner Altmaier stated that the Working Group discussed county mutual language on its Sept. 18 conference call, and he noted that according to NAIC staff, a few states had already agreed to replacement language to address this issue more broadly through a single state exemption. The Working Group did not object to incorporating revised language proposed by the National Association of Mutual Insurance Companies (NAMIC) to address this issue.

b. Limited Filing for Groups with RBC Filing as UCP

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) summarized the ACLI comments on this issue, noting how NAIC staff have repeatedly said the group capital calculation (GCC) should be agnostic to corporate structure, but the exemption in Section 21(B)(1) seems to turn mostly on corporate structure. She noted that if the GCC is supposed to be agnostic to corporate structure, it is undesirable from the ACLI's perspective to potentially exempt large, complex, internationally active groups from having to complete the entire GCC process simply because of the group's corporate structure. Smaller mutual insurance companies can still avail themselves of the exemption in paragraph 21A of Model #450. Ms. Gomez-Vock noted that while it is true that aspects of the GCC and legal entity risk-based capital (RBC) have come closer together—a result the ACLI advocated for and supports—there are still key differences between the two, the most significant being the GCC's calibration to 300% Authorized Control Level (ACL) instead of 200% ACL RBC. She stated that it is not clear to the ACLI why the difference in corporate structure justifies using 200% ACL for mutual groups and 300% for groups with a holding company. She noted that perhaps more importantly, the GCC process consists of much more than a simple ratio or inventory. The NAIC has created a thoughtful tool that provides a rich array of analytical data that is provided in the GCC template that may be lost if a group is permitted to file a limited group capital report. She stated that the ACLI believes that the information in the scheduling and adjustments is just as meaningful whether the group's ultimate controlling person (UCP) is an insurer or holding company. She stated that the ACLI agrees with the state insurance regulators and staff who have said the GCC provides more value than the result. Because they do not know yet what the limited filing comprises, it is very difficult to feel reassured that all of the valuable analytical information from the GCC schedules will be compressed into the limited filing, which NAIC staff had previously indicated would be limited to Schedule 1 and the analytics. Ms. Gomez-Vock stated that if the value of the GCC is the analytical data, not just a numerical ratio, it is hard to understand why this additional information that is contained in each of the GCC's schedules is so valuable for some groups and not for others. Therefore, the ACLI opposes the limited filing exemption for large and complex mutual companies that is provided in Section 21B(1).

Jonathan Rodgers (NAMIC) noted NAMIC's appreciation for changes to Model #440 reverting back to prior versions at commissioners' discretion over exemptions and the limited filing. However, he stressed that there should be a materiality concept in Section 21(B)(1) of Model #450. He stated that NAMIC recognizes the allowance for the limited filing in this

paragraph and therefore a materiality concept. He noted that to the extent that the Working Group was going to limit this paragraph, NAMIC would support maximum flexibility.

Mr. Bruggeman stated that from the beginning, but especially after the first round of field testing, he concluded that the RBC of a UCP is a reasonable proxy for the GCC, especially if a bank was not involved. He stated that this also considers the fact that the GCC is a tool and not a comparison of one group to the next. He stated that he could appreciate the perspective that seems to come out from the ACLI basis for removing this paragraph on the basis that the NAIC should not do anything that reduces the credibility of the GCC. He stated that on that basis, if the paragraph is modified to prevent the exception within the paragraph to apply to internationally active insurance groups (IAIGs) as defined within Model #440 and there is some additional communication with the other affected insurers, the paragraph could be modified and still achieve its original objective. He noted that to the extent that the paragraph is removed, it would seem as though the entire Section 21B could also be removed.

Mr. Smith made a motion, seconded by Mr. Carmello, to remove paragraph 21B(1) of Model #450. The motion passed with no votes from Illinois, Ohio, Texas, and Washington, DC.

c. Subgroup Reporting Details

Dan Daveline (NAIC) indicated that some comments suggested that several issues arise, which have not been addressed, if subgroup reporting is adopted. However, he noted that NAIC staff disagreed and suggested language that could be added to the extent that the Working Group concludes that subgroup reporting may be required in certain situations. The Working Group agreed with the NAIC staff suggestion, and the proposed language will be considered if the Working Group concludes that subgroup reporting may be required.

d. Reference in Communication

Mr. Daveline noted that one comment suggested modifying the language that referred to the GCC as an acceptable international capital standard (ICS) in proposed required communication from certain non-U.S. group-wide supervisors in certain situations. He noted that NAIC staff disagreed primarily on the basis that the proposed language does not refer to the GCC as it is referred to in Model #440 and Model #450. The Working Group agreed with NAIC staff.

e. Communication of Non-Reciprocal Jurisdictions

Bill Schwegler (Transamerica) summarized Transamerica's comments related to limiting the attestation to U.S. groups within Model #450. Mr. Daveline stated that he does not understand the proposed issues given that the paragraph referenced within Model #450 specifically pertains to a section to allow a non-U.S. group to be exempt from the GCC. The Working Group agreed with NAIC staff.

f. Enterprise Risk Definition

Mr. Daveline noted that one comment suggested developing a new definition for enterprise risk specific to the GCC. He stated that he disagreed with the suggestion, noting that the current definition was developed for the Form F and was intended to be broad, and the existing definition is quite accurate with respect to the GCC. The Working Group agreed with NAIC staff.

g. Exemptions

Mr. Daveline noted that one comment regarding the exemptions suggested that the exemptions in Model #440 be specifically referenced in Model #450 or included verbatim in Model #450. He suggested that NAIC staff disagreed with the comment on the basis that it is stylistic and inconsistent with the way most NAIC models are structured. The Working Group agreed with NAIC staff.

h. Subgroup Reporting Reciprocity

Commissioner Altmaier stated that a conference call between NAIC staff and the Federal Insurance Office (FIO) took place last week that has an impact on the subgroup reporting issue, and he asked NAIC staff to summarize those aspects of the discussion. Dan Schelp (NAIC) stated that on Oct. 14, immediately before the scheduled conference call of the Working Group, senior NAIC staff had a conference call with representatives of the FIO and the U.S. Trade Representative (USTR) discussing the proposed changes to Model #440 and Model #450 regarding the subgroup GCC. He stated that

NAIC staff had similar calls with the FIO and USTR during the drafting of the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786). He described how these calls are usually confidential, but the FIO and USTR did not seek to exercise any authority over the states on the call. He noted that NAIC staff took away several concerns about the subgroup GCC after the call.

Mr. Schelp provided a summary of each concern. First, Article 4(b) of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (EU Covered Agreement) specifically permits a subgroup GCC to be exercised by the host supervisory authorities, which in this case would be the U.S. states. However, it further provides that such a subgroup GCC should be exercised “where appropriate.” There is some concern that requiring a subgroup GCC in those instances, where another jurisdiction subject to the EU Covered Agreement places a subgroup capital requirement on U.S. insurance companies, would not in and of itself be considered to be “appropriate.” The EU Covered Agreement itself does not provide any guidance on what an appropriate reason would be to require a subgroup GCC. Second, NAIC staff came away with concerns on the process under the EU Covered Agreement for resolving disputes between the U.S. and the EU. Specifically, Article 7 of the EU Covered Agreement establishes a joint committee to provide the parties with a forum for consultation on the administration of the EU Covered Agreement and its proper implementation. There is some thought that a lead state commissioner should first consult with federal and foreign authorities before unilaterally applying a subgroup GCC. However, neither the NAIC nor any of the states are members of the joint committee, nor do NAIC staff know in practice how effective the joint committee will be in resolving any disputes. NAIC staff think it might be worthwhile for the Working Group to consider incorporating a consultation process into its subgroup GCC; although, that process would not preclude a lead state commissioner from exercising a subgroup GCC, where appropriate.

Jack Armstrong (Liberty Mutual) indicated that Liberty Mutual supports the comments from the Coalition group of companies on subgroup reporting and reciprocity, and he believes that still holds true. He stated that there remains an opportunity to reconfirm the EU Covered Agreement and an agreement reached in Abu Dhabi to recognize the U.S. group supervision regulatory scheme at a level equal to any other in the world. He noted that Liberty Mutual believes the EU Covered Agreement allows state insurance regulators to continue with the proposed language because it does use the term “where appropriate.” He stated that the proposed language provides for a process to help decide as to what would be appropriate. He described how the current proposed language is a broader exemption than would be necessary, and it carves back in a very precise way what that circumstance would be. He stated that Liberty Mutual supports the proposed language to make the process as transparent as possible.

Kimberly M. Welsh (Reinsurance Group of America—RGA), speaking on behalf of the Coalition of groups, provided her responses to the three issues raised from the conversation with the FIO with respect to exercising supervision where appropriate for a couple of reasons. The requirement to file the GCC has been set up in Model #440 to apply to every group, subject to certain exemptions, where almost all exemptions are based on reciprocal treatment. Therefore, the authority is designed to provide the state with the ability to engage in group supervision, and to suggest that states authority is not appropriate would be incorrect. Ms. Welsh added that the language in the EU Covered Agreement clearly leaves things up to the state insurance regulator to determine, where it is appropriate, where the only limitation is with respect to worldwide group reporting. With respect to subgroup reporting, it is clearly left up to the state insurance regulators as to whether they want subgroup supervision. Therefore, it is within the states’ rights whether to apply subgroup supervision. Ms. Welsh noted that like how the proposed model allows exemptions for those jurisdictions that respect the GCC, the RGA supports extending to subgroup reporting.

Ms. Welsh noted that with respect to exercising subgroup reporting over one group but not another, the proposed process ends with the individual lead state commissioner making the final decision but in consultation with other state insurance regulators through the NAIC. She noted that under the Coalition’s proposed process, to the extent that a U.S. group is in a hazardous financial condition, there may be a reason that the non-U.S. regulator may want to obtain subgroup reporting group capital. She described how the process requires the non-U.S. jurisdiction to be consulted, along with the U.S. state, because the goal is to ensure that there is reciprocal treatment and mutual recognition of the GCC and not just both parties requiring group capital, as ideally there should only be one group capital. With respect to the joint committee, the Coalition has no objection to the NAIC consulting with the joint committee. Ms. Welsh noted that the Coalition considered including the Federal Insurance Office in the proposed process, but because the ultimate decision is left to the lead state commissioner, it did not seem appropriate. She noted that she believes it would be entirely appropriate to consult with the FIO if the regulator felt the joint committee could help with this process, but she stated that she would hate to see the NAIC not involved in the process, so that is a decision to be made by state insurance regulators.

Ms. Gomez-Vock stated that the ACLI continues to support the subgroup reporting reciprocity provision in Model #440, and at the same time, it believes that such a process must be supported by a transparent process. She emphasized that the ALCI's views on this matter have not changed since it submitted its comment letters.

Mr. Schwegler stated that with respect to the EU Covered Agreement, Transamerica previously identified some issues that have now been seconded by the FIO. He suggested that these complications create an incentive to remove the provision. With respect to Transamerica's comments, he highlighted the risk that state insurance regulators are taking by including this provision, and it is important to take a step back and ask what messages state insurance regulators are sending to other jurisdictions and what the response is going to be from other jurisdictions. He discussed the relationship risk, and he described the current proposal as a clearly retaliatory measure. He stated that where subgroup reporting exists, it is based upon policyholder protection, and he noted that Transamerica is not aware of any situation where there is systematic discrimination. He also discussed what he referred to as retaliatory risk where U.S. actions, when not gone unnoticed, could affect a decision that leads to the rejection of the aggregation method (AM) at the International Association of Insurance Supervisors (IAIS) or set up additional burdens for U.S. groups. He described his view that the U.S. has never agreed to be subject to an evaluation and has never agreed to be subject to the global standard of the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame). He suggested that the only reason that non-U.S. jurisdictions may choose to rely on the U.S. is this retaliatory threat. He emphasized that in his opinion, the risks vastly outweigh the benefits. He noted that a prior version of the proposed changes included "may" instead of "shall" in terms of action to be taken by the lead state commissioner, and he suggested utilizing some of the risks with the exception of the reputational risk

Joseph B. Sieverling (Reinsurance Association of America—RAA) stated that the RAA continues to oppose subgroup reporting in all jurisdictions, and the proposed subgroup reporting provisions should not be included in Model #440 and Model #450. However, if it is included the RAA believes it should be subject to lead state commissioner discretion; although, its U.S. members do support the proposal. Mr. Sieverling stated that the RAA is not convinced that subgroup capital requirements do anything to improve group supervision, and they only have a limited benefit when it comes to protecting policyholders. He described how the proposed subgroup reporting provision appears to be designed to provide leverage against another jurisdiction, which is not helpful and could have unintended effects. He stated that the RAA is concerned about this becoming part of an Accreditation Standard, as it sets a bad precedent given that those standards exist to protect policyholders. He stated that it is also unclear that it will have the effect of other supervisors giving up their authority to require such reporting. Finally, he stated that the proposal creates a complicated process for developing and maintaining such a list going forward. EU Covered Agreement and its allowances for subgroup reporting where appropriate, he asked state insurance regulators if appropriateness is based upon how a non-U.S. jurisdiction treats a U.S. company, and it does not appear to be tied to policyholder protection.

Matthew T. Wulf (Swiss Re) reiterated Swiss Re's previous comments that it opposes this proposed requirement and agrees with many of the same points as the RAA. He emphasized its disagreement with this being a mandatory requirement and should if retained be discretionary.

Paige S. Freeman (Munich Re) stated that Munich Re agrees with the points made by Transamerica, the RAA and Swiss Re, as states already have the tools they need to do what needs to be done. She stated that if the states decide to include such a provision, it should involve lead state commissioner discretion where appropriate; moreover, states should try to work out the issues diplomatically, as opposed to being required to retaliate.

Bruce Byrnes (Berkshire Hathaway) emphasized that this is not retaliatory, and it is simply putting jurisdictions on the same page since Europe already requires subgroup reporting. The proposal suggests that a process be set up where the NAIC could evaluate these things and a state could utilize it to the extent that they deem that appropriate. He noted that the FIO has been aware of this issue for some time, and he wondered if it had made any commitments to the NAIC, or at least raised it at the joint committee, or what action it intends to take if the states take no action.

Ian Adamczyk (Prudential) noted that Prudential submitted a comment on this issue at the onset of discussions, and it echoed some of the same points made by Transamerica on ceding authority. One of its comments was that it did not see the need to exempt any group from this requirement where the state insurance regulator deems it appropriate. Mr. Adamczyk described how other jurisdictions have retained such authority, and it goes both ways. He agreed with the comments made by Ms. Welsh and Mr. Byrnes.

Joe Engelhard (MetLife) noted it is important to distinguish between what is appropriate and the states authority, and without this language, no such ability would exist.

Ms. Welsh stated that Subsection (e) is no different than Subsection (c) or (d), which are also based upon reciprocity, but that with respect to the broad discretion proposed by some others, it will result in a lot of inconsistency where there is a potential for reputational concern, which could result in unfair treatment.

Ms. Belfi discussed the trust that had been built up over the years between the U.S. and other jurisdictions, and regulator do not want that trust to go away, but this is a tool of last resort. Coordinated efforts through colleges and transparent conversations would hopefully resolve any issues that there may be, but some authority needs to exist. Ms. Belfi discussed that in the beginning she supported commissioner discretion, but she now recognizes that the state inconsistency issue could be a problem, and she supports retaining the word “shall.” She stated that CT, NE and NJ had developed proposed language that would address each of the three issues previously identified. Mr. Hudson indicated that California also has some language that would address some of the issues raised, and he read the proposed language. Ms. Belfi read the CT, NE and NJ proposed language. Ms. Mears stated that Iowa supports the discretion and the Californian language, but it opposes the retaliatory language because there may be examples of where it is appropriate. She stated that Iowa also has concerns about how the parties would be brought into the process because the two affected states may be different. Ms. Walker noted that if state insurance regulators have concerns about whether other parties are operating in compliance with the terms of the EU Covered Agreement, the joint committee process should be utilized, not baking it into a statutory provision. Mr. Barlow requested clarification on the phrase “competitiveness of the marketplace” in the proposed language. Ms. Belfi responded that she believes that if a non-U.S. jurisdiction required implementation of another capital standard at the local level and additional capital was required, there could be fairness and market issues. Mr. Schrader agreed with Ms. Belfi’s response. Mr. Kasinow stated that he prefers the California approach. Ms. Belfi asked Ms. Walker how this would be resolved since the states are not part of the joint committee. Ms. Walker responded that the federal government has adopted this EU Covered Agreement; and while it may not be liked, as a state, if she does not believe she needs that subgroup reporting, Texas would not want to receive such reporting. She stated that she hopes once the GCC is implemented, state regulators can model the behavior they prefer with other jurisdictions as opposed to behavior that they oppose.

Mr. Hudson made a motion, seconded by Ms. Obusek, to replace the current paragraph in Section 4L(2)(e) of Model #440 with revised language that reads, “[n]otwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.” The motion passed with no votes from Connecticut, Massachusetts, Missouri, Nebraska, New Jersey and Tennessee.

Commissioner Altmaier stated that the revised language from the decisions made on the call will be exposed until Oct. 30.

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

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September 29, 2020

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

Kathy Belfi
Vice Chair, NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: Proposed Amendments to Insurance Holding Company System Regulatory
Act and Regulations – September 18, 2020 Exposure Drafts

Dear Chair Altmaier and Vice Chair Belfi:

Liberty Mutual appreciates the opportunity to comment on the September 18, 2020 exposure drafts of Models 440 and 450, the NAIC Insurance Holding Company System Model Act and Regulation.

Our comments focus on the amendments to Section 4L of Model 440 that introduce and implement Subsections 4L(2)(e) and 4L(2)(f) and the concept of “subgroup reciprocity” expressed in these provisions in connection with application of the Group Capital Calculation (GCC).

Liberty Mutual joins with the stance in favor of the proposed language taken by the group of U.S. companies in their letter of August 24, 2020. We believe the proposed language appropriately conditions application of the exemptions to the filing of the GCC by non-U.S. groups on the mutual recognition of group supervisory regimes across jurisdictions and, most importantly, to recognition of the GCC.

We believe this language is consistent with the structure of the U.S. approach to group capital regulation and the notion that there should be one single group capital supervisory system for a global insurance group. Moreover, it is fully within the spirit and the letter of the Covered Agreement and the similar agreements between the NAIC and other Reciprocal Jurisdictions. As such, we believe non-U.S. regulators should not object to the proposed amendments.

These provisions provide a reasonable safeguard for U.S. groups against over-reaching regulation in other jurisdictions, while preserving the ability of foreign regulators to apply local financial solvency standards to operating units domiciled or doing business in their jurisdictions. Accordingly, we believe the proposed approach is well balanced and properly respectful of the authority of non-U.S. jurisdictions, while ensuring that U.S. groups are subject to only one group capital supervisory regime.

However, we recommend the proposed language be further revised to delete the discretionary language and make mandatory the treatment of U.S. subgroups set forth in the amendments, once the NAIC has determined that a Reciprocal Jurisdiction, or other jurisdiction that recognizes and accepts the GCC, should be subject to subgroup reciprocity. Doing so will strengthen the import of these provisions by assuring that they are consistently applied among the states.

Thank you for your consideration.

Yours truly,

Jack D. Armstrong

cc: Dan Daveline



October 5, 2020

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

via email to ddaveline@naic.org

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

Allianz Life Insurance Company of North America ("Allianz") and the Transamerica Companies ("Transamerica") welcome the opportunity to comment on the Group Capital Calculation Working Group's most recent exposure of proposed changes to the NAIC's Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450). We appreciate the multiple opportunities we have had to provide input on these important model changes.

In our initial joint comment letter, we explored the tractability and viability of a "subgroup reciprocity" provision by identifying a number of issues that would need to be addressed before "subgroup reciprocity" would be suitable for inclusion in an NAIC model. We had understood the subsequent July exposure to replace subgroup reporting with a revised approach for "recognizing and accepting" the worldwide GCC, which would have alleviated a number of the issues we had initially identified. However, the fact that subgroup reporting remains unresolved indicates that our interpretation may not have been correct.

In this letter we highlight three key considerations for regulators in deciding whether to pursue subgroup reporting of the GCC:

1. The proposed subgroup "trigger" is likely to send unintended messages of disapproval to the international insurance regulatory community;
2. Developing a "U.S. Operations" GCC requires a significant resource commitment from regulators and industry; and
3. Lead state supervisor discretion regarding whether to require subgroup reporting if the trigger is tripped addresses neither of the above issues.

These considerations form the basis of our opinion that subgroup reciprocity should be removed from the current draft exposure.

We also provide input on a few other proposed provisions, including a response to the question we were asked by Jim Jakielo (CT) during the September 18 public call.

A. Three key considerations in assessing whether to include subgroup GCC reporting in Model 440 and 450

1. *The proposed subgroup "trigger" is likely to send unintended messages of disapproval to the international insurance regulatory community*

None of the stakeholder input to date has explained why subgroup supervision currently exists in some jurisdictions. We think this information is vitally important for regulators to consider, as inclusion of a legal trigger based on regulatory practices in non-U.S. jurisdictions would express that state insurance regulators disapprove of those practices or of the underlying motives.

Subgroup supervision of U.S. groups does exist in a few non-U.S. jurisdictions. With no known exceptions, this subgroup reporting does not systematically discriminate against U.S.-based insurance groups, nor is it intended to “retaliate” against U.S. regulatory practices. Instead it is based on the fundamental premise that some form of effective group supervision is necessary to protect policyholders.

Group supervision practices in Japan provide an example of the circumstances that lead to subgroup supervision. Japan has made a policy decision to consider effective group supervision on a non-extraterritorial basis, leading to a “subgroup” construct for all non-Japanese groups. By including a subgroup trigger in Model 440, however, state regulators would seem to be signaling that U.S. state regulators disapprove of Japan’s non-extraterritorial approach to group supervision. Alternatively, state regulators might be signaling disagreement with the fundamental premise that effective group supervision within Japan is necessary. We suspect that neither message would be intended.

Group supervision practices within the European Union (and, post-Brexit, the United Kingdom) provide another example. Recognizing that many significant insurance groups operate internationally, the EU’s Member States have made a policy decision to consider effective group supervision on an extraterritorial basis, with allowance for reliance on non-EU supervisors through an equivalence regime. The U.S./NAIC has elected not to pursue a program that would lead to a finding of equivalence. Under European law, however, effective group supervision is still deemed essential to protect policyholders, and legislation permits a variety of measures to achieve the objectives of group supervision. The U.S.-EU Covered Agreement has removed the potential option for EU supervisors to apply EU capital measures on a worldwide basis, but other options remain available, and supervisors are required to implement measures that achieve the intended objectives. Consequently, in order to ensure that European citizens are protected by effective group supervision, a handful of U.S. groups appears to have become subject to subgroup supervision (based on our internal research). Therefore, a subgroup trigger in Model 440 would signal disapproval either of the NAIC’s own prior decisions regarding the pursuit of equivalence or of the premises underlying the EU’s approach to group supervision. Again, we suspect that neither message would be intended.

At a minimum, the above messages—if they are, in fact, not intended—argue for a scope-out from subgroup reporting for groups whose group-wide supervisor is based in a Reciprocal Jurisdiction. Indeed, NAIC models already consider Reciprocal Jurisdictions to “recognize the U.S. state regulatory approach to group supervision and group capital.” From the more parochial perspective of Allianz and Transamerica, we would find it mystifying for state regulators to potentially enforce a subgroup reporting “penalty” on our organizations because of the NAIC’s own prior decision regarding the pursuit of group supervision equivalence. If subgroup supervision within the EU is deemed to be problematic, rather than “penalizing” EU-based groups operating in the United States, we would gently suggest pursuing a program that leads to group supervision equivalence, thus eliminating the underlying cause.

More generally, we expect that interest in cross-border group supervision will increase in the future. Therefore, before including triggers based on regulatory practices by non-U.S. supervisors in an enduring NAIC model, we believe that U.S. state insurance regulators must be highly confident that the messages of disapproval attached to those triggers will always be intended. If the messages are not intended, state regulators could inadvertently damage relationships within the international regulatory community and harm the prospects for initiatives that would bring U.S. state insurance regulation greater recognition and respect.

2. *Developing a “U.S. operations” GCC requires a significant resource commitment from regulators and industry*

In considering the possibility of a GCC applied to “U.S. operations,” it should be recognized that the current GCC is not sufficiently developed for this purpose. The core challenge with a “subgroup” capital measure is that one must first extract a portion of the group and then assess the capital adequacy only of the extracted portion. Under the current proposal, it would not be straightforward to identify a portion of the group to extract, as “U.S. operations” does not necessarily describe a connected family of legal entities under a parent, unlike a true subgroup. To our knowledge, this term has not been defined.

Following the identification of the portion of the group to extract, there would be a need to develop guidance on how to handle a variety of interconnections between the extracted and non-extracted portions. Such interconnections include:

- Capital instruments issued by either the extracted or non-extracted part of the group that are used to support the entire group;
- A variety of transactions (loans, reinsurance, guarantees) between “in scope” and “out of scope” parts of the group;
- Possible adjustments for (e.g.) cost allocations within the group;
- The benefit of “group support”; and
- Issues related to the possible exclusion of non-U.S. subsidiaries from “U.S. operations.”

We would imagine that each organization subject to a “U.S. operations” GCC could have unique interconnections that require thoughtful consideration.

Finally, it would be necessary to develop appropriate unique regulatory guidance for the use of the “U.S. operations” measure. This would include appropriate calibration, instructions for the Financial Analysis Handbook, and guidance for the use of the results in a supervisory college environment.

The overall process would seem to require a formal charge, drafting, exposures, field testing, and deliberate resolution of issues. We would also request additional revisions to draft Model 440 and 450 to allow for various exclusions and simplified reporting alternatives that are available to U.S.-based groups that are subject to the GCC. As noted above, subgroup supervision does currently exist in some jurisdictions, so—unless Reciprocal Jurisdictions are out of scope of subgroup reporting—an operable “U.S. operations” GCC would be needed soon after a “go live” date. None of the necessary work is currently underway. Our view is that, if regulators decide to incorporate subgroup reciprocity, work on a “U.S. operations” GCC must be undertaken seriously and expeditiously.

3. *Lead state supervisor discretion regarding whether to require subgroup reporting if the trigger is tripped addresses neither of the above issues*

The updated draft changes the consequences of a trigger of the subgroup provision to be discretionary (“has the discretion to require”) rather than mandatory (“shall require”). Should regulators decide to keep the subgroup reciprocity clause in the model law, we support this change in the interest of ensuring that any subgroup reporting does not have the effect of placing unwanted burdens on state regulatory resources. Nevertheless, while we would support this change, it does not address either of the above issues, namely:

- Unintended messages of disapproval are still likely to be sent to the international insurance regulatory community; and
- A significant resource commitment is still required.

It is therefore our opinion that subgroup reciprocity should be removed from the current draft exposure.

B. Other issues

1. We welcome the added clause describing Reciprocal Jurisdictions under Model 440, Section 4L(2)(c)

At present, the only definition of Reciprocal Jurisdictions in NAIC models is found in Model 786. However, the description of Covered Agreement Reciprocal Jurisdictions in Model 786 is incomplete relative to the description of non-Covered Agreement Reciprocal Jurisdictions. Specifically,

- The description of Covered Agreement Reciprocal Jurisdictions mentions only reinsurance, while
- The description of non-Covered Agreement Reciprocal Jurisdictions mentions both reinsurance and group supervision/capital.

When the NAIC adopted changes to Model 786 to incorporate Reciprocal Jurisdictions, it was not contemplated that Reciprocal Jurisdictions would be used outside the realm of reinsurance. This is no longer the case. The NAIC's conditions for non-Covered Agreement qualified jurisdictions to qualify as Reciprocal Jurisdictions were designed to replicate the substantive provisions of the U.S.-EU and U.S.-UK Covered Agreements. Therefore, it is appropriate to incorporate explicit model law language that clarifies that every Reciprocal Jurisdiction "recognizes the U.S. state regulatory approach to group supervision and group capital."¹

2. The communications required of supervisors in non-Reciprocal Jurisdictions in which no U.S. groups operate should be reconsidered

On the September 15 call, Jim Jakielo (CT) queried us regarding a point made in our previous comment letter. The point was:

For jurisdictions in which no U.S. groups operate, the proposal indicates that insurance groups based in such jurisdictions can gain the benefits of "recognizing" of the GCC by sending a communication to the IAIS regarding the acceptability of the GCC "as an international capital standard." Yet the GCC has not, to date, been promoted as an international capital standard; rather the "Aggregation Method"—a more generalized approach akin to the ICS—is being promoted as an international standard. We question whether any supervisors would or could satisfy this provision as drafted.

We were asked to provide a recommendation for alternative language, and we indicated that we would follow up.

Our general view is that group capital is a component of group supervision, and the GCC should apply only when the U.S. lead state is the group-wide supervisor. The current draft model law and regulation essentially makes the opposite presumption: group capital always applies, with exceptions for non-U.S. groups conditioned on bilateral agreements or assertions made by non-U.S. supervisors. Therefore, the NAIC's approach is not our preference. Nevertheless, if this approach is taken, the required assertions should avoid placing non-U.S. supervisors in impossible dilemmas.

Regarding supervisors in jurisdictions in which no U.S. groups operate, we believe it is inadvisable to require an attestation regarding the GCC as an international standard, for the reasons described in our prior letter. We also believe that it is not reasonable to require such supervisors to attest to the merits of the GCC, as such supervisors would have no reason to have knowledge of the specifics of the GCC. Although the Aggregation Method (AM) at the IAIS is sometimes promoted as an international standard, it does not seem appropriate to codify the AM in an NAIC model, as it does not seem certain that the AM will endure and be maintained in the future. We therefore

¹ An alternative interpretation of this clause would be that it is adding a condition to Covered Agreement Reciprocal Jurisdictions, i.e. requiring recognition of U.S. group supervision and capital in addition to being a Reciprocal Jurisdiction as a condition for being out-of-scope of the GCC. This outcome, however, would create a severe conflict with the U.S.-EU and U.S.-UK Covered Agreement, so we do not consider this to be a plausible interpretation.

believe that the most prudent path is to focus on aggregation approaches in general, and our recommendation is for an attestation that “aggregation-based capital approaches are acceptable for an insurance group capital assessment.”

3. *The communications required of supervisors in non-Reciprocal Jurisdictions in which U.S. groups operate should also be reconsidered*

Concerns similar to the above arise from draft Model 450, Section 21D(1), regarding the attestation required of supervisors in non-Reciprocal Jurisdictions in which U.S. groups operate. Such supervisors would be required to attest that insurers whose lead state is accredited “shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting as applicable by the lead state.” However,

- Non-U.S. groups have a lead state but are ordinarily subject to worldwide group supervision by a non-U.S. supervisory authority. There is a need to limit the attestation to U.S.-based groups or groups for which the U.S. lead state is the group-wide supervisor.
- U.S. group supervision and capital do not apply to all U.S. groups with non-U.S. operations. Under current NAIC Model 440, group supervision applies only to Internationally Active Insurance Groups, and, under the most recent draft, there could be situations in which a U.S.-based groups operating in a non-Reciprocal Jurisdiction could be exempt entirely from the GCC. There is a need to align the attestations with the scope of the GCC, once it is finalized, and to consider situations in which either formal group supervision and/or the GCC is inapplicable to a cross-border U.S.-based group.

We recommend careful attention to these attestations during the drafting process, as placing them an NAIC model will make them difficult to change.

We hope the Working Group will find our comments to be informative and constructive. Allianz and Transamerica continue to commit to the development of efficient and effective prudential regulation within the United States.

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cc: Grace Arnold, Temporary Commissioner, Minnesota Department of Commerce
Doug Ommen, Commissioner, Iowa Insurance Division

October 5, 2020

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

Via email to Dan Daveline ddaveline@naic.org

Re: NAIC Group Capital Calculation (“E”) Working Group 9/18/2020 Exposure of the NAIC’s Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

We are writing to provide our comments on the proposed amendments to the Model Holding Company Act and Model Holding Company Regulation currently out for exposure. We commend the GCC Working Group for their efforts on creating a workable framework that meets regulatory needs.

Manulife/John Hancock, Sun Life, and Canada Life support the amendments that allow a regulator in a non-Reciprocal Jurisdiction to recognize and accept the GCC for sub-group reporting “reciprocity in regulatory action.” We appreciate the focus on the actions of non-US jurisdictions as a truly reliable indicator of their recognition of the effectiveness of US oversight.

In addition, we appreciate the amendments to 21D(1) that remove a requirement for written confirmation. Regulators have many ways to confirm their recognition, including through supervisory colleges and regular insurance group interactions. Clarification of these methods as being acceptable for confirmation could be made through either the GCC Instructions, the Financial Analysis Handbook, or a drafting note.

Thank you in advance for your consideration, and we are happy to answer any questions.



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October 5, 2020

Commissioner David Altmaier
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National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

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

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

Dear Commissioner Altmaier:

The following comments are submitted on behalf of the member companies of the National Association of Mutual Insurance Companies¹ regarding the NAIC Group Capital Calculation (E) Working Group's revised draft amendments to the Model Insurance Holding Company System Regulatory Act (#440) and Regulation (#450).

NAMIC members are largely supportive of the current amendments that would require insurance holding company systems (IHCS) to file at least one annual group capital calculation (GCC), subject to specified exemptions, before the lead-state commissioner has the discretion to exempt the ultimate controlling person (UCP) from the filing or to allow for a limited GCC filing only that would require information that is not already provided to the lead state regulator pursuant to other existing law. We believe that the amendments to the Model Regulation (#450) give the lead-state commissioner a lot of flexibility to determine whether subsequent annual GCC filings would be beneficial in the review and assessment of IHCS. Even in situations where a group has been exempted from the GCC (or allowed to file a limited GCC filing) in prior years, the current proposal gives the lead-state commissioner the authority to withhold the exemption and request a GCC whenever the situation may call for it, for example, an insurer purchases a large non-insurer or some other material risk that impacts the enterprise emerges throughout

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



the year. Further, the lead-state commissioner will be able to compare the results of the GCC to the groups' annual RBC report to help the lead-state commissioner make a determination on whether to exempt the group from the GCC or request a limited GCC filing. As recognized by other commenters, and the NAIC, for some insurance group structures with an insurer as the UCP already supplying an annual RBC report, the GCC calculation does not afford additional information.

We support the comments made by Texas during the July 21, 2020 GCCWG meeting requesting that the Working Group consider giving the commissioner the authority to provide exemptions; however, as currently drafted, the lead-state commissioner would be significantly constrained in its decision-making ability. The language currently being proposed in Model Act (440) Section 4L(2)(f) includes the phrase, "an insurance holding company system that has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories." We suggest the Working Group revert to the language proposed in the July 23, 2020 Working Group proposal. That language is as follows:

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

We believe the Act should establish the requirement of the GCC and any non-specified exemption criteria should be left to the Regulation. It is the lead-state commissioner that is in the best position to determine if an exemption is warranted or not based on its expertise, significant interaction, and deep understanding of the IHCS and its insurers. By keeping this language as currently proposed in the Model Act (440), it takes away the lead-state commissioner's ability to grant exemptions from certain groups (i.e. those with insurers domiciled outside the United States or its territories) which may not be appropriate given the unique circumstances of each IHCS. Furthermore, it does not allow for any consideration of the materiality or operational status of insurers domiciled outside the United States or one of its territories. We believe the July 23, 2020 proposal provides the lead-state commissioner with the most flexibility and control over requiring an annual GCC or a limited GCC filing. In addition, with respect to the phrase, "an insurance holding company system that has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories.," this exact phraseology is also included in the proposed changes to Model 450 (Section 21A(2) and 21B(2)(a)); therefore, in our estimation, it is duplicative to include it also in the Model Act.

The language in the Regulation as currently proposed requires a full GCC in year one for all groups under the \$1 billion direct written premiums threshold, subject to specified exemptions, and no exemption would be granted in



subsequent years for these groups if they have “insurers within its holding company structure that are domiciled outside of the United States or one of its territories” (Model 450 Section 21A(2)). In addition, for groups above the \$1 billion DWP threshold where the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, those groups must also file a full GCC in year one. These groups *may* qualify for the limited GCC filing if the IHCS “conducts no insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction” and the lead-state has determined that the IHCS has no material financial risk emanating from non-insurers within the group. NAMIC members would prefer that this language include considerations for materiality and urge the Working Group to reconsider the inclusion of a materiality concept to avoid excluding an IHCS with immaterial operations from the limited GCC filing. In the alternative, we request the Working Group consider adding the term “active” to Model 450 Section 21B(1), to read, “the holding company system conducts no *active* insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction...” This would give the lead-state commissioner discretion to allow a limited GCC filing for a U.S. RBC filer whose operations are in run-off so long as they met the other criteria of Model 450 Section 21B(1).

The GCC exemption and the limited GCC filing in the Model 450 Regulation provide discretionary authority to grant or remove the exemption based on a change in circumstances of the IHCS. In addition, embedded within each Model 450 exemption (Section 21A(5); Section 21B(1); and 21B(2)(c)), is the requirement that any non-insurers within the holding company system “do not pose a material financial risk to the insurers ability to honor policyholder obligations”. This language provides an additional hurdle for IHCS with non-insurers to obtain an exemption and empowers the lead-state commissioner to refrain from granting the exemption or to remove an exemption previously granted based on a change in circumstances involving non-insurers.

Finally, as it applies to specified exemption criteria included in the amendments to the Model Act (440) and specifically Section 4L(2)(a) exemption criteria for county mutual, town mutual, and farm mutual insurers, NAMIC members believe the threshold should be revised. As stated in a previous comment letter to the working group, many NAMIC members do not file Risk-Based Capital reports with their lead state due to their size; therefore, completing the GCC would present a significant challenge for these groups. Instead of using a dollar threshold, we suggest using a structural approach such that limits the exemption to single state writers that only include one insurer writing business within the group. We request the following language be considered by the working group:

“An insurance holding company system that has only one insurer within its holding company structure that only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer.”



We believe that the GCC was not designed to capture the universe of small single-state (single-county in many cases) town, county and farm mutual insurers. This language would address our concerns that these groups would be required to complete the GCC. Further, these entities are not writing outside of the United States and should not be burdened with additional group supervision requirements designed to meet the purposes of the Covered Agreement as they are not active in a Host party's territory.

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

Sincerely,

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

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

October 5, 2020

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

Dear Commissioner Altmaier:

Our coalition strongly supports mutual recognition of supervisory regimes across jurisdictions. As U.S. insurance groups with international operations, we believe this must include recognition and acceptance of the tools and approaches employed for state-based group supervision – including the group capital calculation (GCC) – by foreign jurisdictions. We believe a subgroup reciprocity provision in Section 4L(2)(e) of the Model Act is critical to furthering this objective, as are the reciprocity requirements in Sections 4L(2)(c) and (d).

To be effective, the provisions must be applied consistently across the states and be subject to a process framework that guides a consistent outcome among the states in the application of Sections 4L(2)(d) and 4L(2)(e). This would give the U.S. the ability to advance a unified position when engaging in dialogue with non-U.S. jurisdictions on the topic. We agree that diplomacy efforts should be given an opportunity to work before a final decision on whether a jurisdiction recognizes and accepts the GCC is made. At the same time, these aspects must be incorporated in a manner that does not undermine the overarching objective of securing mutual recognition of the GCC.

Thus, we support drafting Section 4L(2)(e) as follows:

Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead state commissioner ~~has the discretion to shall~~ require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system if the non-U.S. insurance holding company’s group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. based insurance group’s operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to “recognize and accept” the group capital calculation.

“Recognize and Accept” Criteria

We support the “recognize and accept” criteria in the Model Regulation, but we recommend amendments to clarify that Model Act Section 4L(2)(e), which addresses application of reciprocity at the subgroup level, applies not only to Section 4L(2)(d) but also to Section 4(L)(2)(c). As currently drafted in the latest exposure, only Section 4L(2)(d) is addressed in Section 21D of the Model Regulation and thus its scope needs to be broadened to include Section 4L(2)(e).

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

1. With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]:

a. the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

~~b. 2. With respect to [insert cross reference to Section 4L(2)(d), the non-U.S. jurisdiction where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1).~~

2. With respect to [insert cross reference to Section 4L(2)(e) of the Model Act], the non-U.S. jurisdiction does not apply its own group capital reporting measures to the operations of U.S. insurance groups within its jurisdiction;

~~3. With respect to [insert cross reference to Section 4L(2)(d), the non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1).~~

3. The non-U.S. jurisdiction ~~The P~~ Provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

Commented [A1]: The reference to “Reciprocal Jurisdiction” should be deleted. The exemption from worldwide reporting of the GCC for Reciprocal Jurisdictions is addressed in Section 4L(2)(c) of the Model Act, which we support. Section 4L(2)(c) does not incorporate the “recognize and accept” language because Reciprocal Jurisdictions are separately designated pursuant to the Credit for Reinsurance Models.

However, Reciprocal Jurisdictions would be subject to the “recognize and accept” determination with respect to subgroup reporting in Section 2L(4)(e) of the Model Act as both the Credit for Reinsurance Models and Covered Agreements do not prohibit subgroup level reporting – see Attachment 1 for further information. Our suggested amendments throughout Section 21D aim to make sure Section 2L(4)(e) is appropriately applied across all jurisdictions to further advance the objective of securing mutual recognition of the GCC.

Commented [A2]: Moved with edits as shown in redline, to Section 21D(1)(b) above.

Additionally, Section 21(E)(3) of the Model Regulation should be amended as follows to reflect that a Reciprocal Jurisdiction may be determined to *not* recognize and accept the GCC at the *subgroup* level (as opposed to the worldwide level) in accordance with Model Act Section 4L(2)(e):

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

1) ~~A list of jurisdictions that “recognize and accepts” the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)] and of jurisdictions that “recognize and accept” the group capital calculation pursuant to [insert cross-reference to Section 4L(2)(e) of the Model Act], is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to 4L(2)(d)] or [insert cross-reference to 4L(2)(c)] but is not exempted from filing under 4L(2)(c). The lead state commissioner shall provide the non-U.S. jurisdictions confirmation to the NAIC for recommendation that it be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.~~

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

3) ~~A list of jurisdictions that “recognize and accepts” the group capital calculation is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The commissioner may approve a jurisdiction that does not appear on the NAIC list of jurisdictions except that the Commissioner shall not remove from any non-U.S. jurisdiction that is a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital. Such Reciprocal Jurisdictions will automatically be included on the NAIC List. If the lead state commissioner makes a determination pursuant to Section 4L(2)(d) and/or 4L(2)(e) that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.~~

4) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accepts” the group capital calculation.

Commented [A3]: We believe the process to be employed to track jurisdictions that recognize and accept the GCC should support determinations made at both the worldwide parent and subgroup level. As noted above, a determination must be made as to whether Reciprocal Jurisdictions recognize and accept the GCC at the subgroup level.

Commented [A4]: We believe this section should start with the text currently in 21E(3), with the list referred to established via a process similar to the one that is proposed on pages 4 and 5 of our comment letter.

Commented [A5]: We recommend deleting the current E1 and replace it with E3.

Commented [A6]: Moved up to E1, per comment above.

Commented [A7]: We recommend deleting this highlighted language because, for purposes of the 4L(2)(c) exemption, Reciprocal Jurisdictions are not subject to the “recognize and accept” evaluation and do not need to be included on the list. The application of 4L(2)(c) is automatic for jurisdictions already deemed to be “Reciprocal Jurisdictions” pursuant to the Credit for Reinsurance Model.

Instead, Reciprocal Jurisdictions will only be included or excluded from the list for purposes of whether they are requiring subgroup reporting and thus are subject to 4L(2)(e) of the Model Act.

If the decision is made to retain this provision, we suggest it be modified to read as follows:

The commissioner may approve a jurisdiction that does not appear on the NAIC list of jurisdictions except that the Commissioner shall not remove from the list with respect to the Section 4L(2)(c) of the Model any non-U.S. jurisdiction that is a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital at the worldwide level. Such Reciprocal Jurisdictions will automatically be included on the NAIC List with respect to application of 4L(2)(c) only.

Commented [A8]: The Commissioner makes the final determination under 4L(2)(d) and 4L(2)(e), and the Commissioner should explain when a decision differs from the NAIC recommendation. This same language is included in the Credit for Reinsurance Model.

Recognize and Accept Process

The process for determining whether a jurisdiction “recognizes and accepts” the GGG should both promote dialogue and provide some degree of flexibility to account for unique facts and circumstances. Below is a high-level outline of a process that we believe would:

- Promote dialogue in an effort to avoid the need to enforce the reciprocity provision.
- Establish a fair, transparent, and equitable process for lead-states and the NAIC to consider all the facts and circumstances and have diplomatic discussion with the non-U.S. jurisdiction before making a final decision on reciprocity.
- Encourage a unified approach across states to avoid undermining efforts to promote mutual recognition of the GCC.

We suggest developing a process similar to the existing NAIC process for evaluating Qualified or Reciprocal Jurisdictions in the Credit for Reinsurance Models and associated materials including the Qualified Jurisdiction Working Group’s *Process for Evaluating Qualified and Reciprocal Jurisdictions*. The process would be a narrower review than the Qualified or Reciprocal Jurisdiction review as the only issue being evaluated is whether the jurisdiction recognizes and accepts the GCC.

Under this approach, the lead state would make the final determination based on the relevant facts and circumstances, and there would be a process for the NAIC to provide an analysis and recommendation to regulators with the decision (*which would help encourage uniformity*).

High-Level Framework:

- 1) A lead-state commissioner or a non-U.S. jurisdiction may specifically request an evaluation of the non-U.S. jurisdiction by the NAIC for purposes of the exemptions under Sections 4L(2)(d) and 4L(2)(e). Such requests will get priority over evaluations of other non-U.S. jurisdictions.
 - Note: the process for designating jurisdictions as Reciprocal Jurisdictions referenced in 4L(2)(c) is already established through the Credit for Reinsurance Models. But that process only addresses *worldwide* group capital reporting, accordingly Reciprocal Jurisdictions would need to be evaluated for *subgroup* reciprocity for purposes of Section 4L(2)(e).
- 2) The NAIC will send formal notice of its intent to initiate an evaluation process to the non-U.S. jurisdiction’s supervisory authority.
- 3) Enforcement of Section 4L(2)(d) and Section 4L(2)(e) are delayed until the review of the non-U.S. jurisdiction has been completed.
- 4) To encourage progress, a period of 6 months from the date of formal notice should be allowed to conduct and finalize the review in a timely manner. Reasonable extensions could be permitted provided they are based on reasonable grounds shown.
- 5) The public will be notified of non-U.S. jurisdiction’s undergoing evaluation, and should have the opportunity to comment, but the process of evaluation and all related documentation will be private and confidential matters between the NAIC, state regulators and the non-U.S. jurisdiction (as governed by confidentiality and information sharing agreements to be established as necessary).

- 6) Before making a final determination that a non-U.S. jurisdiction should not be included on the NAIC list, the NAIC will solicit input from state insurance commissioners and the non-U.S. jurisdiction, including any unique facts or circumstances that should be considered as part of the evaluation, and facilitate discussion among these parties.
 - This process should give the non-U.S. jurisdiction the opportunity to remove its requirements for subgroup capital reporting.
- 7) To inform application of Section 4L(2)(d) and/or Section 4L(2)(e), the NAIC will provide state regulators a list of jurisdictions that “recognize and accept” the GCC, at the worldwide and/or subgroup level, based on the results of the evaluations conducted.
 - Note: A non-U.S. jurisdiction’s imposition of subgroup capital reporting on a specific company due to the hazardous financial condition of that company would not require the NAIC to deem the jurisdiction to have failed to recognize and accept the GCC at the subgroup level.
- 8) The lead state commissioner of the relevant non-U.S. based group will make the final determination regarding the application of Section 4L(2)(d) and/or Section 4L(2)(e) after consideration of the list provided by the NAIC and in consultation with other impacted state commissioners.
- 9) If the lead state commissioner makes a determination pursuant to Section 4L(2)(d) and/or 4L(2)(e) that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.
- 10) Jurisdictions included on the list should be subject to ongoing monitoring by the NAIC similar to the process for Qualified and Reciprocal Jurisdictions.
- 11) A commissioner can call for a reevaluation of a non-U.S. jurisdiction included on the list if it believes the jurisdiction no longer meets the criteria for recognizing and accepting the GCC. Prior to sending formal notice of its intent to initiate an evaluation, the NAIC will facilitate discussion among the relevant parties, as appropriate, in an effort to resolve the matter that triggered the reevaluation request.

Sincerely,

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

Attachment 1

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

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

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

UNITEDHEALTH GROUP

October 5, 2020

Honorable David Altmaier
Commissioner of Insurance
Chair, Group Capital Calculation Working Group
Office of Insurance Regulation
The Larson Building
200 East Gaines Street
Tallahassee, Florida 32399-0305

VIA EMAIL

RE: Amendments to Models 440/450

Dear Commissioner Altmaier:

We write today on behalf of UnitedHealth Group, one of the nation's largest managed care and healthcare services companies, which, through its UnitedHealthcare business platform, administers and provides healthcare benefits to more than 48 million individuals in all fifty states and the District of Columbia. UnitedHealth Group's Optum business segments provide health services, including pharmacy services, health care delivery, population health management, collaborative care delivery, information technology, and health care financial services to 115 million individuals and more than 100,000 physicians, practices, and other health care facilities nationwide. We thank you for the opportunity to provide comments on the recently released amendments to Models 440 and 450.

Model 440.

We note that the definition of "Enterprise Risk" in Section 1.I of the model has not been amended to take into consideration its application to the new group-wide financial supervision of national and international insurance groups. The current language reads:

"Enterprise Risk." "Enterprise risk" shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition].

We suggest that in the context of the Group Capital Calculation (GCC), this definition is overly broad. The GCC is intended to permit the lead state regulator to assess group solvency. It is not intended to replace state-based assessments of insurer risk or risk-based capital solvency of an insurer, and it is not intended to be a legal-entity solvency review tool. When used to define actions that can or should be taken by the lead state regulator, "enterprise risk" should focus exclusively on risk to the holding company system as a whole. Risk should not be measured by its potential impact on the smallest – or even largest - legal entity within a holding company group, or even a subset of legal entities unless there is a material impact on the

entire group. To do otherwise supplants state-based insurance regulation and confuses the nature of the GCC as a tool for the holistic review of the group as a whole and could cause specific insurer risks to be mis-interpreted as group risks. The application of multiple levels of materiality across multi-license groups is burdensome for groups and may excessively multiply “group risks”. It is critical that the GCC be used only by the lead state regulators and that it be used only when there are material implications for the group.

We suggest that new language, in a new paragraph, be added to this definition as follows:

(b) For the purposes of the group capital calculation only, “enterprise risk” shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurance holding company system as a whole.

Model 450

Section 21.

We urge that the words “lead state” appear before each instance in which there is a reference to the “commissioner” in order to remain clear that the GCC calculation is not to be used by non-lead states. It is critical that there only be one commissioner with authority to take actions with respect to solvency considerations for a large insurance holding company system. We note instances in subsections B, C, D and E in which the terms “commissioner” and “lead state commissioner” are used interchangeably. This can cause significant confusion in the future.

Also, in Section 21, the exemptions from filing are potentially confusing. Model 440 Section 4L(2) has a list of exemptions from filing, for example, for holding company systems that are required to complete a group capital calculation by the U.S. Federal Reserve Board. We urge that these exemptions either be specifically referenced in Section 21 of Model 450, or that they be included verbatim in the Regulation in order to avoid confusion about which entities are relieved from filing altogether versus only those potentially relieved from filing after filing at least one GCC with its lead state regulator.

We thank you for the opportunity to provide our input and comments and look forward to discussing this with you further. Please let me know if you have any questions or comments.

Sincerely,



Randi Reichel, Esq.
Vice President, National Regulatory Affairs
UnitedHealth Group

Cc: Mr. Dan Daveline
James Braue
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October 05, 2020

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

Re: NAIC Group Capital Calculation (“E”) Working Group 9/18/2020 Exposure of the NAIC’s
Model Holding Company Act (#440) & Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

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

Our engagement in this initiative continues to be guided by principles our Board approved. We have included the Principles as an Appendix in this letter and we have attached our prior letters on these exposures. While we have refrained from providing a markup of the Model Act and Model Regulation text, we note that we believe our Board approved principles and the intent of our previously submitted comments are equally applicable.

In addition to carry forward of our principles and prior comments, ACLI has identified one additional item it would like to address.

- **ACLI opposes the exemption in § 21B(1) as overly broad and recommend removing it from the Model Regulation. Creating too many exemptions for the GCC deprives regulators of valuable analytical data and could hurt the credibility of the GCC if large, complex insurance groups are excluded from the GCC.**

With respect to U.S. domiciled groups, ACLI continues to support exemptions for groups that file a group capital report with the Federal Reserve Board and for small insurance groups. An appropriate threshold for small insurance groups is the size-threshold used in ORSA (\$1 billion in annual written or assumed premium for the groups).

ACLI members oppose the proposed exemption in 21B(1)¹ and believe it should be eliminated. The exemption is overly broad and deprives supervisors of valuable analytical information about

¹ Section 21B(1) gives regulators the discretion to exempt any group from having to complete a GCC ratio if: (i) the ultimate controlling party (“UCP”) is an RBC filer; (ii) the group has filed a full GCC at least once, (iii) the group does not have insurance operations in the EU or UK; and (iv) the non-insurance operations don’t pose a material threat to policyholders.

a group's solvency and intragroup transactions, whether they are mutual or non-mutual companies. Members are also concerned that 21B(1) is detrimental to the long-term credibility of the GCC as a group capital assessment.

We recognize that in its current form, and consistent with ACLI's advocacy, the GCC calculation for many groups with an RBC filer as the ultimate controlling person is likely to be highly consistent with the RBC calculation for that UCP insurer. This may cause some to question the supervisory value of obtaining the GCC from such a group. However, the GCC process consists of more than simply the ultimate ratio. The supervisory value in the GCC's scheduling and adjustments for consequential intragroup financial arrangements, for example, may be as meaningful when applied to a group with a holding company UCP as with an insurer UCP. As a result, ACLI opposes the exemption in 21(B)(1).

In addition, 21B(1) creates the risk of an unlevel playing field, because potentially complex groups could qualify for the exemption, whereas simpler groups with less risk would not, solely because of their corporate structure. This potential exemption for large and complex groups could also harm the U.S. in its efforts to promote the GCC as an acceptable alternative to Insurance Capital Standard developed by the International Association of Insurance Supervisors if the U.S. carves out large and complex insurance groups from the GCC.²

To be clear, the ACLI is not arguing in favor of the Holding Company Act providing exemptions for more groups, regardless of size or complexity. We continue to recommend that exemptions or limited filing privileges for U.S. based groups should be limited to groups who have less than \$1 billion in annual written or assumed premiums or who file a group capital report with the Federal Reserve Board. The \$1 billion dollar cap is easy to understand and explain, clearly excludes any potential IAIGs from qualifying for the exemption, and prevents the perceived unfairness of a very large complex group qualifying for the exemption when a much smaller stock or mutual holding company does not qualify. Most importantly, it also ensures that lead-state regulators of large groups have access to the full array of detailed information contained within the GCC's schedules.

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

Mariana Gomez-Vock



Patrick C Reeder



² Under 21B(1), a regulator has the discretion to exempt a large and complex mutual insurer, even if the group qualifies as an Internationally Active Insurance Group ("IAIGs"), owns one or more depository institutions, and has significant overseas insurance operations, as long as the operations aren't in the EU or UK. However, a regulator would lack the ability to exempt a mid-size or large company with a holding company as the ultimate controlling party, even if the company had a simple corporate structure, did not operate overseas, and did not own any depository institutions.

Appendix

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).
2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.
3. Subgroup reciprocity:
 - a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation (“GCC”) and group capital regimes in other jurisdictions, in the model law.
 - b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.
 - c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.
4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment (“ORSA”) group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.
5. ACLI continues to support strong confidentiality protections for GCC results and related materials.



Mariana Gomez-Vock
Vice President & Associate General Counsel
Marianagomez@acli.com

July 15, 2020

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

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

Dear Commissioner Altmaier,

The American Council of Life Insurers appreciates the opportunity to submit these comments on the NAIC Group Capital Calculation Working Group's proposed revisions to the Model Holding Company Act. Our comments are divided into three parts. In the first section, we summarize the key principles guiding our responses to the NAIC's proposed revisions in the Model Holding Company Act. While many of our principles align with the exposure, we believe that some of the language in the exposure requires refinement and some of the processes for implementation must be clarified, through an accompanying regulation or regulatory guidance. The second section assesses the proposed exemptions against ACLI's principles of support. The final part of our letter discusses ACLI's response to the Working Group's recommended confidentiality language.

PART I. KEY POSITIONS

The following items are key areas of agreement among ACLI's diverse set of members, that guided our response to the NAIC's exposure. ACLI members support legislative regulatory proposals that align with the following principles:

1. An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).
2. Group capital standards or assessments at the subgroup or intermediate holding company level are undesirable for U.S. and non-U.S. groups.
3. Subgroup reciprocity:
 - a. ACLI supports including a subgroup reciprocity provision regarding the Group Capital Calculation ("GCC") and group capital regimes in other jurisdictions, in the model law.

American Council of Life Insurers | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

acli.com

- b. At the same time, we believe that such a reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice and equitable to insurers based in all jurisdictions.
 - c. ACLI continues to support cooperation and ongoing dialogue between jurisdictions to foster mutual recognition and reciprocity.
- 4. ACLI continues to support an exemption for small holding companies that uses a threshold like the Own Risk and Solvency Assessment (“ORSA”) group thresholds, as well as an exemption for insurance groups that file a group capital report for the Federal Reserve Board.
 - 5. ACLI continues to support strong confidentiality protections for GCC results and related materials.

PART II. SPECIFIC COMMENTS ON THE PROPOSED EXEMPTIONS IN SECTION 4L(2).

- 1. **An insurance group should only be subject to one group capital assessment or requirement at the world-wide level (i.e., the level of the ultimate controlling person).**

ACLI believes that an insurance group should only be subject to one group capital assessment or requirement at the level of the ultimate controlling person (i.e., world-wide level).¹ Achieving this result— of one group capital assessment or requirement at the world-wide level, requires that jurisdictions accept other group supervision regimes, including group capital assessments, and avoid imposing redundant group capital regimes on groups who are already subject to a group capital evaluation.² We believe this is critical to avoid the situations where groups are subject to redundant and potentially conflicting capital frameworks, which could inhibit management’s ability to operate the company and protect policyholders. Beyond the practical obstacles created by trying to apply more than one group capital assessment at the world-wide parent, the broad application of extraterritorial authority by multiple jurisdictions defeats the purpose of having a single group-wide supervisor at the world-wide parent level. It also contravenes supervisory colleges, whose existence and mission are intended to apprise regulators of the groups’ activities and financial condition, as well as promote regulatory dialogue.

The concepts of “one-group, one group-capital standard or assessment” and the related principle of reciprocity are embedded in the U.S. Covered Agreement with the European Union and United Kingdom³ and the NAIC’s Reciprocal Jurisdiction process in the NAIC Credit for Reinsurance Model

¹ Other jurisdictions, and the Covered Agreement, use the term “level of the world-wide parent” instead of “ultimate controlling person.”

² ACLI’s support of the concept that a group should only be subject to one-group capital assessment or requirement is made within the context of whether it is appropriate for a group to be subject to more than one group capital calculation or requirement. It should not be read to imply that ACLI believes that group capital is fungible. ACLI’s general policy is that capital within a consolidated or aggregated capital calculation is not fungible when it is held in an insurance entity, and an insurance group-wide supervisor does not and should not have the authority to transfer insurance assets out of a regulated entity unless pursuant to applicable law or regulation.

³ EU and US Covered Agreement (Sept. 2017), is available here, <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement>. The US-UK Covered Agreement is available here <https://home.treasury.gov/news/press->

Regulation (#786). The Working Group has proposed an exemption for non-U.S. holding companies whose non-U.S. group-wide supervisors are located within reciprocal jurisdictions that is parallel to the requirements of the Covered Agreement and Reciprocal Jurisdiction process.

Under proposed 4L(2)(c), the world-wide parent of a group whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction is exempt from having to file the GCC at the world-wide level.⁴ ACLI supports this result, because we do not believe a group should be subject to more than one group capital assessment or standard at the world-wide level. There may be circumstances when a supervisor needs to request information from the world-wide parent, especially if the group's activities pose a serious threat to policyholders located in a supervisors' jurisdictions, but these requests are distinguishable from attempting to require a non-U.S. holding company to apply a U.S. group capital calculation at their world-wide parent level.

We think the same logic applies to non-U.S. groups whose non-U.S. group-wide supervisors are located within non-reciprocal jurisdictions. We understand, and support, the NAIC's and Team USA's ongoing efforts to secure mutual recognition for the GCC and the Aggregation Method; however, we have significant concerns that the revisions to the Model Holding Company Act could subject an insurance group whose group-wide supervisor is in a non-reciprocal regime to two capital assessments at the world-wide parent level. That is an undesirable result. A potential manifestation of our concern is in Section 4L(2)(d)(ii)(a). As 4L(2)(d) is written, the non-U.S. group supervisor must "recognize and accept" the U.S. GCC for the non-U.S. insurance group to qualify for an exemption from the GCC. If the non-U.S. group supervisor fails this test, then the ultimate parent company of the non-U.S. group will have to file the GCC at the level of the world-wide parent.

To help avoid such outcomes, the phrase, "recognizes and accepts" will need to be clarified by establishing a transparent process in an accompanying regulation or regulatory guidance. There are many possible processes or potential definitions that could be used to determine if a regime "recognizes and accepts" the GCC. It could, for example, be defined to allow supervisory regimes to demonstrate reciprocity through regulatory action. In other words, where a non-U.S. jurisdiction does not apply its own group capital reporting requirements to a U.S. insurance group (either at the ultimate controlling party of a subsidiary or affiliate operating in that jurisdiction or at the subgroup level), then the non-U.S. jurisdiction could be deemed to "recognize and accept" the GCC. It could include the NAIC acting as a central body to establish and maintain a record of jurisdictions that "recognize and accept" the GCC. Alternatively, it could include language that empowers the lead-state to assess each situation individually to determine if an exemption is appropriate for an insurance group. We believe these processes and potential definitions of "recognize and accepts" should be the subject of transparent discussion and vetting by stakeholders and regulators.

[releases/sm570#:~:text=The%20U.S.%20DUK%20Covered%20Agreement%20also%20benefits%20the%20U.S.%20economy,Covered%20Agreement%20Letters%20to%20Congress.](#)

⁴ The U.S. operations of the non-U.S. group domiciled in a reciprocal jurisdiction may still be subject to the GCC, but only if their group wide supervisor does not recognize or accept the GCC for a U.S. group doing business in its jurisdiction

2. ACLI supports including a subgroup reciprocity provision regarding the GCC and group capital regimes in other jurisdictions in the model law.

ACLI supports the inclusion of a reciprocity provision, such as subsection 4L(2)(e), in the Model Holding Company Act. Subsection 4L(2)(e) specifies that the exemptions for non-U.S. insurance groups are contingent on their non-U.S. group-wide supervisor “recognizing and accepting the group capital calculation for any U.S. insurance group’s operations doing business in that group wide supervisor’s jurisdiction.” As we noted above, we believe that the phrase “recognize and accepts” will need to be clarified upon implementation, perhaps in an accompanying regulation, or regulatory guidance. Further, we believe that the subgroup reciprocity provision must be supported by a process that is transparent on how reciprocity is determined in practice, and equitable to insurers based in all jurisdictions. We think a similar process, with equal levels of transparency and equity is required for determining if reciprocity exists at the world-wide level (per § 4L(2)(d)).

While ACLI believes that subsection 4L(2)(e) is consistent with the Covered Agreement, it would be prudent for the NAIC’s Office of General Counsel to consult with the U.S. Treasury about the provision.

3. ACLI supports an exemption for insurance groups that file a group capital report with the Federal Reserve Board - § 4L(2)(b).

ACLI supports the Working Group’s recommended exemption for insurance groups who file a group capital calculation with the Federal Reserve Board, although we are recommending a minor change to accommodate information-sharing restrictions on Insurance Savings and Loan Holding Companies (“ISLHC”). ISLHCs are not opposed to sharing the information and results with their lead-state commissioner, but they may not be permitted to share the results or supporting information, with any outside parties, including regulators, until they obtain permission from the Federal Reserve Board through a prescribed process that is occasionally lengthy. As a result, we recommend amending 4L(2)(b) to strike the reference to “non-U.S” supervisor and to remove the language conditioning the exemption on the ISLHC filing a copy of the Federal Reserve Board’s group capital calculation with the lead-state commissioner. In its place, we recommend inserting language requiring the ISLHC to cooperate with their lead-state supervisors requests to access group capital calculation information, as well as take any necessary steps to facilitate this exchange of information.

ACLI agrees that ISLHCs should be expected to help their lead-state commissioner gain access to their federal group capital calculation information and we understand the lead-state commissioner’s desire and need to access this information. However, we do not believe it is appropriate to subject the ISLHC to a GCC filing requirement when the ISLHC is prohibited by law from sharing the information until they receive permission from the Federal Reserve Board. We think an appropriate balance is struck by exempting the ISLHC from the GCC, but also including language that creates a duty for the ISLHC to facilitate information-sharing between the lead-state commissioner, the Federal Reserve Board, and the ISLHC, to the maximum extent permissible by state or federal law.

Additionally, in section 8.1A, we also recommend striking “and” and replacing with “or” in the section addressing confidentiality protections for non-U.S. insurers and ISLHC who file a group capital calculation with the Federal Reserve Board.

4. ACLI supports the concepts embodied in 4L(2)(f) and 4L(2)(g) and we encourage the NAIC to refine them to improve clarity.

(a) ACLI comments on 4L(2)(f)

Subsection 4L(2)(f) gives the commissioner the discretion to exempt an insurance holding company system from filing a group capital calculation if the group has previously filed an annual group capital calculation and the insurance holding company system is a non-ORSA filer who meets certain criteria. While ACLI is generally supportive of the attempt to create an exemption for non-ORSA filers, additional streamlining and clarity may be useful in this section.

Proposed revisions to section 4L(2)(f):

- f. ~~Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(d),~~ Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation ~~if the insurance holding company system has previously filed the annual group capital calculation and~~ if the lead-state commissioner makes a determination based upon ~~that filing~~ that the insurance holding company system meets all of the following criteria:
- (i) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;
 - (ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
 - (iii) Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;
 - ~~(iv) Has *de minimis* material affiliated transactions between any of the insurers and the non-insurers that do not impart any risk associated with these transactions; and the holding company system attests that there have been no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital calculation.~~
 - ~~(v) Has *de minimis* materially risky non-insurers within its holding company structure, as described in the NAIC Group Capital Calculation Instructions. The non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.~~

(b) ACLI comments on 4L(2)(g)

Subsection 4L(2)(g) provides supervisory discretion to allow the ultimate parent companies of certain groups to submit a limited GCC filing, consisting of Schedule 1 and other information the supervisor deem necessary. ACLI is generally supportive of the principles expressed in this provision, but we encourage the Working Group to streamline this section prior to placement in the model Holding Company Act.⁵

⁵ At a minimum, it is not clear if the conditions listed after “and the following additional criteria are met” are intended to apply only to non-ORSA filers or groups with an RBC-filing insurer as the ultimate controlling person.

Regardless of whether the Working Group adopts ACLI's specific recommendations for subsection 4L(2)(g), we encourage the NAIC to harmonize the terminology used in 4L(2)(f) and 4L(2)(g), as well as evaluate if some of the guidance included in 4L(2)(f) or (g) may be better suited in a regulation or supplementary regulatory material (i.e., guidance, handbook, or the GCC instructions).

For example, ACLI recommends that 4L(2)(g) refer to a "limited annual group capital filing or report" instead of the detailed description of Schedule 1 and additional information. Regulatory guidance could specify explain that a "limited annual group capital filing or report" refers to Schedule 1 of the GCC. Reducing the specificity in the description of the limited filing will help the statute stay evergreen in the event of future changes to the GCC template and instructions.

Proposed changes to 4L(2)(g):

~~"(g) In addition to the commissioner's discretion to exempt an insurance holding company after reviewing a previously filed annual group capital calculation described in Section 4L(2)(f), The lead-state commissioner has the discretion to instead accept an limited group capital filing or report on an annual basis that includes a single schedule of all of the entities within the group as well as corresponding key financial figures from those entities (Schedule 1) and any other specified information from the group capital calculation template, completed in accordance with the NAIC Group Capital Calculation Instructions, and which excludes all of the other requirements of the annual Group Capital Calculation, if either:~~

~~"(i) the ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the lead-state commissioner has determined ~~that there are de minimis materially risky non-insurers; that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations;~~ or~~

~~"(ii) the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and the following additional criteria are met:~~

- ~~(i) (a) The insurance holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;~~
- ~~(ii) (b) The holding company includes no banking, depository or other financial entity that is subject to a specified regulatory capital framework; and~~
- ~~(iii) (c) The lead state commissioner ~~has not made a determination that the holding company structure has de minimis material affiliated transactions between any of the insurers and the non-insurers or has not determined that the holding company structure has de minimis materially risky insurers, but~~ believes the filing of the limited group capital report ~~Schedule 1~~ is sufficient to meet the needs of the lead-state Commissioner."~~

5. 4L(2)(h) should be revised to ensure compliance with the Covered Agreement and enhance mutual regulatory cooperation.

Because this section gives the lead-state commissioner the authority to require the ultimate controlling person of any group to file GCC, regardless of whether they are domiciled in a U.S. or non-U.S. jurisdiction, we believe that 4L(2)(h) should be modified to conform with the Covered Agreement and the NAIC Credit for Reinsurance Model Regulation (#786).

We recommend that the NAIC Office of General Counsel confer with the U.S. Treasury on the best way to incorporate the requirements into the Model Holding Company Act that a Host Jurisdiction may need to satisfy prior to requesting group prudential information from an ultimate controlling person domiciled in a covered-jurisdiction. One option may be to condition information requests to the ultimate-controlling person of a non-U.S. jurisdiction on the terms found in Article 4(f) and Article 4(g) of the Covered Agreement. If the Holding Company Act gives the lead-state commissioner the authority to request information from the world-wide parent of a non-U.S. jurisdiction in a covered jurisdiction, then the Holding Company Act should also include the requirement that the lead-state commissioner informs the non-U.S. group's supervisory college of information of any requests that extend to the world-wide parent. As a practical matter of promoting regulatory cooperation, it makes sense to extend this informational notice to all group wide supervisors of non-U.S. groups.

In addition, we recommend striking 4L(2)(h)(i) and moving it to section 4L(2)(f) or 4L(2)(g), which is where we believe it may provide the most value to regulators. We do not believe it is appropriate to require a group that is already subject to prudential group capital supervision to have to submit a GCC simply because a material transaction has occurred anywhere in the holding company system, including extraterritorial transactions by non-U.S. insurance entities. However, that kind of requirement may be appropriate for a U.S. domiciled group that is not otherwise subject to a full group capital assessment because they are partially or fully exempt from filing the GCC. It may also be helpful to limit the language regarding "material transactions" to those between insurers and non-insurer affiliates, as this appears to reflect the concerns expressed by regulators on Working Group calls.

Proposed changes to 4L(2)(h):

"h. Notwithstanding the exemptions stated in Section 4L(2)(a) through Section 4L(2)(g), the commissioner may require the ultimate controlling person to file an annual group capital calculation, completed and filed in accordance with the NAIC Group Capital Calculation Instructions and as directed by the lead state commissioner, if any of the following criteria are met:

- ~~(i)~~ there are any material transactions that have occurred since the last filing of the annual group capital calculation or the Schedule 1; or

[ACLI strongly recommends consulting with the NAIC Office of General Counsel, the Federal Reserve Board, and the U.S. Treasury regarding the following provisions]:

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

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type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

- (iv) Any requests for information from the ultimate controlling person of a non-U.S. insurer who is otherwise exempt from the group capital calculation should be communicated promptly to the entity's group-wide supervisor and supervisory college.

PART III. COMMENTS ON THE PROPOSED CONFIDENTIALITY PROTECTIONS

Like other supervisory tools, the confidentiality of the GCC and similar materials submitted by non-U.S. or Federal Reserve Board group capital filers, is of paramount importance to ACLI, and we appreciate the NAIC's sustained acknowledgment of its importance. Any collection, use and disclosure of confidential, company information must be necessary for the supervision of insurance legal entities or groups and shall take place subject to current laws regarding confidentiality and only in and to the extent of the exercise of the governmental agency or regulator's statutory authority. The expanded universe of highly sensitive information required to be filed, as well as the novelty of the calculation heightens concerns about confidentiality protections for the information.

Confidentiality protections and potential vehicles for these protections should be thoughtfully considered and examined and must be well-established in law before the GCC is implemented and we support the NAIC's efforts to incorporate these confidentiality protections alongside the filing authority for the GCC in the Model Holding Company Act. We appreciate the Working Group's longstanding commitment to maintaining the confidentiality of the GCC, as well as the Working Group's efforts to work with industry to develop a GCC confidentiality framework that meets the needs of all parties.

As ACLI has noted in past comment letters, non-regulators who view the GCC do 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 may 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."⁶

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 regulators to disclose these reports. We support the NAIC's proposed restrictions and limitations on the sharing of GCC results and information.

CONCLUSION

Thank you for the opportunity to provide comments on the proposed revisions to the Holding Company Act. ACLI appreciates the efforts the NAIC has made to engage the stakeholder

⁶ Source: [NAIC Proposed Group Capital Calculation Memo, May 29, 2019](#), p. 1.

community in the development of the Model Holding Company Act, and we would welcome the opportunity to discuss our comments with you in greater detail.

Sincerely,

A handwritten signature in black ink that reads "Mariana Gomez". The signature is written in a cursive style with a large, stylized initial 'M'.

Mariana Gomez



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August 24, 2020

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

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

Dear Commissioner Altmaier:

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

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

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

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ACLI comments on the exposed Model Act and Regulation

We appreciate that the latest version of the Model Holding Company Act and Model Holding Company Regulation reflect updates to address points ACLI raised in response to the prior consultation. As with any iterative process, we have additional comments and recommended changes to the exposure. In addition to our high-level views, expressed above, we have enclosed a more detailed set of technical comments and a redline, in the appendix (Appendix 1), as well as a full set of our technical comments (Appendix 2), and a clean version of the Model Act and Regulation, as modified by our recommendations (Appendix 3).

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

Mariana Gomez-Vock



Patrick C. Reeder



Enclosures:

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

ACLI comments on the exposed Model Act and Regulation

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

Model Act – 440
 ACLI Modifications Redlined

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

- a) An insurance holding company that does not conduct business outside of the U.S. and either (a) is an insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
- b) ~~An insurance holding company who is required to perform a group capital calculation specified by the United States Federal Reserve Board. Instead, the insurance holding company shall file a copy of the calculation required by the United States Federal Reserve with the lead state commissioner, if permitted by federal law and regulation. The insurance holding company is under an affirmative duty to facilitate information-sharing between the lead state commissioner and the United States Federal Reserve Board to the maximum extent permissible by state or federal law, and shall take any necessary steps to facilitate this exchange of information on a regular basis;~~
- c) An insurance holding company whose non-U.S. group-wide supervisor ~~as determined in accordance with the principles of section 7.1,~~ is located within a Reciprocal Jurisdiction [insert cross-reference to appropriate section of Credit for Reinsurance Law];
- d) An insurance holding company:
 - i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC ~~principles of group supervision approach,~~ as detailed in the NAIC Financial Analysis Handbook, and
 - ii) ~~the lead state has determined that because of this~~ whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation ~~is not required to be filed; and as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or~~
 - 1. ~~Whose~~ For non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:
 - a. ~~Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor; or~~
 - (b) ~~Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor; or~~
 - iii) ~~For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing a competent regulatory authority in such a jurisdiction provides written confirmation to the lead-state~~

Commented [MG1]: [Comment 1] 4L(2) currently requires the ultimate controlling person to submit the group capital calculation. However, it will likely be more appropriate for some insurance groups that may be required to file the GCC, including those that are part of non-financial conglomerates and the U.S. operations of foreign-based groups, to conduct the filing at a level below the ultimate controlling person. Our language broadens the model act to account for such circumstances.

Commented [MG2]: [Comment 2] The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the "controlling person" as determined by the lead state, as well as specifying the situations where this may be necessary.

Commented [MG3]: [Comment 3] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with < \$1 billion in group premiums if the group has not filed a GCC at least once. That is why we are recommending, as an alternative to granting an exemption for groups who don't file an ORSA because of size, giving the lead-state the discretion to accept a limited group capital report for such groups, as long as they have filed a GCC at least once (see comments to 21A).

Commented [MG4]: [Comment 4] ACLI supports 4L(2)(b) as it is written.

Commented [MG5]: [Comment 5] Appears unnecessary – recommend deleting to shorten text.

Commented [MG6]: [Comment 6] Changed to match how the terminology in the NAIC Financial Analysis Handbook.

Commented [MG7]: [Comment 7] Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i). If ACLI's changes are adopted, a clean version of (d) would read:

"d. An insurance holding company
 "(i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and whose non-U.S. group-wide supervisor recognizes and accepts the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction, as specified by the Commissioner in regulation; or
 "(ii) For non-U.S. jurisdictions where no U.S. insurance groups operate, a competent regulatory authority in such d...

Commented [MG8]: [Comment 8] Streamline and make the language more consistent with what is required of other jurisdictions, by striking reference to recognizing the GCC as an acceptable ICS and replacing with recognition as an "acceptable world-wide capital assessment for U.S. groups."

ACLI comments on the exposed Model Act and Regulation

commissioner, with a copy to the International Association of Insurance ~~Supervisor~~Supervisors recognizing the group capital calculation as an acceptable world-wide capital assessment for U.S. groups.

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

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

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

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

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

Commented [M9]: [Comment 9] Clarify that even if the U.S. operations of a non-US group must file a GCC, this section does not invalidate the exemption at the world-wide level provided by 4L(2)(c) and (d). Without this change, the language could be interpreted as invalidating the exemption at the world-wide level, which we do not believe is what was intended with 4L(2)(e).

Commented [MG10]: [Comment 10] Intended to align the Model Act with the ACLI Board-approved principles.

Commented [M11]: [Comment 11] This section appears to give the Commissioner broad authority to exempt groups from the GCC, even if they do not meet the criteria in the model law for exemption. If states have the broad authority to exempt any group – beyond those exemptions specified in the law, it creates the risk of an unlevel playing field. We recommend limiting this discretionary authority to accept a limited group capital report from companies who meet the criteria in the model regulation.

Commented [M12]: [Comment 12] A clean version incorporating ACLI's changes would read as:

"21A. The lead-state commissioner has the discretion to accept a limited group capital filing report as specified by the NAIC GCC instructions, if the lead-state commissioner determines the insurance holding company can satisfy the following criteria:

- 1) If the insurance holding company has filed a group capital calculation at least once; and,
 - a. The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing, and the holding company system does not include any material insurers within its holding company structure that are domiciled outside of the United States or one of its territories, and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations, or
 - b. The insurance holding company:
 - (i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and
 - (ii) Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and
 - (iii) The lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations."

Model Regulation (450)
 ACLI modifications REDLINED

Section 21.

~~21A. Where an insurance holding company system has previously filed the annual group capital calculation, the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead-state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:~~

- ~~Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000;~~
- ~~Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;~~
- ~~Has no banking, depository or other financial entity that is subject to a specified regulatory capital framework within its holding company structure;~~
- ~~The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and~~

ACLI comments on the exposed Model Act and Regulation

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

~~21B. The lead state commissioner has the discretion to either accept or exempt the ultimate controlling person from filing a limited group capital filing or report on an annual basis if either: if the lead state commissioner determines that a limited group capital report provides sufficient information to evaluate the material risks posed by the group to the insurance entities in the group, and the insurance holding company can satisfy the following criteria:~~

~~1) Provided if the insurance holding company conducts no insurance operations in has filed a jurisdiction subject to a covered agreement, the group capital calculation at least once; and,~~

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

~~a. _____~~

~~b. ORSA size exemption the insurance holding company system has annual direct written and unaffiliated assumed premiums (including international direct and assumed premiums), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; or~~

~~the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and the following additional criteria are met:~~

~~c. The insurance holding company system has no:~~

~~(i) Does not include material insurers within its holding company structure that are domiciled outside of the United States or one of its territories; and~~

~~(ii) The holding company includes no Does not include a banking, depository or other material non-insurance financial entity that is subject to a specified regulatory capital framework; and~~

~~(iii) The holding company system attests that there are no material transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the lead state has determined that the non-insurers within the holding company system do not pose a material risk to the insurers ability to honor policyholder obligations.~~

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

~~1) if any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or~~

~~2) any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to define standards and commissioner's authority over companies deemed to be in hazardous financial condition]; or~~

~~3) any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.~~

Commented [MG13]: [Comment 13] ACLI suggests limiting the discretion to accept a limited group capital report (vs. also allowing an exemption), because we heard multiple regulators on the GCCWG express a desire to collect at least one full group capital calculation before a group could become eligible for a limited filing reporting obligation. Alternatively, if the regulators would prefer the ability to exempt eligible groups from filing any GCC-related report, collecting at least one full-GCC prior to granting the exemption may help regulators determine the extent of material risk within the group's non-insurance operations.

Commented [MG14]: [Comment 14] 21A(1)(a-c) are not exemptions - a group would still have to file a full GCC at least once, and then an annual limited group report. 21A recognizes that there are some groups that may not meet the criteria for exemption in 4L(2)(a)-(d), but the GCC filing may not add new information that a lead state commissioner needs in order to meet the obligation as a group wide supervisor - per 21(A)1.

Commented [MG15]: [Comment 15] Additional work is needed to define "materiality" with respect to the GCC, including how to determine whether a non-US insurance operation was material, and what impact, if any, this might have on the Covered Agreement. This information could be included in the FAH and/or GCC Instructions.

Commented [MG16]: [Comment 16] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in annual premiums). However, if such an approach is not acceptable to regulators, then we propose adding a section to 21A to give regulators the discretion to accept a limited annual group capital filing from these groups, as long as the group has filed a full GCC at least once.

Commented [MG17]: [Comment 17] 21(A)(1)(c) recognizes that there may be some groups where the lead-state has sufficiently clear line of sight into each of the holding company's material entities, and fully understands the holding company's financial position without the full GCC, they should have the same level of discretion as those ...

Commented [MG18]: [Comment 18] Assuming the intent was to capture depository institutions or other bank-like entities that are not subject to insurance department regulation, then we recommend adding "material non-insurance" before financial entity, especially because the definition of financial entity remains unclear and may evolve as regulators get more experience with the GCC. This would ...

Commented [MG19]: [Comment 19] We recommend deleting this section, because these transactions are likely to be captured in a limited group filing that a supervisor will be able to review prior to determining if this discretion is appropriate. In addition, there are material intra-group transactions that occur in the ordinary course of business that we do not think should automatically disqualify a gro ...

ACLI comments on the exposed Model Act and Regulation

21C. ~~For the purposes of [insert cross reference to Model Holding Company Act section 4L(2)(d)], a 21D-A non-U.S. jurisdiction that is not a reciprocal jurisdiction, is considered to “recognize and accept” the group capital calculation if it meets the following requirements:~~

~~Recognizes the U.S. state regulatory approach to group supervision and group as a world-wide capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and assessment for U.S. insurance groups that are domiciled or maintain their headquarters in this state or another who operate within the jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision of the group-wide supervisor, if it satisfies the following criteria:~~

~~1. The group-wide supervisor within the jurisdiction does not apply the jurisdiction’s own regulatory measure of insurance group capital adequacy at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and~~

- ~~1) A non-U.S. jurisdiction that does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group-wide supervisor, may also be included in 21D(1) if it provides written confirmation; who operate within that jurisdiction.~~
- ~~2) A non-U.S. jurisdiction where no U.S. insurance groups operate can be included in 21D(1) as recognizing the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisor. In this case this will serve as the documentation otherwise required. A competent regulatory authority in such a jurisdiction provides written confirmation that information non-U.S. regarding the insurance holding company, their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. If such information-sharing agreements were in place prior to this Act, such as those provided in a covered agreement or memorandum of understanding, no additional confirmation is required. The commissioner shall determine, in consultation with the NAIC Committee Process, if the required information sharing agreements are in force.~~

~~21D. in 21D(1).~~

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

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

Commented [MG20]: [Comment 20] Proposed changes are intended to align the Model Regulation in line with the ACLI Board approved policy on the scope of the GCC.

Commented [MG21]: [Comment 21] The proposed changes are intended to align the Model Act with ACLI’s Board approved principles

Commented [MG22]: [Comment 22] provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.

ACLI comments on the exposed Model Act and Regulation

2)

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

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

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

Commented [MG23]: [Comment 23] Subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.

ACLI comments on the exposed Model Act and Regulation

Appendix 2. Full text of ACLI technical comments

ACLI comments on the Model Act (#440)

#	Model section	ACLI comment
1	4L(2)	[Comment 1] 4L(2) currently requires the ultimate controlling person to submit the group capital calculation. However, it will likely be more appropriate for some insurance groups that may be required to file the GCC, including those that are part of non-financial conglomerates and the U.S. operations of foreign-based groups, to conduct the filing at a level below the ultimate controlling person. Our language broadens the model act to account for such circumstances.
2	4L(2)	[Comment 2] The NAIC GCC Instructions would be an appropriate place to include additional guidance on criteria for determining the “controlling person” as determined by the lead state, as well as specifying the situations where this may be necessary.
3	4L(2)(a).	[Comment 3] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in group premiums). Some regulators have expressed concern giving an exemption to groups with < \$1 billion in group premiums if the group has not filed a GCC at least once. That is why we are recommending, as an alternative to granting an exemption for groups who don’t file an ORSA because of size, giving the lead-state the discretion to accept a limited group capital report for such groups, as long as they have filed a GCC at least once (see comments to 21A).
4	4L(2)(b)	[Comment 4] ACLI supports 4L(2)(b) as it is written.
5	4L(2)(c)	[Comment 5] Appears unnecessary – recommend deleting to shorten text.
6	4L(2)(d)	[Comment 6] Changed to match how the terminology in the NAIC Financial Analysis Handbook.
7	4L(2)(d)	[Comment 7] Streamlined and relocate definition of recognize and accept to the Model Reg; not intended to change the intent/purpose of (d)(i).
8	4L(2)(d)(iii)	[Comment 8] Streamline and make the language more consistent with what is required of other jurisdictions, by striking reference to recognizing the GCC as an acceptable ICS and replacing with recognition as an “acceptable world-wide capital assessment for U.S. groups.”
9	4L(2)(e)	[Comment 9] Clarify that even if the U.S. operations of a non-US group must file a GCC, this section does not invalidate the exemption at the world-wide level provided by 4L(2)(c) and (d). Without this change, the language could be interpreted as invalidating the exemption at the world-wide level, which we do not believe is what was intended with 4L(2)(e).
10	4L(2)(e)	[Comment 10] intended to align the Model Act with the ACLI Board-approved principles.
11	4L(2)(f)	[Comment 11] This section appears to give the Commissioner broad authority to exempt groups from the GCC, even if they do not meet the criteria in the model law for exemption. If states have the broad authority to exempt any group – beyond those exemptions specified in the law, it creates the risk of an unlevel playing field. We recommend limiting this discretionary authority to accept a limited group capital report from companies who meet the criteria in the model regulation.

ACLI comments on the Model Regulation (#450)

#	Model section	ACLI Comment
12	Section 21A	[Comment 12] A clean version incorporating ACLI's changes would read as...

ACLI comments on the exposed Model Act and Regulation

#	Model section	ACLI comment
13	Section 21A	[Comment 13] ACLI suggests limiting the discretion to accept a limited group capital report (vs. also allowing an exemption), because we heard multiple regulators on the GCCWG express a desire to collect at least one full group capital calculation before a group could become eligible for a limited filing reporting obligation. Alternatively, if the regulators would prefer the ability to exempt eligible groups from filing any GCC-related report, collecting at least one full-GCC prior to granting the exemption may help regulators determine the extent of material risk within the group's non-insurance operations.
14	Section 21A(1)	[Comment 14] 21A(1)(a-c) are not exemptions per se - a group would still have to file a full GCC at least once, and then an annual limited group report. 21A recognizes that there are some groups that may not meet the criteria for exemption in 4L(2)(a)-(d), but the GCC filing may not add new information that a lead state commissioner needs in order to meet the obligation as a group wide supervisor - per 21A(1).
15	Section 21A(1)(a)	[Comment 15] Additional work is needed to define "materiality" with respect to the GCC, including how to determine whether a non-US insurance operation was material, and what impact, if any, this might have on the Covered Agreement. This information could be included in the FAH and/or GCC Instructions.
16	Section 21A(1)(b)	[Comment 16] ACLI supports an exemption for insurance holding companies that do not file the ORSA because of size (i.e., < \$1 billion in annual premiums). However, if such an approach is not acceptable to regulators, then we propose adding a section to 21A to give regulators the discretion to accept a limited annual group capital filing from these groups, as long as the group has filed a full GCC at least once.
17	Section 21A(1)(c)	[Comment 17] 21(A)(1)(c) recognizes that there may be some groups where the lead-state has sufficiently clear line of sight into each of the holding company's material entities, and fully understands the holding company's financial position without the full GCC, they should have the same level of discretion as those companies covered by (a) to allow a limited annual filing, as long as the group has filed a full GCC at least once.
18	Section 21A (1)(c)(ii)	[Comment 18] Assuming the intent was to capture depository institutions or other bank-like entities that are not subject to insurance department regulation, then we recommend adding "material non-insurance" before financial entity, especially because the definition of financial entity remains unclear and may evolve as regulators get more experience with the GCC. This would avoid disqualifying groups who may have a broker-dealer that exists solely to support investing for the insurer from being able to qualify for a limited reporting schedule. A broker dealer that is immaterial (if materiality was defined at 2-5% of total assets) to the group is not going to have a significant impact on the GCC or pose a material risk to policyholders.
19	Section 21A(1)(c)	[Comment 19] We recommend deleting this section because these transactions are likely to be captured in a limited group filing that a supervisor will be able to review prior to determining if this discretion is appropriate. In addition, there are material intra-group transactions that occur in the ordinary course of business that we do not think should automatically disqualify a group from being able to file a limited group capital report. Some of these material transactions include the periodic payment of dividends, which requires regulatory notification and in the case of extraordinary dividends, regulatory approval; the use of non-insurance service companies to share overhead and operating costs among insurance subsidiaries, and tax-sharing agreements among affiliates.

ACLI comments on the exposed Model Act and Regulation

#	Model section	ACLI comment
20	Section 21C	[Comment 20] Proposed changes are intended to align the Model Regulation in line with the ACLI Board approved policy on the scope of the GCC.
21	Section 21D	[Comment 21] The proposed changes are intended to align the Model Act with ACLI's Board approved principles
22	Section 21D	[Comment 22] provides clarity that existing information sharing agreements between covered and reciprocal jurisdictions will satisfy this requirement.
23	Section 21E	[Comment 23] Subgroup reciprocity must be supported by a transparent and equitable process. The Act and Regulation contain a proposed framework for a process to determine if a non-U.S. jurisdiction "recognizes and accepts the GCC". We believe further refinement is necessary to improve it and address outstanding questions, such as how to address situations when it is difficult to access confidential information in some non-U.S. jurisdictions. We ask the NAIC to commit to fully develop this process, in consultation with interested parties, prior to finalizing the Model Regulation. ACLI and its members remain committed to assisting the NAIC in this effort.

ACLI comments on the exposed Model Act and Regulation

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

**MODEL ACT – 440
WITH ACLI MODIFICATIONS (CLEAN)**

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

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

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

- e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require a group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation, for any U.S. insurance group's operations in that non-U.S. jurisdiction.
- f. Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to accept a limited group capital filing or

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ACLI comments on the exposed Model Act and Regulation

report, if the insurance holding company meets the criteria for such an exception, as specified by the commissioner in regulation.

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

MODEL REGULATION (450)
WITH ACLI MODIFICATIONS (CLEAN)

Section 21.

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

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

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

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

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ACLI comments on the exposed Model Act and Regulation

volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

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

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

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

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

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

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

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

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Draft: 10/5/20

Group Capital Calculation (E) Working Group
WebEx
September 29, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met via WebEx call Sept. 29, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Jim Jakielo and John Loughran (CT); Susan Bernard and Kim Hudson (CA); Philip Barlow (DC); Carrie Mears (IA); Vincent Tsang (IL); Roy Eft (IN); Christopher Joyce (MA); Judy Weaver (MI); Barbara Carey (MN); John Rehagen (MO); Jessica Price (NC); Ben Hostetler (NE); Dave Wolf (NJ); Dale Bruggeman (OH); Kimberly Rankin (PA); Trey Hancock (TN); Mike Boerner (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Discussed Revisions to the GCC Instructions

Commissioner Altmaier stated that the purpose of the meeting is to present NAIC staff suggested revisions to the group capital calculation (GCC) instructions (Attachment Three-C1) compiled in response to the comments received during the latest exposure and discussed during the Working Group calls on July 29 and Sept. 2. He added that the template would be updated in conformity with the instructions. He noted that his goal is to expose the revised instructions until Oct. 15 at the end of the discussion. He stated that a summary of the changes (Attachment Three-C2) is included in the materials, which will also help identify where the changes were made in the instructions. The following revisions were presented:

a. Definition of Financial Entities Without a Specified Regulatory Capital Requirement

Lou Felice (NAIC) stated that he had been working with several interested parties on improving the definition of financial entities. He added that the results of that discussion to date are included in the revised definition. In response to a question from Mr. Tsang, Mr. Felice said he flagged some language that should be evaluated by state insurance regulators during the comment period. The language relates to the threshold used for the proportion of intragroup activity conducted by certain affiliates to determine whether an affiliate is a financial or a nonfinancial entity.

b. Principles for Evaluating Whether a Nonfinancial Entity Poses Material Risk

Mr. Felice stated that he had been working with the same interested parties on developing principles to be considered in determining whether a nonfinancial entity not owned by an insurer in the group posed material risk to the insurers in the group. Such entities owned by an insurer will remain in the capital charges (e.g., risk-based capital [RBC]) for the insurer. He added that a definition of cross-support mechanisms was added since they are referenced in both the definition of a financial entity and in the material risk principles. The results of the input provided are included in the revised instructions.

c. Treatment of Financial Entities Without Specified Regulatory Capital Requirement

Mr. Felice stated that he incorporated comments supporting similar treatment for all financial entities without regulatory capital requirements. He stated that no entities defined as financial could be excluded from the GCC, but he added that a suggestion from the (American Property Casualty Insurance Association—APCIA) to categorize entities as low, medium or high risk was now included in the instructions. The filer's categorization would use the material risk principles as a guide. Factors for each category are suggested in the instructions. He suggested that the Working Group consider using a medium risk charge until further data is collected.

d. Treatment of Nonfinancial Entities

Mr. Felice stated that the instructions now include a specific industry average after the covariance factor applied to GCC equity value and calibrated to 300% x authorized control level (ACL) RBC as the capital charge for these entities. The calculation of the factors was provided to a large mutual insurer for a reasonableness review, and an error was identified and corrected. He noted that the charge would apply to nonfinancial entities that pose material risk and are owned by non-insurers. Furthermore, such entities that do not pose material risk are subject to exclusion from the GCC. Mr. Felice stated that an alternative revenue-based risk charge remains as a potential option for comment but is less connected to RBC. He suggested that the factor for the revenue-based charge be set at the same level as for a "medium" risk financial entity. Bruce Byrnes (Berkshire Hathaway) questioned the use of an equity charge for entities not owned by insurer since those entities' value are not available to pay policyholder claims. He continued that he did not understand why different industries attract different risk charges. Mr. Felice indicated that the rationale was to be agnostic to group structure entities that pose risk.

e. Allowance for Capital Instruments as Additional Capital

Mr. Felice suggested removing the “tracked downstream” approach in line with most comments received. He added that an alternative approach suggested by the APCIA could be run in parallel via a sensitivity test. The APCIA contends its approach better represents structural subordination. Mr. Felice stated that the approach applies the same overall limitations for a capital allowance. Mr. Felice stated that NAIC staff recommend raising the overall limit on the allowance from 50% to 75% of total adjusted carrying value in the template. Commissioner Altmaier stated that the revisions are generally in line with the approach laid out in the previously issued memorandum on capital instruments. Mr. Felice agreed and stated that there were some refinements to the approach for calculating allowance.

David Neve (Global Atlantic Financial Group) asked if the question of eliminating the “tracked downstream” approach is still open. Commissioner Altmaier stated that it was a last opportunity for additional comments on this subject. Joseph Engelhard (MetLife) stated that his company would assess the potential alternative approach and noted that MetLife may have additional comments on the 30% and 15% proxy approach as applied to qualifying senior and hybrid debt, respectively. Tom Finnell (America’s Health insurance Plans—AHIP) stated that AHIP may also have further comments on the 30% and 15% calculations. Commissioner Altmaier said that he looks forward to any further comments from MetLife and AHIP.

f. Application of Scalars for Non-U.S. Insurance Entities

Mr. Felice stated that the instructions have changed to incorporate 100% of jurisdictional capital requirements at a prescribed capital requirements (PCR) level for all jurisdictions with risk-sensitive capital requirements. He said that a sensitivity test was added to collect information on the excess relative ratio scalar approach favored by all those who commented. For jurisdictions without risk-sensitive capital requirements, an equity charge would be applied and asked for comments on the suggested 100% charge. Commissioner Altmaier noted that scalars remain an open issue, and deliberation would be informed by ongoing work at the International Insurance Relations (G) Committee.

Patrick Reeder (American Council of Life Insurers—ACLI) asked about how the 100% of jurisdictional PCR would affect comparability with the international workstream. Commissioner Altmaier stated that the current language keeps options open as comparability is defined. Ned Tyrrell (NAIC) agreed that the current approach is a good placeholder while evaluating other methods, in particular work being done by the American Academy of Actuaries (Academy).

g. Calibration Level

Commissioner Altmaier raised the issue of the calibration level of the GCC and invited further comments during the upcoming exposure period. Mr. Felice described the rationale for supporting a 300% x ACL RBC calibration level as most suitable for the purpose of the GCC as a group-wide analytical tool for the lead state regulator. Mr. Tyrrell described the issues of calibration and scalars as hard to separate. He added that the current 300% x ACL RBC is reasonably comparable to the PCR level used by international jurisdictions in their capital formulas.

Mr. Engelhard said calibration is an important issue for MetLife. He acknowledged the interrelationship with scalars and comparability with international standards. He said he appreciates the opportunity for continued discussion. Ian Adamczyk (Prudential Financial) agreed with Mr. Engelhard’s comments. Mariana Gomez-Vock (ACLI) questioned how GCC calibration relates to the Bilateral Agreements between the United States of America (U.S.) and the European Union and between the U.S. and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement).

h. Sensitivity Analysis and the Collection of “Other Information”

Mr. Felice indicated that NAIC staff suggest retaining the Sensitivity Analysis tab to provide valuable analytics to the lead state regulator. He conceded that some of the analysis points relate to alternative charges for entity types where a final decision has not been made by the Working Group, and those may be removed away once the decisions are made.

Mr. Felice stated that much of the information collected will support the regulatory analytics purpose of the GCC. He said he recommends that the Analytics Drafting Group determine the value of the existing or potential new items in this section.

Hearing no objections, Commissioner Altmaier instructed NAIC staff to expose the revised instructions for a public comment period ending on October 15. Recognizing that there are a few open items, he stated that the Working Group is nearing the point of finalizing decisions and asked that any issue that the Working Group has not adequately addressed be identified.

2. Discussed Other Matters

Commissioner Altmaier stated that during its next meeting on Oct. 15, the Working Group will return to the discussion on revisions to the *Insurance Holding Company System Regulatory Act* (#440).

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

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**NAIC GROUP CAPITAL CALCULATION
INSTRUCTIONS
SEPTEMBER 24, 2020**

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I. Background

A. Work Performed Up Through 12/31/15

1. In 2015, the NAIC ComFrame Development and Analysis (G) Working Group (CDAWG) held discussions regarding developing a group capital calculation (GCC) tool. The discussions revealed that developing a GCC was a natural extension of work state insurance regulators had already begun, in part driven by lessons learned from the 2008 financial crisis which include better understanding the risks to insurance groups and their policyholders. While insurance regulators currently have authorities to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist regulators in identifying risks that may emanate from a holding company system.
2. More specifically, the GCC and related reporting provides more transparency to insurance regulators regarding the insurance group and make risks more identifiable and more easily quantified. In this regard, the tool assists 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 supporting/sidizing the operations of non-insurance entities, potentially undermining/adversely impacting the insurance company's financial condition and/or placing upward pressure on premiums to the detriment of insurance policyholders. This calculation provides an additional analytical view/early warning signal to regulators so they can begin working with a groupe/company to resolve any concerns in a manner that will ensure that policyholders will be protected. The GCC is an additional reporting requirement but with important confidentiality protections built into the legal authority. State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to provide lead-State regulators with further insights to allow them to reach/make informed conclusions/decisions on the financial condition of the group both and the need for further information or discussion/action, and the type of action to take.
3. 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, they do not have the benefit of a consolidated statutory accounting system and financial statements to assist them in these efforts. It was noted prior to development that a consistent method of calculating group capital for typical group risks would provide a very useful tool for state financial regulators to utilize in their group assessment work. It was also noted that a group capital calculation could serve as a baseline quantitative measure to be used by regulators in to compliment/enjunction with the view of group-specific risks and stresses provided by/identified in the Own Risk and Solvency Assessment (ORSA) Summary Report filings and as well as risks identified in Form F filings that may not be captured in legal entity RBC filings. Finally, it's important to understand that regulators believed that a group capital calculation would be another valuable tool to complement the states' legal entity focused solvency assessments.
4. During the course of several open meetings and exposure periods, CDAWG considered a discussion draft which included three high level methodologies for the group capital calculation: an RBC aggregation approach, a Statutory Accounting Principles (SAP) consolidated approach, and a Generally Accepted Accounting Principles (GAAP) consolidated approach. On September

11, 2015, the CDAWG members unanimously approved a motion to move forward with developing a recommendation for a group capital calculation and directed an appropriate high-level methodology for the recommendation.

5. At a CDAWG meeting on September 24, 2015, pros and cons for each methodology were discussed, and a consensus quickly developed in support of using an RBC aggregation approach if a group capital calculation were to be developed. The NAIC Executive/Plenary ultimately adopted the following charge for the Financial Condition (E) Committee:

“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.”

6. The RBC aggregation approach is intended build on existing legal entity capital requirements where they exist rather than developing replacement/additional standards. In selecting this approach, it was recognized as satisfying regulatory needs while at the same time having the advantages of being less burdensome and costly to regulators and industry and respecting other jurisdictions’ existing capital regimes. In order to capture the risks associated with the entire group, including the insurance holding company, RBC calculations would need to be developed in those instances where no RBC calculations currently exist.
7. In early 2016, the Financial Condition (E) Committee formed the Group Capital Calculation (E) Working Group (Working Group), who began to address its charge and various details of the items suggested by the CDAWG. The instructions included herein represent the data, factors, and approaches that the Working Group believed were appropriate for achieving such an objective. The GCC instructions and template are intended to be modified, improved and maintained by the NAIC in the future similar ~~such as existing tools such as~~ are the *Accounting Practices and Procedures Manual*, the *Annual Statement Instructions* and *Risk-Based Capital formula and Instructions*. This includes but is not limited to future disclosure of additional items, such as stress testing, which was originally supported by the CDAWG but has not yet been considered.

II. Definitions

8. **Broader Group:** The entire set of legal entities that are controlled by the Ultimate Controlling Person of insurers within a corporate group. When consider the use of this term, all entities included in the Broader Group should be included in Schedule 1 and the Inventory, but only those that are denoted as "included" in the Schedule 1 will be considered in the actual group capital calculation.

9. **Financial Entity:** A non-insurance entity that engages in or facilitates financial intermediary operations (e.g., accepting deposits, granting of credits, or making loans, managing, or holding investments, etc.). Such entities may or may not be subject to specified regulatory capital requirements of other sectoral supervisory authorities. The primary examples of financial entities are commercial banks, intermediation banks, investment banks, saving banks, credit unions, savings and loan institutions, swap dealers, and the portion of special purpose and collective investment entities (e.g., investment companies, private funds, commodity pools, and mutual funds) that represents the Broader Group's aggregate investment interest ownership in such entities, whether or not without regard to any member of the Broader Group. ~~is involved in general that~~ entity's management responsibilities (e.g., via investment advisory or broker/dealer duties) for those entities. For purposes of this definition, a subsidiary or subsidiaries of an insurance company whose predominant purpose, in the aggregate for all such subsidiaries is to manage or hold investments or act as a broker / dealer for those investments on behalf of the insurance company and its affiliated insurance (greater than 90% of all such investment subsidiaries' the investment subsidiary's assets under management or held are owned by or for the benefit of these insurance affiliates) should NOT be considered a Financial Entity. In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through products or transactions such as a mortgage, other credit offering, a derivative, and intra-group cross support mechanisms (as defined below).

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DRAFTING NOTE: ANY ADDITIONAL ACTIVITIES PER REGULATORS AND IPS?

10. **Insurance Group:** For purposes of the GCC, a group that is comprised of two or more entities of which at least one is an insurer, and which includes all of the insurers in the Broader Group. Another (non-insurance) entity may exercise significant influence on the insurer(s), i.e. a holding company or a mutual holding company; in other cases, such as mutual insurance companies, the mutual insurer itself may be the Ultimate Controlling Person. The exercise of significant influence is determined based on criteria such as (direct or indirect) participation, influence and/or other contractual obligations; interconnectedness; risk exposure; risk concentration; risk transfer; and/or intragroup agreements, transactions and exposures. An Insurance Group may include entities which facilitate, finance or service the group's insurance operation, such as holding companies, branches, non-regulated entities, and other regulated financial institutions. An insurance Group is thus comprised of the head of the Insurance Group 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 could be headed by:

- an insurance legal entity;
- a holding company; or
- a mutual holding company.

An Insurance Group may be:

- a subset/part of bank-led or securities-led financial conglomerate; or
- a subset of a wider group.

An Insurance Group is thus comprised of the head of the Insurance Group and all entities under its direct or indirect control.

11. **Lead State Regulator:** as defined in the NAIC's Financial Analysis Handbook, i.e., generally considered to be the one state that "takes the lead" with respect to conducting group-wide supervision within the U.S. solvency system.
12. **Reciprocal Jurisdiction:** as defined in the Model Law for Credit for Reinsurance.
13. **Entity not Subject to A Regulatory Capital Requirement:** This is a financial entity other than an entity that is subject to a specified regulatory capital requirement.
14. **Scope of Application:** Refers to the entities that meet the criteria listed herein for inclusion in the GCC ratio. The application of material risk criteria may result in the Scope of Application being the same as, or a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s). Please note, U.S. Branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S. insurance regulator, otherwise in as much as they are already included in a reporting legal entity, they are already in the scope of application and there is no need for any additional reporting.

15. Material Risk: Risk emanating from a non-insurance / non-financial entity not owned by an insurer that is of a magnitude that would adversely impact a group's ability, to pay policyholder claims or make other policy related payments (e.g. policy loan requests or annuity distributions).

To determine whether an entity within the Broader Group poses material risks to the Insurance Group, the totality of the facts and circumstances must be considered. The determination of whether risk posed by an entity is material requires analysis of various aspects pertaining to the subject entity. A determination that a non-insurance / non-financial entity does not pose material risk allows the filer to request exclusion of that entity from the calculation of the GCC ratio in the Inventory Tab. A number of items as listed below should be considered in making such a determination, to the extent they apply Caution is necessary, however. The fact that one or more of these items may apply does not necessarily indicate risk to the Insurance Group is, or is not, material. The group should be able to support its determination of material risk if requested by the lead-State regulator. This should not be used as a checklist or as a scorecard. Rather, the list is intended to illuminate relevant facts and circumstances about a subject entity, the risk it poses, how the Insurance Group might be exposed to that risk and means to mitigate that risk."

Primary Considerations:

- Past experience (i.e., the extent to which risk from the entity has impacted the Insurance Group over prior years/cycles).
- The degree to which capital management across the Broader Group has historically relied on funding by the Insurance Group to cover losses of the subject entity.
- The existence of cross support mechanisms between the entity and the Insurance Group (e.g., guarantees).
- The means by which risk can be transmitted, i.e., the existence of sufficient capital within the entity itself to absorb losses under stress and/or if adequate capital is designated elsewhere in the Broader Group for that purpose.
- The degree of risk correlation or diversification between the subject entity and the Insurance Group. (e.g., where risks of one or more entities outside the Insurance Group are potentially offset (or exacerbated) by risks of other entities) and whether the corporate structure or agreements allow for the benefits of such diversification to protect the Insurance Group.
- The existence and relative strength or effectiveness of structural safeguards that could minimize the transmission of risk to the Insurance Group (e.g., whether the corporate shell can be broken).

Secondary Considerations (If primary considerations suggest exclusion may be reasonable, these can be used to further support exclusions):

- The location of the entity in relation to the Insurance Group within the Broader Group's corporate structure and how direct or indirect the linkage, if any, to the Insurance Group may be.
- The activities of the entity and the degree of losses that the entity could pose to the group under the current economic environment or economic outlook.
- Whether the entity (or grouping of similar entities) comprises less than either 5% of the broader group-wide equity or broader groupwide revenue.

The guidance above recognizes that there are diverse structures and business models of insurers that make it impracticable to apply a one-size-fits-all checklist that would work for materiality determinations across all groups. Strict or formulaic quantitative measures based on size of the entity or its operations of a non-insurance affiliate are an insufficient proxy for materiality of risk to the insurance operations. The GCC Instructions thus consider the unique circumstances of the relevant entity and group and uses an interactive process whereby the group brings forward its suggestions as to entities that should be excluded from the scope of application for a discussion with the lead state, ultimately culminating in an agreement on the scope of application. The guidance in this section helps to facilitate that process and discussion with criteria for cross support mechanisms that can potentially transmit material risk, as defined, to the insurance group as well as safeguards that can mitigate such risk or its transfer.

~~45-16.~~ **Ultimate Controlling Person:** As used in the NAIC's Insurance Holding Company System Regulatory Act (Model #440). This the entity that exercises control directly or indirectly over all entities within the broader group.

~~16.17.~~ **Control:** As used in the NAIC’s Insurance Holding Company System Regulatory Act., the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K of Model #440 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

~~17.18.~~ **Affiliate:** As used in the NAIC’s Insurance Holding Company System Regulatory Act., an “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For purposes of the GCC, affiliates will NOT include those affiliates reported on Schedule A or Schedule BA, EXCEPT in cases where there are financial entities reported as or owned indirectly through Schedule A or Schedule BA affiliates ~~or where a non-financial, non-insurance Schedule A or Schedule BA affiliate represents greater than X percent of the insurance entity’s adjusted available capital.~~ In general Schedule A and Schedule BA affiliates will otherwise remain as investments of a parent insurer will be reported as parent of the value and capital calculation of the parent insurer. Any entities that would otherwise qualify as Schedule BA affiliates as described above but are owned by other entities (e.g. foreign insurers or other type of Parent entity) should be treated in the same way.

~~DRAFTING NOTE: Initial suggestion is to set “X” threshold for material non-financial entities no higher than 5%.~~

~~18.19.~~ **Person:** As used in the NAIC’s Insurance Holding Company System Regulatory Act., a “person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

~~19.20.~~ **Cross Support Mechanism:** For purposes of evaluating material risk, ~~depending on the nature of the transaction and the specific circumstances, these may include corporate guarantees, capital maintenance agreements (regulatory or ratings based), letters of credit, intercompany indebtedness, bond repurchase agreements, securities lending or other agreements or transactions that create a financial interdependence or link between entities in the group.~~ ~~interdepe~~

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III. Exemptions & Scope

A. Groups Exempted from the GCC

~~20-21.~~ These instructions do not address groups that are exempt from completing the GCC; those matters are addressed instead within proposed changes to the *Insurance Holding Company System Regulatory Act* (Model #440).

B. Scope of the Broader Group & Scope of Application

~~21-22.~~ When considering the scope of application, preparers of the GCC must first understand the information to be included in Schedule 1 of the template. When developing an initial inventory of all potential entities, the preparers of the GCC shall complete Schedule 1, which requests data for all of the entities directly or indirectly owned by the Ultimate Controlling Person (including the Ultimate controlling Person) that are listed in the insurer's most recent Schedule Y or in relevant Holding Company Filings. This will require the preparers of the GCC to complete basic information about each such entity in Schedule 1, including its total assets, and total revenue and net income for this specific year identified, and the initial filing will require the same information for the prior year. The primary purpose of the Schedule 1 is to 1) assist the lead-state in making an assessment on the entities within the group that should be included in the Scope of Application; and 2) provide the lead state with valuation information to better understand the group. This valuable information produces various ratios and other financial metrics that will be used in the analysis of the GCC and the group by the lead state for their holding company analysis.

~~22-23.~~ To assist the Lead State Regulator in assessing the Scope of Application, the Schedule 1 and the Inventory Tab of the template will be completed by each preparer to provide information and certain financial data on all the entities in the group. Each preparer will also use the include / exclude column in Schedule 1 to request its own set of entities to be excluded from the calculation after applying its criteria for material risk (as defined in Paragraph 15 herein) which will be described in the template and evaluated by the Lead State Regulator. A second column will be used by the regulator to reflect entities that the regulator agrees should be excluded.

~~23-24.~~ Although all entities must be listed in Schedule 1 and in the Inventory tab, the preparer is allowed to group data for certain financial entities not subject to a regulatory capital requirement and certain non-insurance and non-financial entities. Thus, while the Schedule 1 would include the full combined financial results/key financial information (for all entities directly or indirectly owned by the Ultimate Controlling Person, such data may be reported based upon major groupings of entities to maximize its usefulness and allow the Lead State Regulator to better understand the group, its structure, and trends at the sub-group as well as group level. Prior to completing the GCC annually, the Insurance Group should determine if the proposed grouping is satisfactory to the lead state or if there are certain non-insurance and non-financial entities (such entities are required to be broken out and reported separately) that should be broken out and reported separately.

C. General Process for Determining the Scope of Application

~~24.25.~~ The starting point for “Scope of Application” (i.e., for purposes of the GCC specifically) is the entire group. However, in the case of groups with material diverse non-insurance / non-financial activities isolated from the financial / insurance group and without cross support mechanisms as defined in Paragraph 20, the preparer may request a narrower scope starting at the entity that controls all insurance and financial entities within the group, (i.e., comprise a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s) (Broader Group)). However, the adjustments as to the Scope of Application suggested by the preparer in consultation and in agreement with the Lead State Regulator should include consideration of guidance in Paragraph 9 (“Identify and Include all Financial Entities”) the totality of the facts and circumstances, as described in paragraph 15 (“Definition of Material Risk”). The ~~be documented as to~~ rationale and criteria applied in allowing the reduced scope ~~should be documented and made available to non-lead states if requested.~~ No financial entities may be excluded from scope of application using this method.

~~DRAFTING NOTE: Consider developing general principals or guidance to promote consistency in the assessment of requests for reduced scope of application.~~ The fundamental reason for state insurance regulation is to protect American insurance consumers. Therefore, the objective of the GCC is to assess quantitatively the collective risks to, and capital of, the entities within the Scope of Application. This assessment should consider risks that originate within the Insurance Group along with risks that emanate from outside the Insurance Group but within the Broader Group. The overall purpose of this assessment is to better understand the risks that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims consistent with the primary focus of insurance regulators. Consistent with sound regulation, the benefits of the quantitative analysis facilitated by the GCC should exceed the cost of implementation.

D. Guiding Principles and Steps to Determine the Scope of Application

~~25.26.~~ For most groups, the Scope of Application is initially determined by the preparer in a series of steps, listed here and then further explained as necessary in the text that follows:

- Develop a full inventory of potential entities using the Inventory of the Group template (Schedule 1)
- Denote in Schedule 1 for each non-financial entity whether it is to be “included in or excluded from” the Scope of Application” using the criteria below in the section “Identify Risks from the Broader Group”
- All entities, whether to be included in or excluded from the Scope of Application are to be reported in the Inventory Tab of the template.
- Non-financial entities may qualify for grouping on this Inventory Tab as described elsewhere in these instructions.

E. Steps for Determining the Scope of Application

26-27. Identify and Include all Entities in the Insurance Group

Include in the Scope of Application all entities that meet the definition of an affiliate, below and that that fit the criteria identified in the definition of the Insurance Group, below, and denote as such (i.e., included in the Scope of Application) in the Schedule 1 and Inventory of the Group template. Said differently, all insurance entities and entities owned directly or indirectly by the insurance entities in the group shall be included in the Scope of Application.

27-28. Identify and Include all Financial Entities

Financial Entities (as defined in Paragraph 922, herein) within the Inventory of the Group template shall be included in (i.e. may not be designated as “excluded from”) the Scope of Application regardless of where they reside within the Broader Group.

As learned from the 2008 financial crisis, U.S. insurers were not materially impacted by their larger group issues; however, materiality of either equity or revenue of an entity might not be an adequate determinant of potential for risk transmission within the group. Furthermore, risks embedded in financial entities are not often mitigated by the activities of the insurers in the group and may amplify their (the insurers’) risks.

Any discretion in evaluating the ultimate risk generated by a defined financial entity that is not subject to a regulatory capital requirement should be applied via review of the material risk definitions/ principles included in Paragraph 15 to set the level of risk as low, medium or high and not to exclude such entities from the calculation. The rationale should be documented, and all data required in Schedule 1 must be provided for the entity for purposes of analysis and trending.

28-29. Identify Risks from the Broader Group

An Insurance Group may be a subset of a Broader Group, such as a larger diversified conglomerate with insurance legal entities, financial entities, and non-financial entities. In considering the risks to which the Insurance Group is exposed, it is important to take account of those material risks (as defined in Paragraph 15) to the Insurance Group from the Broader Group within which the Insurance Group operates. All non-insurance / non-financial entities included within the Insurance Group that pose material risk to the insurers in the group should be included within (i.e. may not be designated as “excluded from”) the Scope of the Application. Non-financial entities within the Broader Group but outside the Insurance Group that pose such risks/material risks to the Insurance Group should be included within (i.e. may not be designated as “excluded from”) the Scope of Application; non-material non-insurance / non-financial entities within the Broader Group or within the Insurance Group (as both terms are defined in Section II, herein) others than those entities owned by entities subject to a specified regulatory capital requirement ~~may~~ should be reported as “excluded”. When determining which non-financial entities from the broader group to include in the Scope of Application, the preparer must include any entity that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims or provide services to policyholders consistent with the primary focus of insurance regulators.

29-30. Review of Submission

The Lead State Regulator should review the Inventory of the Group template to determine if there are entities excluded by the preparer using the criteria above that the Lead State Regulator agrees do not pose material risk to its insurance operations. Additional information may be requested by the Lead State Regulator to facilitate this analysis. For entities where the lead-state regulator agrees with the request to exclude, the group capital calculation may exclude the data for such entities. Ultimately, the decision to include or exclude entities from the GCC will occur based on the Lead-State regulator's knowledge of the group and related information or filings available to the Lead-State and whether they believe an applicable entity would not adversely impact the entities within the Scope of Application to pay policyholder claims.

DRAFTING NOTE: A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested, but not approved for exclusion by the lead-State.

~~30-31.~~ The preparer, together with the Lead State Regulator, would use the above steps, which includes considering the Lead State Regulator's understanding of the group, including inputs such as Form F, ORSA, and other information from other involved regulators, to determine the reasonableness of the suggested Scope of Application.

~~31-32.~~ Updating the Scope of Application

The Scope of Application could be re-assessed by the preparer and the Lead State Regulator each successive annual filing of the GCC provided there has been substantial changes in corporate structure or other material changes from the previous year's filing. Any updates should be driven by the assessment of material risk and changes in group structure as they impact the exclusion or inclusion of entities within the Scope of Application based on material risk considerations.

IV. General Instructions

~~32-33.~~ The NAIC Group Capital Calculation Template consists of a number of tabs (sections) within one workbook. The following provides general instructions on each of these tabs. IV.

~~33-~~

34. **Attestation:** This tab is intended to work similar to the Annual Statement and RBC attestations, which are both intended to give the regulator greater comfort that the company has completed in accordance with its (these) instructions.

35. **Input 1-Schedule 1:** This tab is intended to provide a full inventory of the group, including the designation by the filer of any non-financial entities to be included in, or excluded from, the

Scope of Application and include sufficient data or information on each affiliated entity (See Schedule A and Schedule BA exceptions) within the group so as to allow for analyzing multiple options for scope, grouping and sensitivity criteria, as well as, allowing the lead state regulator and template reviewer to make a determination as to whether the entities to be included in the scope of application or excluded from the scope of application meet the aforementioned criteria. This tab is also used to maximize the value of the calculation by including various information on the entities in the group that allow the lead state to better understand the group as a whole, the risks of the group, capital allocation, and overall strengths and weaknesses of the group.

36. Except as noted in on the Inventory tab, equity method investments that are accounted for based upon SSAP. No. 48 (Joint Ventures, Partnerships, and Limited Liability Companies) are not required to be de-stacked (separately listed) in Schedule 1, i.e. their value would be included in amounts reported by the parent insurer within the calculation. The basis for this approach is predicated on the purpose of the entire group capital calculation which is to produce an expected level of capital and a corresponding actual level of available capital. The available capital for such Joint Ventures, Partnerships, and Limited Liability Companies is already considered in Schedule 1 but its inclusion in its parent's financial statements amounts and can thus be excluded from an inventory (not separately listed) since the parent already receives a corresponding capital charge within its RBC.
37. **Input 2-Inventory:** This tab is intended to be used by the consolidated group to provide information on the value and capital calculation for all the entities in the group before any de-stacking of the entities. While some of this information is designed to "pull" information from Schedule 1, other cells (blue cells) require input from the group. This tab will include the adjustments for investment in subsidiary other than were an exception is described in these instructions and adjust for intra group arrangements. This tab is set up to subtract those adjustments from capital and therefore should be entered as a 1) positive figure if the adjustment currently has a positive impact on the available capital or the capital calculation; or as a 2) negative figure if the adjustment currently has a negative impact on the available capital or the capital calculation. It will also be used to add relevant entities included as equity investments in Schedules A and BA and to aggregate the resulting adjusted values for use in the actual group capital calculation.
38. **Input 3-Capital Instruments:** This tab is intended to be used to gather necessary information to that will be used to calculate an allowance for additional available capital based on the concept of structural subordination applied to senior or other subordinated debt issued by a holding company. It will also provide information on all Debt issued within the group
39. **Input 4 – Analytics:** In recognizing a primary purpose of the GCC is to enhance group-wide financial analysis, this tab includes or draws from entity-category-level inputs reported in the Tab or elsewhere in the GCC template to be used in GCC analytics. Separate guidance for lead-State regulators to reference in analysing the data provided in the GCC Template (reference applicable location of the guidance - e.g. Financial Analysis Handbook) is included as ~~insert attachment or appendix reference~~. It includes trending entity and group wide metrics that promote analysis that is not currently available from other sources.
40. **Input 5 – Sensitivity Analysis and Inputs:** This tab includes inputs and / or describes informational sensitivity analysis for XXX / AXXX business, captives, permitted & prescribed practices, debt designated as "Other", unscaled foreign insurer values and other designated

sensitivity analysis. The inputs are intended to simply be a disclosure, similar to the disclosure required under Note 1 of the statutory financial statements. The analysis will be applied in the Summary 2 Tab.

41. **Input 6 – Questions and Other Information:** This tab will provide space for participants to describe or explain certain entries in other tabs. Examples include the materiality method applied to exclude entities in Schedule 1 and narrative on adjustments for intra group debt and adjustments to available capital or capital calculations that are included in the “other adjustment” column in the Inventory Tab.
42. **Calc 1 – Scaling (Ins):** This tab list countries predetermined by NAIC and provides the necessary factors for scaling available and required capital from non-US insurers to a comparable basis relative to the US Risk-based Capital figures. It also allows for set scaling options (that vary by insurance segment such as life, P/C, and health).
43. **Calc 2 – Scaling (Non-Insurance):** This tab is used to determine calculated capital for non-insurance entities.
44. **Summary 1 - Entity Category Level:** This tab provides a summary of ~~base~~ available capital and calculated capital for each entity category before the application of capital instruments.
45. **Summary 2 - Top Level:** This tab calculates various informational GCC ratios resulting from applying “on top” and entity level adjustments to adjusted carrying value and adjusted calculated capital and are described in the Sensitivity Inputs and Analysis Tab section. These “what if” scenario analysis will not be part of the ~~base~~ GCC ratio.
46. **Summary 3 – Analytics:** Provides a summary of various GCC analytics.
47. **Summary 4 - Grouping Alternatives:** This tab currently calculates and displays a grouping option that was submitted by an interested party.
48. All cells in the template are color-coded based on the chart below Inputs should only be made in blue cells. Do not add/delete rows, columns, cells or change the structure of the template in any way. If there appears to be an error in the formulas in the template, contact the NAIC.

The following set of colors is used to identify cells:	Colors used
Parameters	
Input cells	
Data from other worksheets	
Local calculations	
Results propagated	

VI. Detailed Instructions

Input 1 – Schedule 1

49. ‘Schedule 1A’ is a small table at the top for identification of the filer. Enter the ‘Name of Group’, name of the person the Template is ‘Completed by’ and the ‘Date Completed.’ Indicate the version number of the template if there are updates or multiple persons completing the template. All figures (in all tabs) should be converted to \$’000s. For example, a book value of \$123,450 should be entered as 123.45 in the template.
50. More detailed information on each legal entity should be reported in Schedule 1B-1E. The order of the entries in Schedule 1 should match that in the Inventory Tab. The first entity listed should be the ultimate controlling party.
51. U.S. Branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S. insurance regulator. They should be reported under the appropriate entity category in [Sch1B Col 6].
52. Entries are required for every entity within the scope of the group. However, while recognizing that lead-State regulators retain the discretion to ask for greater detail, the following simplifications may be applied as long as information for every entity is listed in Schedule 1B:
- A single numerical entry for like Financial Entities would be allowed at the intermediate holding company level, assuming that the like entities are owned by a common parent that does not own other entity types, all use the same accounting rules (e.g., all GAAP), and are at least consistent with the way the group manages their business. The entity at which the total data is provided must be assigned an “Entity Category” in Schedule 1 that corresponds to the instructed carrying value and capital calculation for which the entry is made (e.g. an entity that would otherwise be categorized as a non-operating holding company but holds asset managers would be categorized as an asset manager). Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as “included”.
 - In addition, a single numerical entry would be allowed for all non-insurance / non-financial entities at the intermediate holding company level assuming that the intermediate holding company owns only non-insurance / non-financial entities and would include any positive

residual value of the holding company itself. Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as "included".

DRAFTING NOTE: A grouping option similar to what is applied to financial entities as described in the first bullet, is suggested.

- Values for, non-insurance / non-financial subsidiaries of U.S. RBC filers may remain with their Parent insurers and will not be de-stacked. Entries for these individual entities in the grouping will be reported in Schedule 1B only as "included"
- Mutual Insurance Groups may use the amount of required capital from the top-level Insurer's RBC Report adjusted to 300% x ACL RBC and further adjusted to de-stack foreign insurers and other financial entities owned directly or indirectly (on a look-thru basis) via RBC filing subsidiaries. Such foreign insurance subsidiaries or other financial subsidiaries shall be reported at the carrying values and capital calculations as described later herein.

~~**DRAFTING NOTE:** Depending how broadly financial institutions are defined, consideration can be given to establishing criteria for not de-stacking certain entities from the RBC filing UCP or downstream RBC filers.~~

- Data for U.S. Branches of Foreign insurers may be omitted from Schedule 1 if they are otherwise included in the entries, values, and capital requirements of a foreign insurer.

These simplifications will be treated in a similar manner in Input 2 – Inventory.

53. Any financial entity owned by a Parent insurer and listed in Schedule A or Schedule BA, any insurance or financial entity that is owned indirectly through a Schedule BA affiliate, ~~or any Schedule A or BA affiliate that represents greater than X% of total group adjusted capital~~ should be listed in Schedule 1 and in the Inventory and assigned the appropriated identifying information (See also the instructions for Part B of the Inventory). These entities will be de-stacked from the values for the Parent insurer. The same treatment for these entities will be afforded when they owned by a foreign insurer or other non-insurance entities.

54. Schedule 1B contains descriptions of each entity. Make selections from drop down menu where available.

- **[Sch1B Col 1] Include / Exclude (Company)** – This column is to select entities where a request is made for exclusion. The filer will indicate which non-insurance / non-financial entities not owned directly or indirectly by an insurer that should be excluded from the GCC as not posing material risk to the group. The filers definition of material risk will be reported in the Other Information Tab
- **[Sch1B Col 2] Include / Exclude (Supervisor)**– Column to be filled in by supervisor. These are entities where the Supervisor agrees with the filer's assessment of material risk and these entities will be excluded from the ~~base~~ group capital calculation and may be included in a sensitivity analysis later in the template.

DRAFTING NOTE: This Column may also be completed by the filer after advance consultation with the lead-State regulator.

- **[Sch1B Col 3] Include / Exclude (Selected)**– Formula to determine treatment of tab for later sensitivity analysis. If supervisor has made a determination of include/exclude in the prior column, that will be used. If not, company’s selection will be used.
- **[Sch1B Col 4] Entity Grouping** -The column denotes whether this is an insurance or non-insurance / non-financial entity and is also automatically populated based on the entry in Column 8.
- **[Sch1B Col 5] Entity Identifier** – Provide a unique string for each entity. This will be used as a cross reference to other parts of the template. If possible, use a standardized entity code such as NAIC Company Code (“CoCode”) or ISO Legal Entity Identifier. CoCodes should be entered as text and not number (e.g. if CoCode is 01234, then the entry should be “01234” and not “1234”). If there is a different code that is more appropriate (such as a code used for internal purposes), please use that instead. If no code is available, then input a unique string or number in each row in whatever manner is convenient (e.g. A, B, C, D, ... or 1, 2, 3, 4...). Do not leave blank.
- **[Sch1B Col 6] Entity Identifier Type**– Enter the type of code that was entered in the ‘Entity Identifier’ column. Choices include “NAIC Company Code”, “ISO Legal Entity Identifier”, “Volunteer Defined” and “Other”.
- **[Sch1B Col 7] Entity Name** – Provide the name of the legal entity.
- **[Sch1B Col 8] Entity Category** – Select the entity category that applies to the entity from the following choices (all US Life Captives shall select the option for RBC Filing Captive, complete the calculation using the Life RBC formula in accordance with instructions below regarding “Additional clarification on capital requirements where a US formula (RBC) is not required” whether the company is required by their captive state to complete the RBC formula or not):

Non-Insurer Holding Company	U.K. Solvency II – Non- Life	Argentina
RBC Filing U.S. Insurer (Life)	U.K. Solvency II - Life	Colombia
RBC Filing U.S. Insurer (P&C)	U.K. Solvency II - Composite	Indonesia
RBC Filing U.S. Insurer (Health)	Australia - All	Thailand
RBC Filing U.S. Insurer (Other)	Switzerland - Life	Barbados
U.S. Mortgage Guaranty Insurers	Switzerland - Non-Life	Regime A (Participant Defined)
U.S. Title Insurers	Hong Kong - Life	Regime B (Participant Defined)
Other Non-RBC Filing U.S. Insurers	Hong Kong - Non-Life	Regime C (Participant Defined)
RBC filing (U.S. Captive)	Singapore - All	Regime D (Participant Defined)
Canada - Life	Chinese Taipei - All	Regime E (Participant Defined)
Canadian - P&C	South Africa - Life	Bank (Basel III)
Bermuda - Other	South Africa - Composite	Bank (Other)
Bermuda - Commercial Insurers	South Africa - Non-Life	Financial Entity with a Regulatory Capital Requirement
Japan - Life	Mexico	Other Financial Entity without a Regulatory Capital Requirement
Japan - Non-Life	China	Asset Manager/Registered Investment Advisor
Japan – Health*	South Korea	Other Non-Ins/Non-Fin with Material Risk
Solvency II - Life	Malaysia	Other Non-Ins/Non-Fin without Material Risk
Solvency II -- Composite	Chile	Non-operating Holding Co.
Solvency II - Non-Life	India	Schedule A and BA Directly or Indirectly Owned Financial Affiliates
Solvency II – Non-Life	Brazil	Schedule A and BA Directly Owned Material Non-Financial Affiliates

*If the GCC group's Japanese insurer Health business (referred to as Third Sector) is greater than 60% of total Life (referred to as First Sector) and Health business combined, as reflected by annualized premium for the year reported, then that group may elect to use the Japan Health scalar set rather than the Life scalar.

All U.S. captives are required to complete the applicable RBC formula template. In addition, any insurer, other than U.S. Captive, that submits an RBC filing to either the State of domicile or the NAIC will be considered an RBC filer.

- **[Sch1B Col 9] Alternative Grouping** – This is an optional input field. This field should be used if you wish to show similar entities aggregated into a single line on the "Grouping Alternative Exhibit". For example, if you have a dozen small dental HMO businesses, you may wish to show them as a single line called "Dental HMOs", as opposed to listing each entity separately. This is a level of granularity below 'Entity Category' but above individual entities. No entity should be put in the same 'Alternative Grouping' as its parent. It is fine to put only one entity in a grouping. If any entries are left blank then, in column 17, the 'Entity Name' will be selected as the grouping. This will not impact the order of the entities for which data is entered in Schedule 1 or the Inventory tab.
- **[Sch1B Col 10] Parent Identifier** – Provide the 'Entity Identifier' of the immediate parent legal entity for each entity, as applicable. If there are multiple parents, select the parent entity with the largest ownership percentage. Only include one entry. For the top holding company, enter "N/A".
- **[Sch1B Col 11] Parent Name** – This will be populated by a formula, so input is not required.
- **[Sch1B Col 12] % Owned by Parent** – Enter percentage of the entity that is owned by the Parent identified earlier in the worksheet. Percentages of ownership should be based on the percentage of voting class securities (unless ownership is maintained other than by control of voting securities) consistent with what is reported pursuant to State holding company regulation filings (Form B or equivalent).
- **[Sch1B Col 13] % Owned within Group Structure** – Enter percentage of the entity that is owned by all entities within the Group.
- **[Sch1B Col 14] State/Country of Domicile** – Enter State of domicile for US insurance entities and country of domicile for all other entities (Use reference that are consistent with those use on Schedule Y where available).
- **[Sch1B Col 15] Zero Valued and Not Admitted Entities– Report for U.S. Insurers Only.** Select the treatment of the entity from following options— 'Zero Valued for RBC' or 'Non-Admitted for Accounting and RBC (Direct or Indirect)'. Zero Valued for RBC are affiliated insurance and financial entities that are otherwise reported in the RBC filer's annual statement at their accounting value (i.e. per Statutory Accounting Principles) but are reported at zero value and zero capital requirements for RBC purposes. Examples include non-Canadian foreign insurers directly owned by U.S. Life RBC filers. The carrying value and capital calculation specified in these instructions for the specific insurance or financial entity type should be reported in Inventory B, Column 2 and Inventory C, Column 2 respectively. DO NOT REPORT ZERO VALUES IN COLUMN 2 OF INVENTORY B AND INVENTORY C FOR THESE AFFILIATES. Only RBC filing entities with this type of affiliate will report in this column.

Non-admitted for Accounting and RBC (Direct or Indirect) are insurance or other financial affiliates that owned directly indirectly by an RBC filer via a downstream non-financial entity or holding companies that are reported at zero value per SAP and are also reported at zero value and zero capital requirements for RBC purposes. Examples include U.S. insurers indirectly owned by a U.S. RBC filer thru a not-admitted holding company that has not been subject to an independent audit. The carrying values and capital calculations specified herein associated with the specific insurance or financial indirectly owned entity type should be reported Inventory B, Column 2 and Inventory C, Column 2 respectively. **DO NOT REPORT ZERO VALUES IN COLUMN 2 IN INVENTORY B AND INVENTORY C FOR THESE AFFILIATES.** Only RBC filing entities with this type of affiliate will report in this column. The excess value in the not-admitted Parent entity may be reported at zero value.

No entry is required in this column for any non-admitted directly or indirectly owned non-insurance / non-financial subsidiary. Report zero for these affiliates in Column 2 of Inventory B and Inventory C.

- **[Sch1B Col 16] Is Affiliates on Schedule A or Schedule BA** – This Column is meant to identify an entity with a financial ~~or a material non-financial~~ entity identifier in Col 8 that is otherwise reported on Schedules A or BA but is being moved to this Schedule. Provide a “Y” response where that is applicable. ~~Also provide a “Y” response for any identified in column 16 as a material non-financial Schedule A or BA affiliates.~~ Otherwise leave blank.
- **[Sch1B Col 17] Selected Alternative Grouping** – This will be populated by a formula, so input is not required. If there are any blank entries in Column 9 (Alternative Grouping) this column will set them equal to the name of the entity.

55. Schedule 1C contains financials for each entity:

- **[Sch1C Col 1] Basis of Accounting** – Enter basis of accounting used for the entity’s financial reporting.
- **[Sch1C Col 2 & 3] Gross and Net Written Premium – Report for all U.S. and non-U.S. insurers** (Use applicable entity Annual Statement data source for US insurers - Life – P/C and Health). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Schedule 1C, Col 4] Reinsurance Assumed from Affiliates** – Report for all U.S and non-U.S. insurers. Use applicable entity Annual Statement data source for US insurers (assumed premiums from P/C Schedule F Part 1 and Life and Health Schedule S Part 1 Section 1 and 2). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Schedule 1C, Col 5] Reinsurance Ceded to Affiliates** - Report for all U.S and non-U.S. insurers. Use applicable entity Annual Statement data source for US insurers (assumed premiums from P/C Schedule F Part 3 and Life and Health Schedule S Part 3 Section 1 and 2). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Sch1C Col 6] Book Assets** - This should be valued based on the applicable basis of accounting reported under the entity’s local regime and represents the total assets as reported in the basic financial statements before eliminations (since that is presumed to be less

burdensome on the insurance holding company). Other financial data should similarly be prepared using financial data before eliminations. However, insurance holding companies are allowed to present such figures after eliminations if they do so for all figures and consistently for all years.

- **[Sch1C Col 7] Book Liabilities** - This should be valued based on the applicable basis of accounting reported under the entity's local regime and represents the total liabilities as reported in the basic financial statements.

- **[Col 8] Gross Paid-in and contributed Capital and Surplus – For U.S insurers report the current year end amounts from Annual Statement Page 3 as follows:**

a. **Life Insurers: lines 29, 30 and 33**

b. **P&C Insurers: lines 30, 31 and 34**

c. **Health Insurers: lines 26 - 28**

56. Generally, Schedule 1D will include entries from regulatory filings or entity specific GAAP financial statements as of the reporting date. The amounts reported should be the entity value on a stand-alone (fully de-stacked) or grouped basis (where applicable). This may require use of company records in certain cases. The amounts should be reported at 100% for the entity listed. Any required adjustments for percentage of ownership will be applied later if necessary, to calculate a capital charge.

- **[Sch1D Column 1] Prior Year Entity Identifier** – Report the Legal Entity Identifier, NAIC company code or other identifier used for the entity in the prior year GCC filing for the prior calendar year.

- **[Sch1D Col 2] Prior Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone Balance Sheet. This will generally be the same as what is reported in the current year column in the prior year GCC filing. Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance / non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance / non-financial entity is included in the capital charges for the Parent entity.

- **[Sch1D Col 3] Net Income** - The final reported income figure from the income statement, and therefore is the figure reported after interest, taxes, extraordinary items, etc. For entities with accounting and reporting requirements that specify that dividends received will be part of "net income", report the dividends received in this column.

- **[Sch1D Col 4] Dividends Paid** – All entity types report dividends paid in reporting year to a parent (or affiliate) shareholder, public shareholders, or policyholders.

- **[Sch1D Col 5] Dividends Received** - All entity types that are subject to accounting and reporting requirements that specify that dividends received will be reported as a surplus adjustment, will report dividends received in reporting year from affiliates in this column.

- [Sch 1D Col 6] **Capital and Surplus Contributions Received from Affiliates** - All entity types. Report sum of Capital Contribution (other than via surplus notes) during the reporting year received from any affiliated entity.

- [Sch 1D Col 7] **All Other Changes in Capital and Surplus**. Include total for all adjustments not listed above. This would include any investment income not already reported in Column 3 or Column 5. Also, report all stock repurchases or redemptions in this column.

DRAFTING NOTE: Greater detail may either be added to the template or made available on request.

- [Column 8] **Current Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone Balance Sheet for the current year. This will generally be the same as what is reported for the entity in the Inventory B, Column 2 Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance / non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance / non-financial entity is included in the capital charges for the Parent entity.

- [Sch 1D Col 9] **Capital and Surplus Contributions Paid to Affiliates** - All entity types report the total of capital contributions (other than via surplus notes) during the reporting year paid to any affiliated entity.

- [Sch1D Col10] **Dividends Received and Not Retained** –All holding companies, insurers and financial entities with regulatory capital requirements indicate by “Y” or “N” if part or all of dividends reported in Column 5 are expected to be paid (passed thru) to a Parent company, to public shareholders, or used to repurchase or redeem shares of stock after the reporting date used for the GCC.

- [Sch1D Col 11] **Capital Contributions from Debt Proceeds** - All insurers and financial entities with regulatory capital requirements indicate by “Y” or “N” if part or all of capital contributions received were from proceeds of debt issued by a Parent or affiliate.

Commented [FL1]: Consider deleting if Tracked Down: streamed Debt is eliminated.

Input 2 – Inventory

57. Columns in Inventory A are being pulled from Schedule 1:

- [Column 1] Insurance/Non-Insurance.
- [Column 2] Entity Identifier
- [Column 3] Entity Identifier Type
- [Column 4] Entity Name –
- [Column 5] Entity Category
- [Column 6] Parent Identifier
- [Column 7] Parent Name
- [Column 8] Basis of Accounting

Columns Requiring Input

58. Enter information on adjustments to carrying value. Considerations specific to different types of entities are located at the end of this subsection.

- **[Inv B Col 1] Carrying Value (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, carrying values utilized should represent the 1) the subsidiary valuation required by the insurance or other sectoral regulator if the Parent is a regulated entity; or 2) in the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then a subsidiary valuation based US GAAP or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements.

The value in this column will include a zero value for entities not admitted per SAP or other jurisdictional regulatory rules. A single entry for all entities that qualify under the grouping exceptions described herein may be made in lieu of individual entries on the line for the affiliate that holds the qualifying entities. This column will include double counting.

The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group.

- **[Inv B Col 2] Carrying Value (Local Regime)** – Record the carrying value recognized by the legal entity's jurisdictional insurance or other sectoral supervisor. This will include the value of capital instruments (e.g. U.S. insurer issued surplus notes) that are specifically recognized by statute, regulation or accounting rule and included in the carrying value of the entity. In the case where the entity is not subject to insurance or other sectoral regulatory valuation, then US GAAP **equity (including OCI)** or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements. If an agreed upon change in local carrying value should become effective by 2019, Volunteer Groups are expected to report on that basis. If the group is comprised entirely of U.S based entities under a U.S based Parent company, the entries in this column will be the same as in Column 1 except in cases where the Parent owns not admitted (or otherwise zero valued financial affiliates that would be reported as not admitted in the Parent Regime column but

fully admitted (per SAP valuation) in the Local Regime column (see instructions for Schedule IB, Column 15). However, if such an entity has been listed in the [Sch1B Col 2] Include / Exclude (Supervisor) column, indicating that the lead-State regulator agrees that the entity does not pose material risk, then a value will be reported here, but the ultimate calculation will show the results without the excluded entity's value. The carrying value for affiliates that are U.S. RBC filers, the value will be the amount reported TAC on entity's RBC report. This column will include double counting. The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group. The entry here should generally be the same as the value reported in Inventory B, Column 1, except where TAC for RBC filers differs from BACV. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries.

DRAFTING NOTE: A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested but not approved for exclusion by the lead-State.

INVENTORY B - Accounting Valuation to be Used				
Parent Entity	Entity	Inv B, Column 1	Inv B, Column 2	Parent Entity Line Inv B, Column 3
U.S. RBC filer	U.S. RBC filer	BACV Per Statutory Accounting	RBC TAC	BACV Per Statutory Accounting
U.S. RBC filer	Other U.S. Insurer	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Financial w/o Capital Reqmt	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Non-Financial	BACV Per Statutory Accounting	No entry Required	No entry Required - Do not de-stack
Other U.S. Insurer	U.S. RBC filer	BACV Per Statutory Accounting	RBC TAC	BACV Per Statutory Accounting
Other U.S. Insurer	Any Other Entity	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Regulatory Accounting	BACV Per Statutory Accounting	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Regulatory Accounting	RBC TAC	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Regulatory Accounting	Per Local Regulatory Accounting	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Regulatory Accounting	Per Local Regulatory Accounting	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Regulatory Accounting	No entry Required	No entry Required - Do not de-stack
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Per Local Public Accounting	RBC TAC	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Per Local Public Accounting	Per Statutory Accounting	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Public Accounting	Per Local Regulatory Accounting	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Per Local Public Accounting*	Per Local Regulatory Accounting*	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Per Local Public Accounting*	Per Local Public Accounting*	Per Local Public Accounting

Commented [FL2]: The Inv. B, Column 2 entry in the chart for cases where a U.S. Insurer owns a foreign insurer is incorrect. It should say "Per Local Regulatory Accounting" rather than "BACV Per Statutory Accounting". 6-30-2020

In cases where a U.S. Life RBC filer owns a foreign insurer and the BACV value reported for the foreign insurer in the Parent U.S. insurers financial statement is adjusted to zero for RBC purposes, then report zero in Inventory B Column 1, and Column 3 for that foreign insurance entity.

- [Inv B Col 3] Investment in Subsidiary – Enter an adjustment to remove the investment carrying value of any directly owned subsidiary(ies) from parent's carrying value. This is intended to prevent from double counting of available capital when regulated entities are stacked. The carrying value to be removed should be the investment value carried by the Parent from which the entity is being de-stacked (i.e. the value in Column 1 in Inventory Section B adjusted for ownership percentage). Thus, there will be no adjustment to the Parent's value in this column for entities that are reported at zero value by the parent. Where entities are owned partially by entities outside of the group, then the Parent's percentage of ownership will be calculated based on the value owned within the group. Generally, all non-

financial affiliates, Schedule A and Schedule BA assets will remain in the value of the Parent insurer and not entered in this column unless they meet the exceptions described herein. ~~If a value for a non-financial affiliate, Schedule A or BA asset must be reported, the carrying value of that entity listed in Schedule 1 and in this section should be entered in this column in the row of the entity that directly or indirectly owns that Schedule affiliate so that the parent entity may eliminate double counting of that available capital which will now be reported by the stand-alone non-financial, Schedule A or BA affiliate listed in the inventory.~~ For indirectly owned Schedule A or BA financial entities, only the value of that entity will be included in this column and the remaining value of the downstream BA Parent will remain with the Parent insurer. Similarly the carrying value of U.S. Branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the value of the foreign insurer so that the parent entity may eliminate double counting of that available capital which will now be reported by the stand-alone Branch listed in the inventory. The 'Sum of Subsidiaries' column may provide a useful check against this entry, but it will not necessarily be equal.

When utilizing public accounting (e.g. GAAP) equity values that differ from regulatory values (e.g. SAP), it is **the GAAP equity** of the insurers must be eliminated from the GAAP Parent in this column, not the SAP (regulated capital). This is necessary in order to allow the calculation to appropriately represent SAP capital of regulated entities and GAAP equity of non-regulated entities. Data on the accounting differences between Parent and Local carrying values will be collected in Column 9 and further detail provided in the Questions and Other Information Tab.

Note: Values for Schedule A and Schedule BA affiliates that are required to be reported in the Inventory Tab will be adjusted out of the value reported by the U.S. insurer in this column.

- **[Inv B Col 4] Intra-group Capital Instruments** – This column is automatically calculated from inputs to the 'Capital Instruments' Tab. It reflects an adjustment to remove carrying value for intra-group financial instruments that are treated as capital by the issuer and consequently create additional capital within the group upon issuance (most notably U.S. Surplus Notes). Example for Surplus Notes – In both intra-group and unaffiliated transactions, 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 in this column. 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 in the corresponding adjustment column for the capital calculation. **No adjustments are made for any intragroup capital instrument that is treated as a liability by the issuer.**
- **[Inv B Col 5] Reported Intra-group Guarantees, LOCs and Other** – Enter an adjustment to reflect the notional value for reported intra-group guarantees, letters of credit, or other intra-group financial support mechanisms. Explain each intra-group arrangement in the Questions and Other Information Tab
- **[Inv B Col 6] Other Intra-group Assets** – Enter the amounts to adjust for and to remove double counting of carrying value for other intra-group assets, which could include intercompany balances, such as (provide an explanation of each entry in the Questions and Other Information Tab):

- a. loans, receivables, and arrangements to centralize the management of assets or cash;
- b. derivative transactions;
- c. purchase, sale, or lease of assets; and
- d. other (describe).

- **[Inv B Col 7] All Other Adjustments** –Include a brief explanation in the “Description of ‘Other Adjustments’” in the Other Information Tab.
- **[Inv B Col 8] Adjusted Carrying Value** - Stand-alone value of each entity per the calculation to eliminate double counting. This value includes permitted and prescribed practices.
- **[Inv B Col 9] Accounting Adjustments (e.g. GAAP to SAP)** – Report the total difference between the carrying value reported in Column 1 (and Column 3) and the value reported in Column 2. This column will apply to Regulated entities where the stand-alone carrying value is based on regulatory accounting (e.g. SAP) while the value reported for that entity by the Parent is carried at a financial accounting (e.g. GAAP) value. Further detail is reported in the Questions and Other Information Tab.
- **[Inv B Column 10] Gross Revenue 2nd Prior Year (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Column 11] Gross Revenue Prior Year (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B, Col 12] Gross Revenue Current Year (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** - Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Col 13] Average Revenue over 3-years (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** – This column is populated from data in Columns 10, 11 and 12.

DRAFTING NOTE: This column will support the capital calculation for Financial Entities without Regulatory Capital Requirements only.

59. ‘Adjusted Capital Calculation’ is reported in a similar manner to the ‘Adjusted Carrying Value above’. The columns are in the same order though it is likely that fewer entries will be needed for Columns 4 -7. Further guidance is below.

- **[Inv C Col 1] Entity Required Capital (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, entity required capital should represent the capital requirements of the Parent’s insurance or other sectoral regulator. 1) for subsidiaries of foreign insurers or other non- U.S.

financial entities, the unscaled capital required by the Parent's regulator of the regulated entity based upon the equivalent of a Prescribed Capital Requirement (PCR) level; 2) for subsidiaries, including applicable Schedule A and Schedule BA subsidiaries, of U.S. insurance entities that are subject to RBC, except where the subsidiary is also an RBC filer, the entry should be equivalent of what would be required in the Parent's RBC, adjusted for covariance where applicable (calculated by the preparer) reported at a level of one and a half times company action level RBC (or 3 times authorized control level RBC) for that entity (i.e. 1.5 times the RBC requirements included in the Parent's RBC report on a post-covariance basis). Where the subsidiary is also an RBC filer, then the amount reported will be at one and a half times company action level RBC (or 3 times authorized control level RBC) AFTER COVARIANCE; 3) for subsidiaries of U.S. insurers that do not file RBC, report the actual amount of capital required in the Parent's capital requirement (if any) for the subsidiary entity; 4) in the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then use zero where applicable. This column will include double counting. The values recorded for all subsidiaries should be the 100% of the specified capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group. A single entry for all entities that qualify under the grouping exceptions described herein may be made on the line for the affiliate that holds the qualifying entities in lieu of individual entries.

- **[Inv C Col 2] Entity Required Capital (Local Regime)** – Enter required capital for each de-stacked entity, as applicable entity description below. For U.S. RBC filing subsidiaries under a U.S. RBC filing parent the amounts will be the same in both the Parent and Local Regime columns except where the RBC filing subsidiary is subject to an operational risk charge. In such cases the amount reported in this column for the subsidiary will include the operational risk charge while the amount reported in Column 1 will exclude the subsidiary's operational risk charge. However, for some entity types this will result in entries for the entities under a U.S. based insurance parent to be different from what U.S. RBC would dictate. In addition, where a U.S. insurer directly or indirectly owns not admitted (or otherwise zero valued) financial affiliates, those affiliates would be reported with zero value in the Parent Regime column but at the specified regulatory value described below for that financial entity type in this column. However, if such an entity has been listed in **Sch1B Col 2] Include / Exclude (Supervisor column)**, indicating that the lead-State regulator agrees that the entity does not pose material risk, then report the capital calculation in accordance with entity instructions, but the ultimate calculation will show the results without the excluded entity's capital calculation. Directly or indirectly owned non-financial entities that were not admitted or otherwise carried at a zero value in the Parent Regime, may be carried at zero value in this column. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries. This column will include double counting. The values recorded for all subsidiaries should be the 100% of the capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group.

60. For financial entities without a regulatory capital requirement and for non-insurance / non-financial entity types where additional options are noted below, the options are shown here for

informational purposes only and the calculations are described in the tabs where the relevant data and calculations reside

Additional clarification on capital requirements where a formula is required:

- U.S. RBC filing Insurers – Report RBC at Company Action Level (300% x ACL)
- Foreign Insurance Entities – The local capital requirement as specified below for each jurisdiction should be reported, by legal entity, at a Prescribed Capital Requirement (PCR) level, or the equivalent of one and a half times company action level RBC (or 3 times authorized control level RBC) The amounts reported will be subject to scaling later in the calculation. Scaled values will be included in the GCC capital calculation (see Scaling Tab). This treatment is different than what U.S. Risk-based Capital (RBC) would require and recognizes other regulators view of adequate capital for insurers within another jurisdiction. It is more reflective of risk within the group context. A sensitivity analysis will be included in the Sensitivity Analysis Tab using 100% of the jurisdictional PCR (i.e. unscaled) for insurers in foreign jurisdictions that are subject to scaling.
- Subsidiaries based in the European Union should use the Solvency II Solo SCR (Solvency Capital Requirement) as the PCR.
- For US subsidiaries, the RBC Company Action Level of each insurer should be re-calibrated to the point at which regulatory action can be taken in any state based on RBC alone, i.e., the point at which the trend test begins, which is one and a half times company action level.
- For Australian subsidiaries, the PCR is the target capital as set by the insurer/group in accordance with APRA requirements. Effectively, this would be "Target capital under ICAAP". PCR is not a set multiple of MCR.
- For Bermudian subsidiaries, the Legal Entity PCR in Bermuda for medium and large commercial insurers is called the "Enhanced Capital Requirement" (ECR) and is calibrated to TailVaR at 99% confidence level over a one-year time horizon.
- For Hong Kong subsidiaries, under the current rule-based capital regime, if applied similar to the concept of PCR, the regime's PCR would be 150% of MCR for life insurers and 200% of MCR for non-life insurers.
- For Japanese subsidiaries, the PCR is the solvency margin ratio of 200%.
- For Korean subsidiaries, the PCR is 100% of risk-based solvency margin ratio.
- For Singaporean subsidiaries, the PCR is 120% of total risk requirement (i.e. capital requirement).
- For Chinese Taipei subsidiaries, the PCR is 200% of RBC ratio.
- For Canadian life entities, the baseline PCR should be stated to be "100% of the LICAT Base Solvency Buffer". Carrying value should include surplus allowances and eligible deposits.

Commented [FL3]: Delete or revise if 100% is used as placeholder.

For property/casualty entities, the PCR should be the MCT capital requirement at the target level.

- For South Africa subsidiaries, the PCR is 100% of the SAM SCR.
- For any entities that cannot be mapped to the above categories, scaling will be at 100%

61. Additional clarification on capital requirements where a US formula (RBC) is not required:

- For those U.S. insurers that do not have an RBC formula, the minimum capital per state law should be used as the basis for what is used for that insurer in the group capital calculation. This may differ from what U.S. Risk-based Capital (RBC) would require. It is more reflective of the regulatory view of risk in the group context. The following requirements should be used in other specified situations where an RBC does not exist:
- **Mortgage Guaranty Insurers:** The minimum capital requirement shall be based upon the NAIC's requirements set forth in the Mortgage Guaranty Insurance Model Act (#630).
- **Financial Guaranty Insurers:** The minimum capital requirement shall be based upon the NAIC's requirements set forth in the Financial Guaranty Insurance Guideline (Guideline 1626), specifically considering Section 2B (minimum capital requirements) and Section 3 (Contingency, Loss and Unearned Premium Reserves) and the other requirements of that guideline that impact capital (e.g. specific limits).
- **Title Companies:** The minimum capital requirement shall represent 300% of the required level of reserves carried by the insurance company.
- **Other Companies:** A selected basis for minimum capital requirements derived from a review of state laws. Where there is a one-off treatment of a certain type of insurer that otherwise would file RBC (e.g., HMOs domiciled in California), the minimum capital required by their respective regulator could be considered in lieu of requiring the entity to complete an RBC blank
- **Captives:** US insurers that have captives should complete the applicable RBC formula regardless of whether the captive is required to complete it in their captive state. The amounts input into RBC by the captive shall be based upon the actual assets and liabilities utilized in the regulatory reporting used by the captive. Captives used exclusively for self-insurance (either by US life insurers or any other type of insurer) or insurance provided exclusively to its own employees and/or its affiliates, should not complete an RBC calculation and the entire entity should be treated as non-insurers and receive the same charge as a non-regulated entity.

62. Non-insurance Financial Entities Subject to a Specified Regulatory Capital Requirement:

- All banks and other depository institutions – the unscaled minimum required by their regulator. For U.S. Banks that is the OCC Tier 1 or other applicable capital requirement. This is understood to be consistent with how the Federal Reserve Board would apply its Building Block Approach.

- Any other financial entity that is subject to a specified regulatory capital requirement will bring that requirement in the GCC at the first level of regulator intervention (if applicable).
- This differs from what U.S. Risk-based Capital (RBC) would require. It recognizes the sectoral regulator's view of risk for a particular financial entity type. It is more reflective of risk in the group context.

63. Non-insurance Financial Entities NOT Subject to a Specified Regulatory Capital Requirement:

- All asset managers and registered investment advisors and all other financial entities as defined in paragraph 9.- Capital required by their sectoral regulator (not-sealed). If no specified capital requirement, then use the capital calculation specified for asset managers and registered investment advisors (i.e. 12% of the three-year average revenue) based the level of risk assigned to the entity. Other financial entities without a regulatory capital requirement include those which create financial risks through products or transactions such as a mortgage, other credit offering, a derivative, corporate guarantees, intercompany indebtedness, operational interdependence, materiality to the application of credit rating methodologies to the overall group rating and other financial links. Because these entities can pose more risk of a material adverse impact on the group's insurance entities and operations than other non-regulated entities, apply 12% of the three-year average revenue. In certain cases, these entities may be subject to a layer of regulation (e.g. S.E.C.) but are not generally subject to a specified capital requirement.
- —the unsealed Capital required by their sectoral regulator otherwise use 15% of the three-year average revenue.

DRAFTING NOTE: a Basel Charge of 15% will be used for the LAIS ICS

DRAFTING NOTE: Instructions currently have all financial entities without a regulatory capital requirement treated the same except for the number of years in the revenue exposure base. Consideration should be given to using the same revenue base for all such entities. However, since the definition of financial entities covers a broad spectrum of activities, it may be appropriate to apply a different charge to certain entities.

PLACEHOLDER FOR LOW / MEDIUM / HIGH RISK CRITERIA

High Risk: 15% x 3-year average revenue

DRAFTING NOTE: a Basel Charge of 15% will be used for the LAIS ICS

Medium Risk: TBD – Suggest 6.0% x 3-year average revenue. This represents Basel charged scaled to combined industry average RBC ratios at 300% x ACL

Low Risk: TBD – Suggest 3% x -year average revenue

~~One additional informational capital calculation for all financial entities that are not subject to an existing regulatory capital requirement by their sectoral or jurisdictional regulator will be applied using 3-year average gross revenue from Inventory B Column 13 with the calculation occurring and results available in the Calc 2 Tab as follows:~~

~~a 12% factor scaled to 4% based on scaling to a 3 times ACL RBC. [A 15% op risk charge would be scaled to 5%]~~

Commented [FL4]: Consider deleting if revised approach is adopted.

DRAFTING NOTE: Medium risk could be used as a starting point while the stratified methodology is further developed.

64. Other Non-Insurance, Non-Financial Entities

- Non-insurance, non-Financial Entities may not be as risky as Financial Entities. For entities not owned by RBC filers or other entities where there is a regulatory capital charge for the entity in the capital formula, use an equity charge of 16% (post tax) for predominantly life insurance groups (OR TAILOR BY INSURER TYPE 14% for predominantly P/C insurance groups and 5% for predominantly health insurance groups) x BACV. If the entity is not subject to a capital charge or is included in the capital charge of another financial entity, then enter zero in Column 1 and the charge specified in this paragraph in Column 2. These factors are based on average after covariance RBC charges for the respective insurer types and are calibrated at 300% x ACL RBC. This is meant to be consistent with how the entity would be treated if owned by an RBC filer while recognizing that the entity may be excluded from the GCC if it does not pose material risk to the insurers in the group.

Non-insurance / non-financial entities owned by RBC filing insurers (or owned by other entities where a regulatory capital charge applied to the non-insurance / non-financial affiliate) is will remain in the Parent's capital charge and reported at that value in Column 1, but will be reported as zero in Column 2. These non-financial entities may not be excluded from the GCC.

One additional informational capital calculation for all non-financial entities will be applied using current year gross revenue from the Inventory B, Column 12 with the calculation occurring and results available in the Calc 2 Tab as follows:

X% of reporting year gross revenue based on a medium level risk for a financial entity 3% operational risk charge using a 300% x ACL RBC calibration.

Commented [FL5]: NEW FACTOR & LANGUAGE 6-30-2020

DRAFTING NOTE: The equity OR revenue options noted above may be applied based on the operating characteristics (i.e. revenue intensive or asset intensive) of the non-financial entity.

Commented [FL6]: These can be combined to offer an alternative approach rather than a sensitivity analysis.

65. Non-operating Holding Companies

- Non-operating holding companies will be treated the same as other non-insurance / non-financial entities. Unless reported on a grouped basis (see paragraph 52, above), for purposes of applying the capital calculation, the carrying value of stand-alone positive valued and negative valued non-operating holding companies will be netted. If the net value is zero or less (floored at zero), the charge applied will be zero.

INVENTORY C - Capital Calculation to be Applied					
Parent Entity	Entity	Inv B, Column 1	Inv B, Column 2	Parent Entity Line	
		Inv B, Column 1	Inv B, Column 2	Inv C, Column 3	
U.S. RBC filer	U.S. RBC filer	RBC ACL (excl. op Risk) x 3	RBC ACL x 3	RBC ACL (excl. op Risk) x 3	
U.S. RBC filer	Other U.S. Insurer	Per RBC	Per GCC Entity Instructions	Per RBC	
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per RBC	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Per RBC	
U.S. RBC filer	Financial w/o Capital Reqmt	Per RBC	12% x 3-year avg revenue	Per RBC	
U.S. RBC filer	Non-Financial	Per RBC	No entry Required	No entry Required - Do not de-stack	
Other U.S. Insurer	U.S. RBC filer	Zero	RBC ACL x 3	Zero	
Other U.S. Insurer	Any Other Entity Type	Zero	Per GCC Entity Instructions	Zero	
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Capital Reqmt	RBC ACL x 3	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Capital Reqmt	Per GCC Instructions	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Capital Reqmt	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Capital Reqmt	12% x 3-year avg revenue	Per Local Capital Reqmt	
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Capital Reqmt	No entry Required	No entry Required - Do not de-stack	
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Zero	RBC ACL x 3	Zero	
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Zero	Per GCC Entity Instructions	Zero	
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Zero	Jurisdictional or Sectoral PCR Level Capital Requirement (Scaled)	Zero	
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Zero	12% x 3-year avg revenue*	Zero	
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Zero	Per GCC Instructions*	Zero	

* Subject to grouping exception in GCC instruction

Capital Calculation Adjustments:

- [Inv C Col 3] Investment in Subsidiary** – Enter an adjustment to remove the required capital of the directly owned subsidiary(ies) from parent’s required capital. The capital requirement to be removed should be the capital requirement carried by the Parent from which the entity is being de-stacked (i.e. the value reported in Column 1 in Inventory Section C adjusted for ownership percentage). Thus, there will be no adjustment to the Parent’s value in this column for entities that are reported at zero value by the parent. This is intended to prevent double counting required capital when regulated entities are stacked. [Example: When de-stacking an RBC filer from another RBC filer, the amount entered on the Parent line would be the RBC of the subsidiary. When de-stacking financial entities that are subject to diversification in a capital formula (e.g. RBC) the amount entered on the Parent line is the post-diversified capital requirement as calculated by the preparer (which is also the amount to be reported for the de-stacked entity on the entity’s line. Generally the capital requirements for Schedule A and BA affiliates and other non-financial affiliates will remain in the capital requirements of the Parent insurer and not entered in this column, except that the capital requirements for any financial entity reported in a Parent’s Schedule A and BA, any financial entity indirectly owned through another Schedule A or BA affiliate, and any other non-financial Schedule A or BA affiliate with a carrying value in excess of X% of total adjusted available group capital listed in Schedule 1 and in this section should be entered in this column in the row of the entity that directly or indirectly owns that Schedule A and BA affiliate so that the parent entity may eliminate double counting of that capital requirement capital which will now be reported by the stand-alone Schedule A or BA affiliate listed in in the inventory. For indirectly owned Schedule A and BA financial entities, only the capital requirements for that entity will be included in this column and the remaining capital requirement of the downstream BA Parent will remain with the Parent insurer. Similarly the capital requirement for any U.S. Branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the capital requirement of the foreign insurer so that the parent entity may eliminate double counting of that capital

requirement which will now be reported by the stand-alone Branch listed in the inventory. The amounts entered in this column for a Parent must correspond to the capital required by the parent entity which is being de-stacked from that Parent.

DRAFTING NOTE: Capital calculations for Schedule A and Schedule BA indirectly owned financial entities that are owned by Schedule A or Schedule BA assets are reported in the Inventory Tab affiliates and will be adjusted out of the value reported by the U.S. insurer in this column (since the non-financial direct parent Schedule A or BA affiliate is not listed in the Inventory Tab).

In the Questions and Other Information Tab, a capital requirement should be reported for the indirectly owned entity based on the insurers Schedule A or Schedule BA charge rather than a charge (which would be zero) attributable to the Schedule A or BA entity that directly owns the financial entity.

- **[Inv C Col 4] Intra-group Capital Instruments** –This column would generally be used if there is potential double counting of capital requirements (e.g. RBC charges on surplus notes purchased by an affiliated U.S. insurer from a U.S. insurer issuer).
- **[Inv C Col 5] Reported Intra-group Guarantees, LOCs and Other** –This column would generally be used if there is potential double counting of capital requirements (e.g. RBC charges on guarantees or LOCs.).
- **[Inv C Col 6] Other Intra-group Assets** –This column is not intended to be used for required capital but is included in case a volunteer believes it is necessary from reporting an inaccurate required capital figure.
 - a. loans, receivables, and arrangements to centralize the management of assets or cash.
 - b. derivative transactions.
 - c. purchase, sale, or lease of assets.
 - d. Other (describe in “Questions and Other Information Tab”)
- **[Inv C Col 7] All Other Adjustments** – Include a brief explanation in the “Description of ‘Other Adjustments’” in the Questions and Other Information Tab. Use this column is for adjustments related to required capital that correspond to adjustments in Inventory B, Column 7 and in cases where a volunteer believes it’s necessary to adjust an inaccurate regulatory required capital figure [Example: RBC calculation applied as a permitted practice.

DRAFTING NOTE: Consider whether this column should be used rather than Column 2 for zero value entities.

- **[Inv C Col 8] Adjusted Capital Calculation Stand-alone capital calculation** for each entity per the calculation to eliminate double counting. This value includes the impact of permitted and prescribed practices
- Inventory D is for ‘Reference Calculations Checks’. These are calculations that can serve as checks on the reasonability/consistency of entries.

- a. **[Inv D Col 1 – 3] Sum of Subsidiaries (Carrying Value)** – This automatically generated column calculates the value of the carrying value of the underlying subsidiaries. It is provided for reference when filling out the ‘Investment in Subsidiary’ column. This sum will often, but not always, be equal to the ‘Investment in Subsidiary’ column.
- b. **[Inv D Col 4 – 6] Sum of Subsidiaries (Calculated Capital)** – Similar to above but for calculated capital.
- c. **[Inv D Col 7-8] Carrying Value / Adj Calc Cap** – This is a capital ratio on the adjusted and unadjusted figures. Double-check entities with abnormally large/small/negative figures to make sure that adjustments were done correctly.

DRAFT

Input 3 – Capital Instruments

66. Provide all relevant information pertaining to paid-up (i.e. any receivables for non-paid-in amounts would not be included for purposes of calculating the allowance) financial instruments issued by the Group (including senior debt issued by a holding company), except for common or ordinary shares and preferred shares. This worksheet aims to capture all financial instruments such as surplus notes, senior debt, hybrid instruments and other subordinated debt. Where a Volunteer Group has issued multiple instruments, the Volunteer Group should not use a single row to report that information; one instrument per row should be reported (multiple instruments

issued under the same terms may be combined on a single line). All qualifying debt should be reported as follows.

67. Debt issued by US led groups:

- Surplus Notes – Report the outstanding value of all surplus notes in Column 8 whether issued to purchasers within or outside the group. The outstanding value of Surplus notes issued to entities outside the group and that is already recognized by State regulators and reported 100% as capital in the carrying value of U.S insurer issuers in Section B of the **inventory tab and will not be included in the additional capital allowance**. Surplus notes issued within the group generally result in double counting and will not be included in the additional capital allowance. See instructions below.
- Subordinated Senior Debt (and Hybrid Debt) issued – The outstanding value will be reported in Column 8. Recognition for structurally subordinated debt will be allowed to increase available capital. For purposes of qualifying for recognition as additional capital, both of the following criteria must be met:
 - a. The instrument has 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.
 - c. “Other” Debt - The outstanding value will be reported in Column 8 and will be further described in the Other Information Tab and will be reported in a manner that is consistent with Senior Subordinated Debt as described above. Such Debt will not initially be included in the additional capital allowance for the GCC. An additional allowance of this debt as additional capital will be calculated in this Tab and reported as a sensitivity analysis in the Summary 2 Tab, subject to future determination on whether it will become part of the GCC calculation.

68. Foreign debt:

- Report the outstanding value of Non-U.S. senior debt issued to entities outside the group in Column 8. Debt specifically recognized by statute, regulation or accounting rule as additional capital resources by the lead jurisdiction based on contractual subordination or where a regulatory regime proactively enforces structural subordination through appropriate regulatory / supervisory controls over distributions from insurers in the group **will not be included in the calculation of an additional capital allowance** if it is already reported as capital in the carrying value of the issuer in Section B of the **inventory tab**. **It will be included in the calculation of an additional capital allowance if recognized by the local jurisdiction and NOT already included in the value of the issuer** in Section B of the **inventory tab**. b. Cases where the value of debt instruments issued to purchasers outside the group has not been recognized by the legal entity’s insurance or other sectoral supervisor **will not be included in the additional capital allowance**.

69. Please fill in columns as follows for all capital instruments–

- **[Column 1] Name of Issuer** – Name of the company that issued the capital financial instrument. ¹Will populate automatically from the ‘Entity Identifier’ column in this subsection’.
- **[Column 2] Entity Identifier** – Provide the reference number that was input in Schedule 1.
- **[Column 3] Type of Financial Instrument** – Select type from dropdown. Selections include Senior Debt, Surplus Notes (or similar), Hybrid Instruments and “Other” Subordinated Debt.
- **[Column 4] Instrument Identifier** – Provide a unique security identifier (such as CUSIP). ALL debt instruments must include an internal identifier if not external identifier is available.
- **[Column 5] Entity Category** – Links automatically to selection made on ‘Inventory Tab’ worksheet.
- **[Column 6] Year of Issue** – Provide the year in which the financial instrument was issued or refinanced.
- **[Column 7] Year of Maturity** – Enter the year in which the financial instrument will mature.
- **[Column 8] Balance as of Reporting Date** – Enter the principal balance outstanding as reported in the general-purpose financial statements of the issuer.
- **[Column 9] Intragroup Issuance** – Select whether the instrument was issued on an intra-group basis (that is, issued to a related entity within the group). This column will be used to remove “double counting”. This column is a dropdown box with options “Y” and “N”
- **[Column 10] Treatment in Inventory B** – Select option that applies:
 - a. **Capital** - This instrument is recognized or credited as capital in local regulatory regime and reported as part of the adjusted carrying value of the issuer and was not purchased by an affiliate– This includes the value of qualifying senior and hybrid debt instruments (if recognized as capital) and U.S. surplus notes (or similar local regime instruments) that are issued to entities outside the group recognized in the Inventory B Tab The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital.
 - b. **Liability** – This instrument is reflected by the issuer as a liability in the adjusted carrying value in the Inventory B Tab and was not purchased by an affiliate.- This would apply to all qualifying senior and hybrid debt issued to purchasers outside the group that is not recognized as capital by the local regulator that are issued to entities outside the group recognized in the Inventory B Tab. The value will be included in the calculation of a proxy allowance for additional capital.
 - c. **Liability designation** would also apply to all non-qualifying senior and hybrid instruments and all debt categorized as “Other” issued to purchasers outside the group

that is not recognized as capital by the local regulator. The value of these instruments will NOT be included in the calculation for the in the calculation of a proxy allowance for additional capital.

- d. **Intragroup** – This would apply to all qualifying instruments purchased by an affiliate within the group. The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital. If the financial instrument is recognized or credited as part of the issuer’s available capital in Inventory B, then an adjustment for intra-group capital instruments is made in Inventory B, Column 4 and Inventory C adjustments (if necessary to eliminate an associated capital requirement). If the financial instrument is treated as a liability by the issuer, then no intra-group capital instrument adjustment is required in Inventory B or Inventory C.
- e. The outstanding value of all non-qualifying senior and hybrid instruments and financial instruments categorized as “Other Debt” whether issued to purchasers inside or outside the group will not be included in the calculation of a proxy allowance for additional capital and no other adjustments are required in the template. However, in the unlikely event that the instrument is treated as available capital to the issuer in Inventory B, an adjustment in Inventory B, Column 4 to remove the available capital would be required.

Additional information on instruments categorized as “Other Debt” in the Type of Financial Instrument Column will require additional information to be provided in the Questions and Other Information Tab.

- **[Column 11] Intragroup Purchaser Identifier** – Enter the entity identify for the affiliate entity that purchased the instrument.
- **[Column 12] Description of Other Debt Instruments** – Provide a description of instruments designated as “Other”
- **[Column 13] Base**– This column is calculated automatically using data ON THE ENTRIES IN Columns 3, 8 and 10. It represents the amount of qualifying debt that will be used for in the calculation of a proxy allowance for additional capital.

For intra-group surplus notes, the adjustment will impact the carrying value and associated capital calculation of the purchasing affiliated entity.

- **[Column 14] Tracked Amount Down-streamed** – Enter amount of debt proceeds that was infused into the regulated entities’ surplus at issuance or refinance of qualifying debt. Evidence of such infusion should be provided to the Lead-State. In addition, where a “N” response was entered in Schedule 1D, Column 11, or where a “Y” responses was entered in Schedule 1D, Column 11 and the amount entered here is greater than the current year capital contribution reported in Schedule 1D, Column 71 . an explanation and description of the method used for tracking the proceeds should be provided in the Questions and Other Information Tab.

DRAFTING NOTE: Additional criteria will be provided for purposes of determining qualification of debt as “down-streamed”. Consideration should be given to eliminating the “down-streamed” category in favor of using paid-in and contributed capital and surplus alone.

Commented [FL7]: Delete this Column or consider replacing with APCA approach.

- **[Column 15] Amount Down-streamed** - The total reported as tracked down-streamed will be compared to the total amount of gross paid-in or contributed capital and surplus reported by the insurance entities within the group as reported in Schedule 1. The greater value will be carried into the calculation for an additional capital allowance. No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

Commented [FL8]: Delete or adjust to compare PIC&S to APCA approach.

70. **Proxy Calculation for Additional Capital Allowance** – A calculation will be made in this Tab that will apply 30% of available capital plus the value of all qualifying debt to become part of the proxy allowance for additional capital for qualifying senior subordinated. An additional amount of 15% of available capital plus the value of all qualifying debt will be calculated to become part of a proxy allowance for additional capital for hybrid debt.

No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

71. The greater of the proxy calculation and the downstream (or paid in capital) calculation will be allowed as additional capital. However, an overall limit of no more than ~~50~~75% of the total adjusted carrying value in Inventory B will be applied. Adjustments to increase available capital will be calculated from data on this page. The summary results of the components of the calculation (paid in capital and surplus, tracked downstream, proxy calculation and limitations) are populated as titled in the calculation columns beyond Column 15. The additional capital allowance calculated for capital instruments will be shown as an “on-top” adjustment in the Summary 1 – Entity Level.

Commented [FL9]: Delete reference to down stream or replace it with reference to APCA approach.

72. **Informational Proxy calculation for “Other Subordinated Debt”** – A sensitivity analysis will be applied in a designated calculation column on this Tab and carried into the Summary 2 Tab to adjust the amount of additional capital in the proxy calculation by the amount of “Other Debt” reported in Column 8 of this Tab issued to purchasers outside the group. This informational sensitivity analysis will include an additional allowance for such debt up to 15% of available capital plus the value of all qualifying debt including qualifying “Other” Debt subject to the same limitations noted for the proxy allowance in general.

Input 4 - Analytics

73. The entity type information supporting analytics summarized in Summary 3 - Analytics are pulled into this tab from data or information reported in other Tabs in the GCC template. That data is exported into summaries in the Summary 3 – Analytics Tab. Only 2020 data is currently to be populated. However, it is contemplated that going forwards, data for prior years will also be populated such that it will provide the lead-State regulator with metrics to identify trends over time.

Input 5 - Sensitivity Analysis and Inputs

74. The sensitivity analysis is calculated in the Summary 2 Tab. Most inputs for the analysis are populated from other Tabs as described below and carried into the analysis which are reported in the Summary 2 Tab. However certain analysis requires inputs from this Tab. Inputs are required

in this Tab for Analysis 2, 3, 8, 9 and 10. Sensitivity Analysis are intended to provide the lead-state regulator additional information that helps them better understand the financial condition of the group. Similar to the sensitivity analysis included in the legal entity RBC, it provides the regulator with additional information and allows them to consider “what-if” scenarios to better understand the impact of such items. The results of these analysis will not impact the ~~base~~-GCC ratio.

- **[Analysis 1]: Excluded non-insurance / non-financial entities without material risk** – No additional data is needed in the Tab. The data for entities where exclusion has been requested and the lead-State does not agree will be populated based on entries in Schedule 1B, Column 3 and data in Inventory B, Column 2 and Inventory C, Column 2. This analysis will be applied and reported in the Summary 2 Tab. It will provide the regulator with the impact of excluding non-agreed upon entities on the GCC ratio.
- **[Analysis 2 and 3]: Permitted practices** – This information shows the amount of US permitted practices as described in the Preamble of the NAIC Accounting Practices & Procedures Manual and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position, and their impact on the GCC ratio.
- **Prescribed practices** – This information to be entered on this Tab shows the amount of US prescribed and prescribed practices as described in the Preamble of the NAIC Accounting Practices & Procedures Manual and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position and their impact on the GCC ratio. This analysis will be applied and reported in the Summary 2 Tab.

Permitted and Prescribed Practices - Report Values from Annual Statement Note 1

- Entity Identifier
- Value of permitted practice
- Capital Requirement attributable to permitted practice (if any)
- Description of permitted practice
- Value of prescribed practice
- Capital requirement attributable to permitted practice (if any)
- Description of prescribed practice

- **[Analysis 4]: Foreign Insurer Capital Requirements Unscaled** – No additional data is needed in the Tab. This information shows the amount of foreign insurer capital calculations scaled by applying scalars using the Excess Relative Ratio approach at a 300% x ACL RBC calibration level at 100% of full value for all non-U.S. jurisdictions where scalar data is available. The sensitivity analysis allows the state to understand the impact of scaling on the GCC ratio. This information is populated from the Scalar Tab. This analysis will be applied and reported in the Summary 2 Tab.

Commented [FL10]: Change this sensitivity to collect information on the Excess Relative Ratio approach

- **[Analysis 5]: Debt Classified as “Other”** – No additional data is needed in the Tab. The analysis data will be populated from the Capital Instruments Tab and the analysis will be applied and reported in the Summary 2 Tab.
- **[Analysis 6]: Alternative capital Calculation for Financial Entities without Regulatory Capital Requirements** – No additional data is needed in the Tab. The values reported will represent the alternative values for capital calculation that is being captured in the template. The data will be populated from Schedule 1 and Inventory B and the analysis will be applied and reports in the Scaling Non – Insurance Tab (Calc 2)
- **[Analysis 7]: Alternative capital Calculation for Non-Financial Entities** - No additional data is needed in the Tab. The values reported will represent the alternative values for capital calculation that is being captured in the template. The data will be populated from Schedule 1 and Inventory B and the analysis will be applied and reported in Scaling Non – Insurance Tab (Calc 2).

Commented [FL11]: May consider deleting if consensus is reached on treatment of these entities

75. **[Analysis 8]** For Captives other than XXX/AXXX, all other US captives shall 1) make an asset adjustment similar to that described below;

Asset Impact

76. For the asset impact, it is ONLY required for the assets included in a captive or an entity not required to follow the statutory accounting guidance in the NAIC *Accounting Practices & Procedures Manual*. It is not required for assets for those groups that retain such business in a non-captive traditional insurance company(ies) that is already required to follow the NAIC *Accounting Practices & Procedures Manual*. Please note, variations for state prescribed and permitted practices are captured in the separate sensitivity analysis.
77. The asset impact amount shall be determined based upon a valuation that is equivalent to what is required by the NAIC *Accounting Practices & Procedures Manual* (NAIC SAP). For this purpose, “equivalent” means that, at a minimum the listed adjustments (as follows) be made with the intent of deriving a valuation materially equivalent to what is required by the NAIC *Accounting Practices and Procedures Manual*, however, without requiring adjustments that are overly burdensome (e.g. mark-to-market bonds used by some captives under US GAAP, vs full SAP that considers NAIC designations). To be more specific, the asset impact shall be developed by accumulating the impact on surplus because of an accumulation of all the following in paragraphs 79 and 80 combined. Please note that Letters of Credit or other financial instruments that operate in a manner like a letter of credit, which are not designated as an asset under either NAIC SAP or US GAAP and are required to be adjusted out of the available assets (i.e. the asset reduction is recorded as a negative figure in the template).
78. To achieve the above, accumulate the effect of making the following impact and record as a negative figure in the template, an asset adjustment for all the following explicit assets not allowed to be admitted under NAIC SAP:
79. Assets specifically not allowed under NAIC *Accounting Practices and Procedures Manual* in accordance with paragraph 9 of *Statement of Statutory Accounting Principles No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*:

- *SSAP No. 6—Uncollected Premium Balances, Bills Receivable for Premiums, and Amounts Due From Agents and Brokers*
- *SSAP No. 16R—Electronic Data Processing Equipment and Software*
- *SSAP No. 19—Furniture, Fixtures, Equipment and Leasehold Improvements*
- *SSAP No. 20—Nonadmitted Assets*
- *SSAP No. 21—Other Admitted Assets (e.g., collateral loans secured by assets that do not qualify as investments are nonadmitted under SAP)*
- *SSAP No. 29—Prepaid Expenses*
- *SSAP No. 105—Working Capital Finance Investments*
- *Expense costs that are capitalized in accordance with GAAP but are expensed pursuant to statutory accounting as promulgated by the NAIC in the Accounting Practices and Procedures Manual (e.g., deferred policy acquisition costs, pre-operating, development and research costs, etc.);*
- *Depreciation for certain assets in accordance with the following statutory accounting principles:*
 - *SSAP No. 16R—Electronic Data Processing Equipment and Software*
 - *SSAP No. 19—Furniture, Fixtures, Equipment and Leasehold Improvements*
 - *SSAP No. 68—Business Combinations and Goodwill*
 - *The amount of goodwill of the SCA more than 10% of the audited U.S. GAAP equity of the SCA's last audited financial statements*
 - *The amount of the net deferred tax assets (DTAs) of the SCA more than 10% of the audited U.S. GAAP equity of the SCA's last audited financial statements.*
 - *Any surplus notes held by the SCA issued by the reporting entity*

80. In addition, record as a negative figure, an asset impact for any assets that are not recognized as an admitted asset under the principles of SSAP No. 4—*Assets and Nonadmitted* including:

- *Letters of credit, or other similar instruments, that operate in a manner like a letter of credit and therefore do not meet the definition of an asset as required under paragraph 2.*
- *Assets having economic value other than those which can be used to fulfill policyholder obligations, or those assets which are unavailable due to encumbrances or other third-party interests should not be recognized on the balance sheet and are therefore considered nonadmitted.*
- *Assets of an insurance entity pledged or otherwise restricted by the action of a related party, the assets are not under the exclusive control of the insurance entity and are not available to satisfy policyholder obligations due to these encumbrances or other third-party interests. Thus, such assets shall not be recognized as an admitted asset on the balance sheet.*

- **[Analysis 9]: Other Regulator Discretion** – This analysis is designed to reflect other regulator adjustments including for transactions other than XXX / AXXX reinsurance where there are differences in regulatory regimes exist and there is a desire to fully reflect U.S. Statutory Accounting treatment. This will be a post-submission item completed by the lead-state regulator. Enter the following information here:

a. Entity Identifier

b. Amount of adjustment

c. Description of regulatory issue

DRAFTING NOTE: This Column may also be completed by the filer after advance consultation with the lead-State regulator.

DRAFT

Input 6 – Questions and Other Information

81. This tab provides space for participants to describe or provide greater detail for specified entries in other tabs (as noted in the instructions for the columns in those tabs) or additional relevant information not captured in the template. Examples include the materiality method applied to exclude entities in Schedule 1; adjustments for intra group debt, description of permitted practices; scalars proposed / supporting information for jurisdiction without a prescribed scalar; and adjustments to available capital or capital calculations that are included in the “other

adjustment” column in the Inventory Tab. Specified items are included in the Tab. Other information that the filer believes is relevant should be added freeform in this tab.

Information or Detail for Items Not Captured in the Template

- Materiality Standard for Non-Financial entities - Describe the methodology used to “exclude” non-financial entities as not posing material risk.
- Intercompany Guarantees– Provide requested information
 - a. Entity Identifier issuing the guarantee
 - b. Entity Identifier of entity or entities that are covered by the guarantee
 - c. Indicate the notional or fixed value of the guarantee
 - d. Describe the nature of the guarantee
- Capital Maintenance Agreements – Provide requested information
 - a. Entity Identifier obligated under the agreement
 - b. Entity Identifier for entity or entities that are covered by the guarantee
 - c. Indicate the notional or fixed value of the agreement
 - d. Describe the nature of the agreement
- Alternative Scalar Approaches – Describe suggested approaches to scaling of foreign insurer capital requirements other than those currently included in the template.

Commented [FL12]: May no longer be needed. See later comments on scalar approach.

Information or Detail for Items Captured in the Template

- Value of intangible assets included in non-insurance Holding Companies – Provide the requested information for all entities designated with a holding company entity type.
 - a. Entity Identifier
 - b. Total value of intangible assets included in local carrying value column in Inventory B*
 - c. Description and amount of each intangible asset

*Auto populated

DRAFTING NOTE: Consideration should be given to whether the carrying value of the issuer(s) of debt allowed as additional capital should be adjusted for purposes of a capital calculation. This may result in positive values for Issuers that would otherwise report a negative value.

DRAFTING NOTE: Consider whether this information should be collected only for positive value holding companies.

- Currency Adjustments –Provide requested information only for entities where the amount reported for an entity in Inventory B Column 2 is different than the amount in Inventory B, Column 1 due to currency conversion.

a. Entity Identifier

b. Currency Type reported in Inventory B Column 1 and Inventory C, column 1 (Foreign currency)

c. Conversion rate applied

d. Source of conversion rate applied

DRAFTING NOTE: Consider whether guidance on sources of conversion rates should be provided in lieu of this information.

- Intra-group Assets - Description of Adjustments for intra-group assets reported in Inventory B, Column 7 and Inventory C, Column 7. Provide the following information:

a. Entity Identifier

b. Amount reported in Inventory B, Column 7*

c. Description of adjustment

* Auto populated

- Other Adjustments - Description of adjustments reported in Inventory B, Column 8 and Inventory C, Column 8. Provide the following information:

a. Entity Identifier

b. Amount reported in Inventory B, Column 7*

c. Description of adjustment

* Auto populated

- Accounting Adjustments– Provide requested information only for entities where the amount reported for an entity in Inventory B Column 1 is different than the amount in Inventory B, Column 2 due to differences in accounting basis

a. Entity Identifier

b. Value reported in Inventory B Column 1*

c. Value reported in Inventory B Column 2*

d. Total Amount of Adjustments related to difference in accounting basis*

e. Nature of Adjustment (e.g. GAAP to SAP)

f. Description and amount of the Adjustments (e.g. treatment of deferred acquisition cost; reserve valuation; treatment of intangible assets)

*Auto populated

- Methodology for tracking / reporting down-streamed debt proceeds – Describe the approach used to report tracked down-streamed debt proceeds reported in Column 140 in the Capital Instruments Tab (See instructions for See instructions for Column 14 in the Capital Instruments Tab).
- The tab also includes a listing of all Schedule A and Schedule BA affiliates along with the following information:
 - a. Parent identifier (if available) this is the same information as is included in Schedule 1 (Sch. 1B, Col 3) as would be entered for non-Schedule A / BA affiliates
 - b. Parent Name – Enter the Name of the Parent
 - c. Is Parent a Schedule A or BA Asset? - This column is only required for financial entities that are Directly owned by a Schedule A or BA Affiliate. No other downstream affiliates owned by Schedule A or BA entities need to be listed. These entities are not normally independently reported in Schedules A and BA so are extra entries.
 - d. Financial or material non-financial? (Y/N) - if the entity meets the criteria as being a financial entity, indicate with a “yes” response. A “no” response is not required for other entities listed. “Yes” entries should correspond to “yes” entries in Schedule 1(Sch. 1B, Col 17)
 - e. Carrying Value of Immediate Parent – Report the value listed in Schedule A and BA of the Parent insurer. For those cases where an indirect financial entity is reported use the value used by the direct Parent
 - f. Capital Requirement for Immediate Parent - Report the value listed in the RBC report of the Parent insurer (pre-tax where applicable). For those cases where an indirect financial entity is listed, report the value of the capital requirement attributable to the Insurer rather than the direct non-financial Schedule BA parent. The capital requirement reported in this column for the immediate Schedule BA parent should be adjusted to deduct the amount moved to Schedule 1 and Inventory C.

Calc 1 – Scaling (Insurance Entities)

82. All entries in this tab are calculation cells populated using data from within the tab or using data from elsewhere in the template. Scaled values for calculated capital will become part of the base GCC ratio. The calculated values will be summarized by entity type in Summary 1 – Entity Level Tab. The concept of a scalar was first introduced to address the issue of comparability of accounting systems and capital requirements between insurance regulatory jurisdictions. The idea is to scale capital requirements imposed on non-U.S. insurers so as to be comparable to an RBC based requirement. Two approaches for scaling related to foreign insurers were presented, and others are being explored and will be reviewed. A decision on the scaling methodology to be adopted into the GCC Template will be made at the end of the review. In the interim a scalar of

100% of the jurisdictional PCR will be applied to all jurisdictions where a risk sensitive capital requirement is in place.

83. Information on the Excess Relative Ratio (ERR) scalar methodology will be collected and applied in the Sensitivity Analysis Tab

SEE APPENDIX 1 FOR MORE INFORMATION AND EXAMPLES ON HOW THE ERR SCALARS ARE CALCULATED.

Relative Ratio Approach (RRA – “Pure”)

82-84. This method adjusts only the capital requirement of a non-U.S. insurer in the group. It compares the average capital ratios relative to capital required at the first intervention level. For purposes of the template scalars have been developed from publicly available information for certain jurisdictions where such data was available. The scalars may differ if the foreign jurisdiction applies different formulas to the industry segments (Life, P/C and Health). The scalars will require periodic maintenance to provide for accurate scaling for each reporting year but will likely always lag by at least one calendar year. For jurisdiction where a scalar has not been provided, no scalar will be applied. For jurisdictions without risk sensitive capital requirements a 100% charge will be applied to adjusted carrying value. A filer may provide data to support a scaling factor that can be manually entered. In addition, suggested alternate methodologies for scaling in general or for a particular jurisdiction may be provided in the Questions and Other Information Tab. Scalars will be applied using the RBC Trend Test threshold $200\% \times \text{ACL RBC}$ as the first intervention level.

85. Scalars developed by volunteers for jurisdictions where there is only 100% included in the Tab or which are not listed at all should not be included in this Tab. Include the scalars in the Questions and Other Information Tab along with supporting rationale for the scalar.

~~83. Other scaling methodologies may be considered to improve risk measurement for foreign insurers. Suggestions should be described in the Questions and Other Information Tab in the Alternative Scalars Section.~~

~~84. Drafting Note: Base Case is subject to change based on input received.~~

Calc 2 – Capital Calculations for Non-insurance Entities

85-86. All entries in this tab are either calculation cells using data from within the tab or using data populated from elsewhere in the template. Calculated capital for all entities except insurers will be reported in this Tab. The calculated values will be summarized by entity type in Summary 1 – Entity Level Tab.

86-87. In addition, one informational option for calculated capital for financial entities without an existing regulatory capital requirement and one informational option for calculated capital for

Commented [FL13]: Should we keep this paragraph or delete it?

non-financial entities will be reported in this tab. Those calculation will not be carried into the Summary 1 – Entity Level Tab and will not be part of the **base**-GCC ratio.

87-88. Only amounts for entities that the filer and the lead- State regulator agree should **not** be excluded (See Schedule 1B, Column 2) will be brought into the calculation in this Tab and Summary 1 – Entity Level. Entities where the Lead-State does not agree with the filer’s request to exclude an entity will be part of the **base**-GCC ratio.

Summary 1 - Entity Level GCC Summary

88-89. Summarized results by entity type for the **Base**-GCC ratio will be reported in this tab. An on top adjustment for debt allowed as additional capital will be added at the bottom of the table. All informational sensitivity analysis will be reported in Summary 2 and will not impact the **Base** GCC ratio.

Summary 2 – Informational Sensitivity Tests

89-90. Summary results for each informational sensitivity analysis described in the Sensitivity Analysis Inputs Tab will be shown here. Each sensitivity analysis will be shown on a stand-alone basis. It is expected that each informational sensitivity analysis will run automatically in the background and the results for each displayed in this Tab. The results for the informational sensitivity analysis will not be included in **Summary 1 - Entity Level**.

Summary 3 – Analytics

90-91. Summary results for metrics described in the Analytics Guidance **[insert attachment or appendix reference]** and utilizing data collected in the Input 4 – Analytics Tab or other Tabs in the GCC will be calculated and presented here.

Summary 4 - Alternative Grouping Option(s) (a.k.a. Cigna Illustration)

91-92. One sample alternative structure for grouping entities in the GCC calculation is displayed based on a suggested method. It can be modified, or other suggestions can be accommodated based on combining of data from **Schedule 1 and the Inventory** in to be defined ways.

This tab is intended to be an additional analytical tool. The tool summarizes the GCC based upon how a reporting entity views its organization, and provides regulators that view, to align it with regulatory information, other than what is reported elsewhere in the GCC Template, that the reporting entity has submitted such as current filings, communications, etc. In this summary view, entities are organized into like regimes and multiple entities may be grouped together, in order to create a view of capital that is easy to review and analyze within each grouping. The intent of this approach is to provide an additional analytical tool designed to enhance dialogue between the lead regulator and the company contemplated by the GCC filing. This view is transparent (no scalers, no adjustments, no de-stacking) so that financial information may be cross-walked to other financial submissions such as RBC filings.

92-93. The results are dependent on how the reporting entity populated. Input 1 - Schedule 1, Column H, [7] Alternative Grouping. For example, if you have a dozen small dental HMO businesses, you may wish to collapse the results to a single line called "Dental HMOs", by populating Input 1 - Schedule 1, Column H, [7] Alternative Grouping for each dental HMO as "Dental HMOs". Then "Right-click" and select "Refresh" to see the results with the "Dental HMOs" combined.

93-94. For your reference, the data for the Summary 4 - Grouping Alternative is from Calc 1 - Scaling (Ins, Bank) which is fed by the inputs you have made in Input 1 - Schedule 1, Input 2 - Inventory, etc.

DRAFT

94-95. The concept of a scalar was first introduced to the Working Group in a joint presentation from the American Council of Life Insurers (ACLI) and the American Insurance Association (AIA) at the 2016 Spring National Meeting. Within that presentation, it was suggested that the local capital requirements be multiplied by a factor (e.g., 1.0, 2.3, etc.) to equate the local capital requirement to an adjusted required capital level that is comparable to U.S. levels. During its Aug. 11, 2016 conference call, the Working Group again discussed the possible use of scalars for non-U.S. insurers and noted that scalars are needed, at least in part, to remove the differences that exist between countries because of the different level of conservatism built into the accounting and capital requirements. The purpose of a scalar is to address the issue of comparability of accounting systems and capital requirements between jurisdictions. The following provides details on how the scalars were calculated by the NAIC, or how they are to be used when the NAIC has not developed a scalar for a country due to lack of public data. Two approaches are shown:

Relative Ratio Approach

95. ~~Included below are various steps to be taken in calculating the relative ratio approach to developing jurisdiction specific scalars. In order to numerically demonstrate how this approach could work, hypothetical capital requirements and financial amounts have been developed for Country A. Based on preliminary research that has been performed by NAIC staff, it appears that the level of conservatism built into accounting and capital requirements within a jurisdiction may differ significantly for life insurers and non-life insurers. Therefore, ideally each jurisdiction would have two different scalars based on the type of business. The example below includes information related to life insurers in the U.S. and Country A.~~

• ~~Understand the Jurisdiction's Capital Requirements and Identify the First Intervention Level~~

a. ~~The first step in the process is to gain an understanding of the jurisdiction's capital requirements. This can be done in a variety of ways including reviewing publicly available information on the regulator's website, reviewing the jurisdiction's Financial Sector Assessment Program (FSAP) reports and discussions with the regulator.~~

~~In Country A, assume that the capital requirements for life insurers are based on a capital ratio, which is calculated as follows:~~

$$\text{Capital ratio} = \frac{\text{Total available capital}}{\text{Base required capital (BRC)}}$$

~~In the U.S., capital requirements are related to the insurer's risk based capital (RBC) ratio. For purposes of the Relative Ratio Approach, an Anchor RBC ratio is used and calculated as follows:~~

$$\text{Anchor RBC ratio} = \frac{\text{Total adjusted capital}}{100\% \text{ Company Action Level RBC*}}$$

~~* 100% Company Action Level RBC is equal to the Total RBC After Covariance, without adjustment or 200% Authorized Control Level RBC.~~

b. ~~Similar to legal entity RBC requirements in the U.S., Country A utilizes an early intervention approach by establishing target capital levels above the prescribed~~

Commented [FL14]: Replace all language below with Excess Relative Ratio Information

minimums that provide an early signal so that intervention will be timely and for there to be a reasonable expectation that actions can successfully address difficulties. Presume that this target capital level is similar to the U.S.'s Company Action Level (CAL) event, both of which can be considered the first intervention level in which some sort of action—either on the part of the insurer or the regulator—is mandated. For simplification purposes, NAIC staff is not considering the RBC trend test in this memo.

- e. For Country A, the target capital level is presumed to be a capital ratio of 150%. That is, the insurer's ratio of total available capital to its BRC should be above 150% to avoid the first level of regulatory intervention. Again, this is similar to the U.S.'s CAL event, which is usually represented as an RBC ratio of 200% of Authorized Control Level (ACL) RBC (ignoring the RBC trend test). In the Relative Ratio approach, the Anchor RBC ratio represents the Company Action Level event (or first level of regulatory intervention) as 100% CAL RBC (instead of 200% ACL RBC), because CAL RBC is the reference point that is used to calibrate against other regimes. The Anchor RBC Ratio (Total Adjusted Capital = 100% CAL RBC) tells us how many "multiples of trigger level capital" that the company holds. Conceptualizing the CAL event as 100% CAL RBC allows the consistent definition of local capital ratios that are calibrated against a "multiples of the trigger level" approach, to ensure an apples-to-apples comparison².

Obtain Aggregate Industry Financial Data

- 96.— The next step is to obtain aggregate industry financial data, and many jurisdictions include current aggregate industry data on their websites. Included below are the financial amounts for use in this exercise.

<i>U.S. Life Insurers—Aggregate Data</i>
Total Adjusted Capital = \$495B
Authorized Control Level RBC = \$51B
Company Action Level RBC = \$102B
<i>Country A Life Insurers—Aggregate Data</i>
Total Available Capital = \$83B
BRC = \$36B

Calculate a Jurisdiction's Industry Average Capital Ratio

- 97.— To calculate a jurisdiction's average capital ratio, the aggregate total available capital for the industry would be divided by the minimum or base capital requirement for the industry in computing the applicable capital ratio. In Country A, this would be the BRC. In the U.S., this base or minimum capital requirement is usually seen as the ACL RBC, but because the Relative

² While it is mathematically equivalent to use 200% ACL RBC as the denominator, the Approach is designed to use the representation of first-intervention level capital levels as the conceptual underpinning of the Relative Ratio Approach, where 100% CAL RBC is the reference point to calibrate against other regimes.

Ratio Approach is using 100% CAL RBC as a reference point to calibrate other regimes to, the Relative Ratio formula uses 100% CAL RBC as the baseline and the first intervention level to calculate the Average Capital Ratio and Excess Capital Ratio. As a result, the scaled ratio of a non-U.S. company should inform regulators how many multiples of first intervention level capital the non-U.S. company holds. Included below is the formula to calculate a jurisdiction's industry average capital ratio:

General Industry Average Capital Ratio Formula

$$\frac{\text{Total adjusted capital (or similar amount)}}{\text{Base/minimum capital requirement}}$$

98. Based on the formula above and data obtained in Step #2, included below are how to calculate each jurisdiction's industry average capital ratio:

Calculation of U.S. Industry Average Capital Ratio - Life Insurers

$$\frac{\$495\text{B (Total Adjusted Capital)}}{\$102\text{B (CAL RBC)}} = 485\%$$

Calculation of Country A Industry Average Capital Ratio - Life Insurers

$$\frac{\$83\text{B (Total Available Capital)}}{\$36\text{B (BRC)}} = 231\%$$

Summary of Revisions Post GCC Meetings Held at the Virtual Summer National Meeting and on 9/2/20:

All highlighted in **blue** is new, deleted, or revised. The revisions cover the issues that were discussed during the calls on 7/29 and 9/2. Any language highlighted in **yellow** is either a drafting note or represents changes already made and distributed in early July in response to clarifications or technical comments received during the comment period.

All references to a “base” GCC have been deleted. The Definitions Section has been moved to earlier in the document (now Section II). There are comment bubbles on pages 23, 25, 29, 31, 32, 39, 41, 44, and 47.

Section I - Background

- Paragraphs 2, 3, 7, and 26 (Section III) related to what appeared to be reasonable comments on confusion related the use and purpose of the GCC.

Section II - Definitions

- Paragraph 9 narrows and includes activities / criteria to the definition of financial entities to delete the relationship to the insurance contract or operation that AHIP, ACPIA and United found particularly objectional (**further Input from IPS on this issue was offered - a separate document is close to completions with IPs. The latest version is attached (see Attachment 3) and has been put int the instructions document pending further edits.**)
- Paragraph 15 adds a definition of material risk considerations based on APCIA suggestions but modified by NAIC Staff (**further Input from IPS on this issue was offered - a separate document is close to completions with IPs. The latest version is attached (see Attachment 3) and has been put int the instructions document pending further edits.**)
- Paragraph 18 deleted the reference to de-stacking material nonfinancial Schedule A / BA Affiliates and the Drafting Note. The deletion if the Schedule A / BA affiliates is also behind the revisions to the Chart on page 19, the 1st bullet on page 21, the first paragraph on page 26 and on Page 33. **This is based on comments received and the strong potential that all material nonfinancial entities included in the scope of application whether owned within or outside the Insurance Group will get the approximation of a post covariance charge in the GCC, so de-stacking material non-financial Schedule A /BA affiliates from their insurer owners just adds an unnecessary complication.**
- Paragraph 20 adds a definition of cross support mechanisms.

Section III – Exemptions and Scope

- Paragraph 23 adds a reference to where the definition of Material risk will be found
- Paragraph 25 clarifies how the Scope of Application should be determined and points to the definitions of financial entities and material risk.
- Paragraph 26 deletes some unsupported language.
- Paragraph 28 adds rationale for grading risk for financial entities.
- Paragraph 29 adds clarity on using material risk to include or exclude entities and adds language for excluding nonmaterial non-financial entities from the scope of application.
- Paragraph 32 adds clarity on periodic reassessment of Scope of Application.

Input 1 – Schedule 1

- Paragraph 52 clarifies lead-State discretion to request additional detail.

- Paragraph 52 clarifies that all excluded entities need to be reported in Schedule 1B only. **This is for cross reference to Schedule Y for completeness. No financial data will be required.**
- Paragraph 53 (on page 20) and chart on page 19 delete the reference to separately identifying material non-financial Schedule A or BA affiliates as these will not be de-stacked. This causes other deleted language later in the document.

- Input 2 - Inventory
- Page 24 adds a clarification on GAAP equity.
- Paragraphs 60 – 62 add language on the difference in treatment between the GCC and RBC for several entity types.
- Paragraph 63 Clarifies the drafting note language and adds a placeholder for the APCI.A. proposed concept of a stratified risk charge (Low / Medium / High) for financial entities with no specified regulatory capital requirement. – **This is in line with a proposal from APCI.A.**
- Paragraph 64 Adjusts the post covariance approximated charge for material non-insurance / nonfinancial entities to a post -tax rate for Life and adjust all insurer types to an average charge per industry type and calibrate the charges to a 300% x ACL level. **The revised definition of financial entities will move some from financial to nonfinancial based on the narrowing of the definition of financial entities not subject to regulatory capital requirements.**
- Paragraph 63 deletes duplicative language related to definition of a financial entity.
- Paragraph 63 merges treatment of all financial entities with no specified regulatory capital requirement and adds charges based on high / medium / low risk determinations.
- Paragraph 64 clarifies and revises treatment of non-financial entities.

Input 3 - Capital Instruments

- Page 37 makes a clarification in subparagraph b.
- Page 38 (top of Page) introduces potential changes to the treatment of Capital Instruments.
- Page 38, Paragraph 71 increases the overall limit from 50% to 75% of Total Adjusted Carrying Value.

Input 5 – Sensitivity Analysis

- Page 40 introduces potential changes to the placeholder sensitivity analysis for scalars and other potential adjustments to the Sensitivity Analysis (Note that the XXX/ AXXX sensitivity was deleted).

Calc 1 – Scaling (Foreign Insurers)

- Page 46 revises the placeholder scaling methodology to 100% of jurisdictional PCR.

The GCC Template will be updated in line with the revised instructions.

Draft: 9/23/20

Group Capital Calculation (E) Working Group
Conference Call
September 18, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met via conference call Sept. 18, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair, and Jim Jakielo (CT); Kim Hudson and Susan Bernard (CA); Philip Barlow (DC); Carrie Mears and Mike Yanacheak (IA); Susan Berry and Vincent Tsang (IL); Roy Eft (IN); John Turchi (MA); Steve Mayhew (MI); Barbara Carey (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Dale Bruggeman (OH); Trey Hancock (TN); Jamie Walker and Mike Boerner (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Discussed Further Proposed Changes to Model #440 and Model #450

Commissioner Altmaier stated that the purpose of this conference call is to discuss the comments received (Attachment Three-D1) on the Working Group's previously exposed proposed changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). He stated that likely near the end of the conference call, the Working Group will expose a revised version of both of the models that attempts to make changes to address the comments received that were perceived to be most helpful in clarifying the language in the previous versions. He described how after such an exposure, the Working Group will likely revert back to its next conference call being on the template and instructions in this pattern of wading back and forth between finalizing the models and the instructions and template.

a. Subgroup Reporting Reciprocity

Commissioner Altmaier described how this particular issue makes up the majority of the comments received, and he hopes that an oral summary of the issue by each of the commenters might provide Working Group members with additional context necessary to make a decision on whether they want to include this concept in the ultimate final models adopted. He asked that each of the commenters provide an oral summary of their most important points in their comment letters.

Bonnie Guth (Munich Re America Services—MRAS) summarized the key points in the MRAS's comment letter. She stated that while it supports a level playing field, it does not believe that a retaliatory measure in a model law to do so would be appropriate. She emphasized the manner in which the proposed language appeared to not be drafted for regulatory purposes but rather to get back at other jurisdictions, and she stated that it is up to the state insurance regulator in each state to determine if subgroup reporting is needed.

Michael Demuth (Allianz) summarized the key points in the comment letter from Allianz/Transamerica. He stated that their comments were largely based upon their interpretation of the proposed models, and he restated some of those interpretations. Ms. Belfi noted that the group capital calculation (GCC) has yet to be recognized and is still in process. He clarified that the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) already require reciprocal jurisdictions to recognize and accept the U.S. approach to group supervision and group capital. Mr. Rehagen asked Mr. Demuth to clarify his points relative to the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" (EU Covered Agreement). Bill Schwegler (Transamerica) stated that one jurisdiction will not impose worldwide supervisor, including group capital, and Model #786 defines that by recognizing and accepting. He noted that this was caused by an NAIC definition and not by something defined internationally. Dan Schelp (NAIC) noted that with respect to the current covered agreements, they both recognize the U.S. group supervision and discuss the provision of reinsurance collateral; therefore, any use has to clarify the use of the U.S. group supervision. He stated that their issue was related to the treatment of reciprocal jurisdictions. Mr. Schwegler stated that the clarification Transamerica seeks is whether the reciprocal jurisdictions could be subject to subgroup reporting. Commissioner Altmaier stated that he believes that this is part of the open question for the Working Group to decide.

Steve Broadie (American Property Casualty Insurance Association—APCIA) described the APCIA's two overarching core principles on this issue: 1) each group should be subject to only one group-wide supervisor and one group capital assessment; and 2) U.S. groups should not be subject to discrimination in foreign markets—we strongly support a level playing field. He stated that state insurance regulators must work together to achieve a framework that respects the principle that an insurance holding company group should only be subject to one supervisory approach and one capital standard. He stated that negotiation is its strong preference for the best process, suggesting that U.S. state insurance regulators must

commit to earnest, good-faith dialogue with their international counterparts to gain a commitment to these core principles. He stated that it is critical that U.S. and international supervisors work together to ensure that U.S. groups are not subject to subgroup capital requirements in foreign jurisdictions. Additionally, the process must include the international colleagues, working through the EU (European Union)-U.S. Insurance Dialogue and similar mechanisms to ensure a level playing field for U.S. groups. Finally, Mr. Broadie suggested that the NAIC develop a transparent process for determining whether a non-U.S. jurisdiction recognizes and accepts the GCC, and he stated that the APCIA is willing and eager to assist the NAIC and U.S. state insurance regulators in this process, but this is a critical dialogue that state insurance regulators themselves must undertake.

Joseph B. Sieverling (Reinsurance Association of America—RAA) summarized the RAA's points by noting that it opposes subgroup reporting and prefers to exclude these provisions from the scope of the draft models. He stated that it views these provisions as retaliatory in nature, and they don't have a place in NAIC models; however, they do have a number of U.S. groups that are subject to subgroup reporting in other jurisdictions, so its conclusion is that if it is left in, it should be subject to lead state commissioner discretion. He stated that one issue in its letter, but not referenced by other commenters, is that this is a complicated issue, and that is reflected in the fact that the NAIC is considering the creation of a new working group to address it.

D. Keith Bell (Travelers), representing a coalition of other companies, said he strongly supports the mutual recognition of supervisory regimes across nations. He stated that as U.S. groups operating internationally, this must include the recognition of tools and acceptance of group capital regimes, including the GCC by foreign jurisdictions. He stated that they believe that the inclusion of subgroup reporting reciprocity in the models is appropriate, as it would be an effective method of furthering this objective. He stated that the use of reciprocity is not intended to be retaliatory. He stated that it also provides a mechanism for states to do something when other jurisdictions do not recognize the U.S. GCC. He noted that the edits that they have provided attempt to streamline the revisions to Model #440 and provide a clear definition of recognize and accept in Model #450, which is where they believe such information is best positioned. Mr. Rehagen asked Mr. Bell about the coalition of companies' view on the use of commissioner discretion on such subgroup reporting. Mr. Bell responded that he is concerned with open discretion, but they did support a framework that provided the commissioner with what should be done. Ian Adamczyk (Prudential) added that he is concerned that it could result in a lack of uniformity among the states, and it could work against the promotion of mutual recognition. Ms. Belfi stated that if mutual recognition of the GCC already existed, she is not sure that this subgroup reporting would be needed, but she asked the coalition of companies to provide their view. Mr. Bell responded that he believes that they all inspirationally want the GCC to be recognized, but it is not there yet; therefore, if the subgroup reporting is removed, there is nothing to drive it to happen. He reiterated that their goal is to have acceptance of the U.S. approach, but they are also cognizant that there may be jurisdictions that do not. The wording is helpful in that it provides a means for dealing with those jurisdictions. Bruce Byrnes (Berkshire Hathaway) stated that he believes that this is fundamentally about mutual recognition and putting the U.S. on equal footing with other jurisdictions. He stated that some jurisdictions outside of the U.S. regulate subgroups today and seek to regulate U.S. groups on a regular basis, and the discretion may work against the U.S. in achieving that goal of mutual recognition. Joe Engelhard (MetLife) stated that he is not aware of any covered agreement that addresses this subgroup reporting issue, and the fact that this issue is being raised to highlight an exception that everyone thought was acceptable in terms of one worldwide group wide supervisor per group. Ms. Belfi asked for clarification on their view of commissioner discretion and specifically where it is acceptable, but she said it needs to be narrowed. Mr. Bell responded affirmatively and noted that they would be more supportive of a framework for how the commissioner could respond.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) summarized the ACLI comments on this issue, noting the ACLI supports including the subgroup reporting reciprocity specified in the model law but at the same time it must be supported by a detailed transparent process must be accompanied with that provision. She stated the letter did request dedication to the development of such a process and appreciated the NAIC staff comment that they would reach out to the ACLI and others to help develop such a process.

Matthew T. Wulf (Swiss Re) stated that Swiss Re had submitted comments in the past, but he is hopeful to address what the current reciprocal jurisdiction process does and does not require companies to do related to the recognition of group supervision and group capital. He stated that while there is currently no official GCC, and by definition it is therefore not officially accepted, in the NAIC Qualified Jurisdiction process, they are required in writing to make a representation that they recognize worldwide group supervision and group capital, so the mechanism already exists.

Commissioner Altmaier stated that his preference is to expose the revised models with wording that includes the subgroup reporting issue, with the understanding that it could always take it back out. He stated that this does not mean this represents a decision, and unless there are objections from Working Group members, he would like to expose them. Patrick C. Reeder

(ACLI) asked what could be done to assist the Working Group with deciding on the issue. Commissioner Altmaier stated that he is not sure if more information is needed, and retaining it is likely to assist the state insurance regulators to further deliberate. Ms. Belfi requested that interested parties provide information on the GCC and how some believe it is already accepted even though it is still being developed. Mr. Jakielo asked that Allianz and Transamerica address a potential problem with the current language, which requires communication to the International Association of Insurance Supervisors (IAIS), and he suggested alternative language.

Ms. Mears asked to highlight the material changes from the last version. Dan Daveline (NAIC) stated that most of the comments received are related to subgroup reporting, and he stated that many interested parties commented on the need to streamline the language and avoid duplication between Model #440 and Model #450. He stated that in addition to this, some additional detail was added to the regulation to spell out a more detailed process in the regulation. He highlighted two additional changes, one representing a change to Model #440 related to the filing of the calculation for a firm that completes its calculation, and another representing a misinterpretation by NAIC staff regarding the misinterpretation that mutual insurers are exempt as opposed to potentially subject to the limited filing. Commissioner Altmaier stated that the exposure will be released until Oct. 5.

b. Details of Reciprocity

Mr. Reeder stated the ACLI's concern dealt with even if the U.S. operations must file, that this does not invalidate the exemption at the worldwide level. Chuck Souza (Reinsurance Group of America—RGA) stated what Mr. Reeder stated was the ACLI's intent, and the paragraph applies to subgroup reporting only; and it does not prevent the exemption from the GCC.

c. County Mutual Exemption

Commissioner Altmaier indicated that one of the open comments was from the National Association of Mutual Insurance Companies (NAMIC). A representative was not present to enhance the understanding of the comment for which NAIC staff noted that the regulation could allow the commissioner to exempt a group below \$1 billion in premium. Mr. Eft stated that NAMIC supports the proposed change, as it has a number of county mutual insurance companies under the \$1 billion size but above the \$1 million in premium, and it would prefer not to have to exempt each of them individually. Mr. Rehagen asked a question relative to a holding company structure where there is a regulated entity under such a county mutual. Mr. Eft described that in Indiana, they are all single entity structures. Commissioner Altmaier asked if NAIC staff could run the data on insurers that are not required to file risk-based capital (RBC) to where further discussions could occur after understanding such data.

d. Covered Agreement Materiality

Commissioner Altmaier stated that this issue was raised by NAMIC, and it was suggested to be rejected by NAIC staff on the basis that it would create a conflict with the EU Covered Agreement. Ms. Berry asked questions relative to potential modifications. Mr. Daveline noted that the limitations on conducting business in another jurisdiction is primarily related to where the GCC provides value.

e. Federal Reserve Calculation

Ms. Gomez-Vock stated that the ACLI supports the sharing of such information, but she stated that it is concerned about the potential for a group to have to complete a dual filing to no fault of their own in terms of the sharing of information between its regulators.

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

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August 24, 2020

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

via email to ddaveline@naic.org

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

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

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

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

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

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

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

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

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

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

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

Additional considerations:

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

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

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

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

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

Attachment 1

Interpretation of the NAIC's Exposure

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



August 24, 2020

VIA EMAIL

ddaveline@naic.org

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

Mr. Dan Daveline
Financial Regulatory Services
National Association of Insurance Commissioners
1100 Walnut Street
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Re: Draft Amendments to the NAIC Insurance Holding Company System Regulatory Act – Model
440

Dear Commissioner Altmaier:

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

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

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

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



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

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

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

Sincerely,

Bonnie L. Guth
Munich Re America Services, Inc.

Paige S. Freeman
Munich American Reassurance Company

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

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

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

~~*—~~

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

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



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Via Electronic Mail

August 24, 2020

Commissioner David Altmaier, Chair
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Kansas City, MO 64106-2197

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

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

Dear Messrs. Altmaier and Daveline:

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

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

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

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

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

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

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

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

Proposed Amendment to the Holding Company Act

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

Subsection L.(2)d.

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

Subsection L.(2)e.

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

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Subsection L.(2)f.

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

Proposed Amendment to the Regulation

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

Rationale for RAA’s Proposed Amendments

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

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

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

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

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

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Sincerely,

A handwritten signature in black ink, appearing to read "Joe Sieverling". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph B. Sieverling
Senior Vice President

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

L. Enterprise Risk Filings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 21. Group Capital Calculation

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

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

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

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

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

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

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

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

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

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

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

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



August 24, 2020

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

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

Dear Commissioner Altmaier:

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

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

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

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

- d. An insurance holding company:
 - (i) ...
 - (ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:
 - a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or

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another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the jurisdiction; or

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

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

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

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

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

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

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

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

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

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

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

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

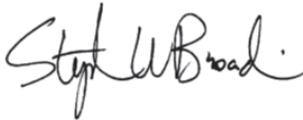
As explained above, the multiple references to "recognize and accept" can create confusion because the phrase appears three times in differing contexts. For example, the reference to "recognize and accept" in Section 4(L)(2)(e) is intended to have a different meaning than that same phrase in this subsection.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

Model Regulation Section 21(D)

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

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

Sincerely,



Stephen W. Brodie
Vice President, Financial & Counsel

APCIA Suggest Revisions - Insurance Holding Company System Regulatory Act (08/24/20)

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

APCIA Suggest Revisions - Insurance Holding Company System Regulatory Act (08/24/20)

- d. An insurance holding company:
- (i) That has provided information to the accredited lead state, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead-state to comply with the NAIC principles of group supervision as detailed in the NAIC Financial Analysis Handbook, and the lead state has determined that because of this the group capital calculation is not required to be filed; and
 - (ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements:
 - a. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the jurisdiction; or
 - a.— Recognizes and accepts the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group wide supervisor; or
Drafting Note: The phrase “Recognizes and accepts” does not require the non-U.S. group wide supervisor to require the U.S. insurance groups to actually file the group capital calculation with the non-U.S. supervisor but rather does not require its own version of a group capital filing.
 - b.— Does not apply its own group capital reporting requirements to U.S. insurance groups, or to parent companies of U.S. insurance subsidiaries, who operate in the jurisdiction of that group wide supervisor; or
 - e-b. For jurisdictions where no U.S. insurance groups operate, recognizes the group capital calculation as an acceptable international capital standard by indicating such formally in writing to the lead state with a copy to the International Association of Insurance Supervisors.
 - (iii) Whose non-U.S. group-wide supervisor provides written confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

APCIA Suggest Revisions - Insurance Holding Company System Regulatory Act (08/24/20)

- ~~e.~~ The exemptions in Sections 4L(2)(c) and 4L(2)(d) shall not apply to the U.S. operations of a non-U.S. insurance holding company if its group-wide supervisor does not recognize and accept the group capital calculation for any U.S. insurance group's operations in that group-wide supervisor's jurisdiction. A jurisdiction is deemed to "recognize and accept" the group capital calculation for a U.S. insurance group when it does not apply its own version of a group capital standard, assessment or report, to the parent of a U.S. entity operating in that jurisdiction.
- e. Notwithstanding the provisions of Section 4L(2)(c) and 4L(2)(d), a lead state commissioner shall require the group capital calculation for the U.S. operations of a non-U.S. insurance holding company if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation as determined through the NAIC Committee Process.
- ~~f.~~ A jurisdiction is considered to "recognize and accept" the group capital calculation that meets one of the following:
- ~~(i)~~ A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and which recognizes and accepts the U.S. state regulatory approach to group supervision and group capital;
 - ~~(ii)~~ A non-U.S. jurisdiction that is not otherwise subject to an in-force covered agreement and which recognizes and accepts the group capital calculation, as specified by the commissioner in regulation. The commissioner shall timely create and publish a list of such non-U.S. jurisdictions that recognize and accept the group capital calculation and shall consider any jurisdiction that has been included on an NAIC list that has been published through the NAIC Committee Process.
- ~~g.f.~~ Notwithstanding In addition to the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead-state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report consistent with criteria as specified by the commissioner in regulation.
- ~~h.g.~~ If an insurance holding company that qualifies for an exemption subsequently no longer qualifies for that exemption due to changes in premium of the insurer(s) within the insurance group of which the insurer is a member, the insurance holding company shall have one (1) year following the year the threshold is exceeded to comply with the requirements of this Act. If a determination is made that the U.S. operations of a non-U.S. insurance holding company is subsequently required to file under Section 4(L)(2)(e), the U.S. operations of the non-U.S. insurance holding company shall have one (1) year following the year in which that determination is made to make its initial filing under Section 4(L)(2)(e).
- ~~h.h.~~ The commissioner may promulgate regulations necessary for the administration of this section.

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

August 24, 2020

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

Dear Commissioner Altmaier:

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

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

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

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

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

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

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

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

Sincerely,

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

Attachment 1

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

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

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

Attachment 2

[Model Law]

L. Enterprise Risk Filings.

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

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

(ii) Whose non-U.S. group-wide supervisor, as determined in accordance with the principles of section 7.1, meets either of the following requirements; recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation for U.S. insurance groups who operate in the jurisdiction of that group-wide supervisor.

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

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

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

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

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

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

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

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

We find this point repetitive and suggest eliminating it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Model Regulation]

Section 21. Group Capital Calculation

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

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

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

We believe this paragraph should be addressed in the regulation.

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

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

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

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

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

Commented [A9]: Updates to 21B1

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

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

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

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

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

Commented [A10]: Updates to 21D

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

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

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

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

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

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

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

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

Commented [A11]: Creation of 21E

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



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August 24, 2020

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

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

Dear Commissioner Altmaier:

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

Mariana Gomez-Vock



Patrick C. Reeder



Enclosures:

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

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

ACLI comments on the exposed Model Act and Regulation

Model Act – 440
ACLI Modifications Redlined

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

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

Model Regulation (450)
ACLI modifications REDLINED

Section 21.

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

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

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

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

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

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

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

ACLI comments on the exposed Model Act and Regulation

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

Appendix 2. Full text of ACLI technical comments

ACLI comments on the Model Act (#440)

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

ACLI comments on the exposed Model Act and Regulation

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

ACLI comments on the Model Regulation (#450)

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

ACLI comments on the exposed Model Act and Regulation

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

ACLI comments on the exposed Model Act and Regulation

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

MODEL ACT – 440 WITH ACLI MODIFICATIONS (CLEAN)

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

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

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

MODEL REGULATION (450)
WITH ACLI MODIFICATIONS (CLEAN)

Section 21.

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

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

ACLI comments on the exposed Model Act and Regulation

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

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

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

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

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

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

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

ACLI comments on the exposed Model Act and Regulation

U.S. jurisdiction.

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

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

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

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



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August 24, 2020

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

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

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

Dear Mr. Altmaier:

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

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

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

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



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

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

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

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

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



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

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

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Jonathan Rodgers".

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

Draft: 9/16/20

Group Capital Calculation (E) Working Group
Conference Call
September 2, 2020

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met via conference call Sept. 2, 2020. The following Working Group members participated: David Altmaier, Chair (FL); Kathy Belfi, Vice Chair, (CT); Susan Bernard (CA); Philip Barlow (DC); Carrie Mears and Mike Yanacheak (IA); Susan Berry (IL); Roy Eft (IN); John Turchi (MA); Judy Weaver (MI); Fred Andersen and Barbara Carey (MN); John Rehagen (MO); Jackie Obusek (NC); Justin Schrader (NE); Dave Wolf and Diana Sherman (NJ); Victor Agbu (NY); Dale Bruggeman (OH); Kimberly Rankin (PA); Trey Hancock (TN); Jamie Walker and Mike Boerner (TX); Doug Stolte and David Smith (VA); and Amy Malm (WI).

1. Adopted its Summer National Meeting Minutes

Commissioner Altmaier said the Working Group met at the NAIC Virtual Summer National Meeting and discussed comments on the exposure of the latest version of the Group Capital Calculation (GCC) instructions and template.

Ms. Belfi made a motion, seconded by Ms. Malm, to adopt the Working Group's July 29 minutes (*see NAIC Proceedings – Summer 2020, Financial Condition (E) Committee, Attachment Five*). The motion passed unanimously.

2. Considered Comments Received on the Exposed Revised Template and Instructions

Commissioner Altmaier stated that the purpose of the meeting is to complete the review of the comments received (Attachment Three-E1) on the previously exposed template and instructions, noting that the discussion would pick up where the Working Group left off at the end of the July 29 meeting during the NAIC Virtual Summer National Meeting. He stated that there were 5 remaining core issues out of the original 12 identified by NAIC staff in the comment summary (Attachment Three-E2).

a. Treatment of Non-Financial Entities

Lou Felice (NAIC) stated that the treatment of non-financial entities is intertwined with other issues discussed at the NAIC Virtual Summer National Meeting, including the definition of financial entities; material risk; excluded entities; and to a lesser extent, calibration. He noted that the treatment proposed in the current template applies only to non-financial entities that are not owned by insurers since non-financial entities owned by insurers will not be de-stacked from the Parent insurer. He indicated that NAIC staff were supportive of using a specific industry average after the covariance factor as the capital charge for these entities, but they expressed doubt about whether a group specific charge would materially change the GCC ratio.

Mariana Gomez-Vock (American Council of Life Insurers—ACLI) asked about how the current risk charge was determined. Mr. Felice explained the methodology. Tom Finnell (America's Health Insurance Plans—AHIP) stated that there should be no charge explicitly used until more data is collected. Steve Broadie (American Property Casualty Insurance Association—APCIA) supported the use of a revenue-based charge until further data was collected and then consider a low/medium/high risk methodology. Ms. Gomez stated that the ACLI does not support a revenue-based charge. James Braue (United HealthGroup—UHG) stated that appropriate credit should be given for diversification between entities in the group. Mr. Felice stated that a post covariance factor was used, thus representing credit for diversification. He also noted that a revenue-based charge is included as an alternative in the current sensitivity analysis, but it was considered less connected to risk-based capital (RBC).

b. Allowance for Debt as Additional Capital

Mr. Felice noted that there were comments on the limitations in the current calculation, which should be considered in light of use of regulatory values rather than U.S. Generally Accepted Accounting Principles (GAAP) values in the adjusted carrying value. Other comments were related to whether tracked down-streamed debt should be removed from the calculation.

Ian Adamczyk (Prudential Financial Inc.) stated that the calibration level was set at a more binding point than existing capital requirements, so he supports adjustment to the current overall limit. David Neve (Global Atlantic Financial) supports eliminating the tracked downstream category in favor of using paid-in capital and surplus. Mr. Braue agreed. Mr. Broadie said he is fine with the limits as adjusted. His main concern is the optics associated with the GCC differing from the international Insurance Capital Standard (ICS). He also offered more detail on an alternative approach and to work with NAIC staff.

Mr. Finnell agreed that the proposed adjustment to the overall limit is a positive step, and he looks forward to working with NAIC staff to improve the instructions to address some lack of clarity. AHIP is still getting feedback from some of its member companies. Mr. Finnell is supportive of exploring the APCA proposed alternative method.

c. Application of Scalars to Foreign Insurers

Mr. Felice stated that the two current scalar methodologies, the pure relative ratio (PRR) and the excess relative ratio (ERR) are placeholders, and either could work. The PRR was initially selected as easier to explain. However, the commenters prefer the ERR. Mr. Felice noted that the Working Group is still looking for other approaches and focusing too strongly on one of the current methods could result in a lack of flexibility to move to another approach. He referred to a comment received indicating that a 100% scalar should be used until a final methodology is selected by the Working Group. Commissioner Altmaier described a project that the American Academy of Actuaries (Academy) has begun to look at scalar alternatives with an expected completion date in March 2021. It was presented to the International Insurance Relations (G) Committee at the NAIC Virtual Summer National Meeting. Mr. Felice suggested that all involved in the GCC follow that workstream. Mr. Barlow asked whether the Academy work included the GCC. Ned Tyrrell (NAIC) stated that the Academy will provide a paper that could be broadly applied across the ICS and GCC. He continued that the Academy will not address specific policy issues and will offer an array of choices with the pros and cons of each.

Ms. Gomez-Vock said she supports the ERR and described the higher level of sensitivity for that approach. Mr. Neve agreed and disagreed with the argument that the PRR is simpler than the ERR. He expressed concerns about how frequently the scalars would be updated and the potential resulting volatility. Mr. Adamczyk said he also supports the ERR, but he is supportive of using 100% to increase flexibility and send a message that the Working Group is still evaluating options and will only incorporate one of those options once finalized.

Ms. Mears asked if scalars would be applied to all foreign jurisdictions or just a core group. Commissioner Altmaier said he sees the issue as to be determined. Mr. Felice agreed and stated that scalars would be applied to those jurisdictions with robust existing capital requirements and where the data was publicly available or made available by the local regulator. Others could be subject to a 100% scalar or an equity-based charge. Ms. Berry asked if the March completion date for the Academy report would affect the Working Group's timing for adopting an initial GCC template. Commissioner Altmaier does not foresee an impact since the GCC template can be adopted with a placeholder methodology for scalars. Mr. Braue stated that the existing scalar approaches produce mathematical inaccuracies. This was clear for the PRR but also appeared to apply to the ERR as well. NAIC staff will review the matter with Mr. Braue.

d. Sensitivity Analysis

Mr. Felice indicated that NAIC staff disagreement with comments suggesting removal of the Sensitivity Analysis tab. He conceded that many of the analysis points relate to alternative charges for entity types where a final decision has not been made by the Working Group, and those will fall away once the decisions are made.

Ms. Gomez-Vock stated that reporting permitted and prescribed practices was not consistent with the current regulatory treatment. She said she recognizes that some will be deleted once a future decision of treatment of certain entities is decided, and she suggested that the purpose for the analysis points should be clarified. Mr. Adamczyk agreed and said he supports clarity on the use of the analysis points. Ms. Gomez-Vock requested that the reference to "Base GCC" be removed in all cases. Mr. Felice agreed that there is only one GCC ratio, and the analysis points are outside the ratio.

e. Collection of "Other Information"

Mr. Felice stated that much of the information collected will support the regulatory analytics purpose of the GCC. In particular, he noted a comment that was critical of collecting information on intangible assets. He noted that these data points do not affect the GCC ratio, and he recommends that the Analytics Drafting Group determine the value of the items in this section of the GCC template.

Mr. Braue stated that he does not understand the difference between physical and non-physical intangible assets that was referenced in the NAIC staff response to the comment by UHG. He recognized the statement that the information on intangible assets would not be used in the GCC ratio, but he asserted that in his opinion, there is no other reason to collect the information except to make that adjustment.

Commissioner Altmaier noted that there were other technical and clarification comments that were received and were being addressed by NAIC staff. He thanked everyone for their comments and assured the meeting participants that the Working Group will take all of them under consideration. NAIC staff will be addressing them in the GCC template and instructions. Commissioner Altmaier expressed his appreciation to the interested parties that have been working with NAIC staff on refinements arising from comments during the NAIC Virtual Summer National Meeting, but he stated that an update on those discussions have to be deferred to a future Working Group call.

3. Discussed Other Matters

Commissioner Altmaier stated that there could be several future calls in September to continue the discussion on the GCC template and instructions, as well as the revisions to the *Insurance Holding Company System Regulatory Act* (#440).

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

W:\National Meetings\2020\Fall\Cmte\E\GCCWG\August 27 Call



July 20, 2020

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

Via e-mail to Lou Felice: lfelice@naic.org

Re: Exposure of Proposed Group Capital Calculation Instructions and Template

Dear Commissioner Altmaier:

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on the changes that have been proposed by the NAIC's Group Capital Calculation (E) Working Group to the Group Capital Calculation (GCC) Draft Instructions and Template, as well as the related FAQ Document, and PowerPoint.

AHIP appreciates the hard work of the GCCWG and of NAIC staff in developing the GCC under tight timeframes as well as in suboptimal working conditions that persist with the ongoing pandemic. In a separate letter submitted on July 15, we stated our appreciation to the working group for recognizing appropriate exemptions and expedited treatments for filing of the GCC. We have some comments below regarding the GCC Instructions that we hope will be seen as constructive. But we first want to call out what we see as clear "positives" in the revised draft GCC and acknowledge the efforts of you and your working group to bring these to bear:

- The overall approach maintains that the GCC is an analytical tool for use by the lead state that will not, in and of itself, dictate capital requirements.
- Appropriate exemptions and expedited treatments from filing all or part of the GCC template have been provided and which provide, in certain instances, for the Lead State Commissioner to use discretion to allow filing only of Schedule 1, i.e., as an analytical construct it could be a sufficient supervisory measure without aggregation to a single group-wide measure.
- Groups could exclude certain non-financial entities from the Scope of Application and large, decentralized groups could request up front a reduction in the scope.

- Determination of materiality of risk posed to the insurance group by non-insurance entities in the broader group will be a qualitative determination (the Financial Analysis Handbook Drafting Group is to consider appropriate criteria).
- Modified instructions for the GCC template are less onerous (than in field testing), i.e., with more grouping and less de-stacking.
- Senior and hybrid debt criteria and limits will accommodate a large majority of debt held by insurance groups to be recognized in group capital.

With that, AHIP would like to provide the following suggestions relative to the GCC Instructions.

I. Scope of Application

Determination of Material Risk

AHIP believes the GCC Instructions could improve the readability of the principle-based guidance for establishing the Scope of Application of the GCC. Currently, some of the principles are included in the section on “definitions” which follows other text where both an understanding of those definitions and the principles therein would be useful for the reader. As well, sections which would appear by the heading to be about principles are more focused on instructions for completing parts of the template.

The section of the GCC instructions on scope of application is intended to help the holding company and its lead state to reach an understanding as to whether a non-insurance entity within the Broader Group poses material risk to the Insurance Group. It should provide principles-based guidance for companies and their lead-state regulators to identify such entities that do not pose material risk and therefore can be excluded from the Scope of Application.

As a threshold matter, the GCC Instructions should provide a definition of “material risk” for purposes of the Scope of Application. In this context, we believe “material risk” should be defined as “risk emanating from a non-insurance entity that is of a magnitude that would adversely impact a group’s insurance operations and its ability to pay policyholder claims.” Likewise, the GCC Instructions should explicitly state that non-material entities within the Broader Group but outside the Insurance Group (as both terms are defined in the GCC instructions) should be excluded from the Scope of Application.

These points naturally follow from the fundamental reason for state insurance regulation and the stated objective of the GCC: policyholder protection. Indeed, paragraph 13 of the GCC Instructions already makes clear that “the overall purpose of this assessment is to better understand the risks that could adversely impact the ability...to pay policyholder claims”.

This reasoning is also in accordance with international standards. For example, under ICP 23, the fact that a non-insurance entity poses risk is not, alone, determinative of whether that entity should be in or out of the scope of group supervision; rather, to be considered included in scope, there also must be some means by which the non-insurance entity could actually transmit that risk to the group's insurance operations, as well as a lack of adequate safeguards that would mitigate that risk of transmission. We believe that the GCC instructions currently embrace those concepts. However, terms such as "cross support mechanisms," and "safeguards" are not defined and it is unclear how they are intended to apply in the context of the scope of application.

For effectuating the materiality analysis for purposes of the Scope of Application, AHIP believes it is necessary for holding companies and lead states to consider the facts and circumstances of a particular entity within a group in a holistic manner. Given the diverse structures and business models of insurers, it would be impracticable to develop a one-size-fits-all checklist of guidelines that would be useful for materiality determinations across all groups. Strict or formulaic quantitative measures are likewise an insufficient proxy for materiality. Instead, the materiality analysis must be assessed in the manner it has been historically – by considering the unique circumstances of the relevant entity and group. We believe that to be the intent of what has evolved through field testing, i.e., an interactive process whereby the group brings forward its suggestions as to entities that should be excluded from the scope of application for a discussion with the lead state, ultimately culminating in an agreement on the scope.

We are not suggesting to somehow upset that interactive process or discussion between the group and its lead state. Rather, AHIP simply recommends facilitating it with definitions for "cross support mechanisms" as well as "safeguards" over the possible transmission of risk between the subject entities of that discussion.

We note that the Form B and D processes entail similar considerations and are already enshrined in the state regulatory process. For example, a detailed review is made of inter-company transactions and agreements that could, depending upon their terms and other pertinent information, fall into the category of "cross support mechanisms" as contemplated by the GCC instructions. Examples could (depending on the facts and circumstances) include certain loans, transactions not in the ordinary course of business; guarantees or other undertakings for the benefit of an affiliate, management agreements, service contracts, cost-sharing arrangements, reinsurance agreements; tax allocation agreements, and more. These agreements are already filed and approved with states. States can leverage these processes already in existence for visibility into cross support mechanisms that may be able to transfer material risk.

As well, Enterprise Risk Reports filed with the lead state already provide information as to the existence of "enterprise risk" defined as "any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole..."

Taken together, Forms B and D and Enterprise Risk Reports establish examples of “cross support mechanisms” as well as whether there is risk that could have a material impact to the insurers in the group (presumably via transfer through at least one such mechanism). It stands to reason that in the GCC, only such risks of non-insurance non-financial entities outside the insurance group that are already identified through those processes could therefore have a material impact and for which the subject entity(ies) that are the source of that risk would therefore be included in the scope of the GCC.

Finally, the GCC Instructions currently contemplate excluding only non-material, non-financial entities from the Scope of Application. However, the Working Group should also consider allowing non-material financial entities within the Broader Group (but outside the Insurance Group) to be excluded from the Scope of Application. We understand that the Working Group views financial entities, in general, to be of greater risk than other affiliates. Even so, all entities that meet the broad definition of “financial” in the GCC Instructions do not necessarily pose material risk (as defined above) under all circumstances. The fact that an entity would be classified as “financial” for purposes of the GCC should be weighed as a factor in the materiality analysis described above, but that alone should not be determinative of materiality.

II. Risk Charges for Material Non-Insurance Entities

Non-Financial Entities

AHIP’s view is that risk charges for non-financial entities should be equal or very similar to the current charge in the sectoral RBC formulas, i.e., 3% in the case of health insurers. The GCCWG has not provided data to suggest that a more substantial risk charge is needed to protect policyholders. In addition, existing regulatory processes, such as the Form B and D processes, are already in place to ensure that the regulated legal entity is protected from the non-regulated, non-insurance entity. Adding an additional risk charge is unwarranted in light of existing regulatory requirements.

Further, the GCCWG has not provided data indicating that policyholders are any more at risk in a diversified insurance holding company than in a non-diversified group. If that is a concern, and if it is desired to consider changes to underlying RBC levels, that should be handled through the appropriate (e.g., Health) RBC Working Group.

Financial Entities

On a related matter, AHIP is concerned with the breadth of the expanded definition of “financial entity” in the GCC Instructions. If the Working Group maintains this expanded definition of “financial entity”, we recommend using a capital charge that is roughly equivalent to an entity’s current post-covariance RBC charge. If it is desired to consider changes to underlying RBC levels, that should be handled through the appropriate (e.g., Health) RBC Working Group.

The exposed GCC Instructions provide that certain non-insurance affiliates of an insurer be deemed as financial. We understand that the Working Group views such affiliates to be of greater risk relative to other types of affiliates, and by deeming them to be financial, they would be listed separately for analytical purposes as well as subjected to a higher capital charge. Specifically, the exposed GCC Instructions add the following to the definition of “financial entity”:

“Affiliates that are integral to the performance of the insurance contract or the provision of insurance or financial products or services to policyholders, members or depositors [Examples include: agents, reinsurance intermediaries, claims adjusters or processors, third party administrators, pharmacy and other benefit managers, provider groups or entities that provide more than X percent of the policy benefits under policies issued by insurers within the group, and] will be treated as financial entities.”

AHIP fundamentally disagrees with the notion that certain affiliates are inherently riskier than others, as based on the language cited above which would effectively deem some affiliates to be considered financial, including third-party administrators and pharmacy benefit managers, provider groups, and pharmacy benefit managers. There is a wide array of types of non-affiliated entities within insurance groups, and it is overly simplistic to conclude that all that are somehow associated with assisting the insurer with contract performance or policyholder services are inherently riskier than others. Indeed, the Form B and D processes recognize that transactions with affiliates may have risks, and that a determination of such risk is very fact-specific to the subject entities and underlying transactions or agreements.

Further, subjecting these entities to a capital charge for financial entities (12% of 3-year average gross revenue – possibly to be increased to 15%) could result in a significant additional charge as compared to current RBC for several reasons:

- The base of the entity’s charge would be changed from BACV to gross revenue.
- The factor applied to the base would increase from 7% BACV to 12% of gross revenue.
- Removing the charge from the insurer’s RBC—where it is subject to the covariance adjustment—to a separate line item for the affiliate itself, where the capital charge is aggregated without a similar covariance calculation or other recognition of risk diversification.

In addition, AHIP has concerns about the reference to “entities that derive a majority of their gross revenue from services that are integral to the performance of the insurance contracts within the group or from the provision of other financial services to policyholders within the group will be considered a Financial Entity without a regulatory capital requirement” in the definition of “Financial Entity.” The GCCWG has not provided evidence to suggest that services performed by such affiliates add risk to the group. In our view, because of greater regulatory oversight

through the Form B and D and other regulatory processes, these arrangements actually reduce the group's risk.

Therefore, AHIP recommends using an equity-based capital charge that is roughly equivalent to the current post-covariance charge for such affiliates in RBC.

III. Treatment of Debt as Qualifying Capital

AHIP very much appreciates that the GCC will, in large measure, recognize certain senior and hybrid debt as capital. Debt is a critical capital resource for many of our members. The capital markets are well-established and have proven to be a reliable resource for the funding of debt instruments, even during the 2008-2009 financial crisis. Experience has shown time and again that the debt markets can be tapped quickly and utilized to enhance policyholder protection in a flexible and cost-efficient manner. Moreover, in periods of macroeconomic stress such as the financial crisis, the use of debt can be a more attractive alternative to the issuance of stock in depressed markets while also avoiding dilution of shareholder interests.

IV: Other Comments

In the attachment, AHIP has provided other comments and questions of a technical nature that were provided by our members.

* * * * *

Again, AHIP appreciates the opportunity to offer comments on the GCC Instructions and Template.

Sincerely,

Bob Ridgeway
Senior Government Relations Counsel

Attachment to Comment Letter of AHIP on the GCC Instructions and Template

1. We note that there are many areas within the template that are labeled “further work needed” or “technical discussions needed.” For example, “Summary Group Alternative 4” is blank. Also, in Summary 2 – Top Level: No formulas appear in the sensitivity section. When will companies have a completed template to review and test, and what other opportunities will there be to provide input on the template based on their review?
2. “Summary Alternative 5 – Organizational Option” is missing from both the template and the instructions. This option is intended to allow the reporting entity to present a summary of the results to assist regulators with understanding the submission.
3. Schedule 1D –Reporting “net dividends paid/(received)” is more practical and meaningful, because many entities act as “pass-through” for moving dividends up the corporate structure. In that context, “dividends received and not retained” becomes unnecessary.
4. I.A.2 in the instructions suggests that another consequence of “subsidization” may be “upward pressure on premiums to the detriment of insurance policyholders.” This implies that the GCC might somehow be a factor in regulating insurance premium rates, which we believe to be an inappropriate use of the GCC based on our understanding of its objectives.
5. I.A.2 in the instructions states that the GCC “provides 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” and will “allow them to make informed decisions on both the need for action, and the type of action to take.” As stated, this is an overly ambitious aspiration for the GCC. In particular, at least in early years of implementation, the GCC will produce a ratio that would require much reliance on other existing regulatory tools to interpret – not the other way around. We understand that the Financial Analysis Handbook Drafting Group is working on guidance for regulators as to how the GCC would be utilized as part of financial analysis and in developing the Group Profile Summary. We recommend deleting the cited phrases in the instructions and await to comment on the work of the Drafting Group in that regard.
6. II.E.20. of the instructions discusses an annual redetermination of scope. This raises concerns about the meaningfulness of year-to-year trends in the GCC should the scope change. And if companies automate processes to produce the GCC, revisions would have to be made on an annual basis.

7. AHIP is unclear as to why the NAIC is proposing to collect data on intangible assets, which is not an element that is necessary to calculate the GCC.



July 20, 2020

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

Re: Proposed Revisions to the Group Capital Calculation Instructions

Dear Commissioner Altmaier:

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

APCIA reiterates our appreciation that the NAIC is moving with the appropriate speed to develop the GCC and help incorporate it into state law. We likewise thank the Working Group and NAIC staff for their continued efforts to advance this important project. We offer these comments on the revised GCC Instructions for the following three topics: (1) Scope of Application, (2) risk charges for material non-insurance entities, and (3) treatment of capital instruments and debt.

I. Scope of Application

A. Determination of Material Risk

APCIA believes the GCC Instructions should include more detailed and principle-based guidance for establishing the Scope of Application of the GCC. In particular, guidance is needed for determining whether a non-insurance entity within the Broader Group poses material risk to the Insurance Group. This will allow companies and their lead-state regulators to identify such entities that do not pose material risk and therefore can be excluded from the Scope of Application, with as much consistency as possible across groups and states.

As a threshold matter, the GCC Instructions should provide a definition of “material risk” for purposes of the Scope of Application. In this context, we believe “material risk” should be defined as “risk emanating from a non-insurance entity that could adversely impact a group’s insurance operations and ability to pay policyholder claims.” Likewise, the GCC Instructions should explicitly state that non-material entities within the Broader Group (but outside the Insurance Group) should be excluded from the Scope of Application.

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These points naturally follow from the fundamental reason for state insurance regulation and the stated objective of the GCC: policyholder protection. Indeed, paragraph 13 of the GCC Instructions already makes clear that “the overall purpose of this assessment is to better understand the risks that could adversely impact the ability . . . to pay policyholder claims”. This reasoning is also in accordance with international standards. For example, under ICP 23, the fact that a non-insurance entity poses risk is not, alone, determinative of whether that entity should be in or out of the scope of group supervision; rather, to be considered included in scope, there also must be some means by which the non-insurance entity could transmit that risk to the group’s insurance operations. In sum, there is more than sufficient justification for the GCC Instructions to make clear that the crux of the materiality analysis is whether an entity could adversely impact a group’s ability to pay policyholder claims, and that non-material entities (as determined using the definition of “material risk” in the preceding paragraph) should be excluded from the Scope of Application.

For effectuating the materiality analysis for purposes of the Scope of Application, APCA believes it is necessary to consider the totality of the facts and circumstances of a particular entity within a group. Given the diverse structures and business models of insurers, it would be impracticable to develop a one-size-fits-all checklist of guidelines that would be useful for materiality determinations across all groups. Strict or formulaic quantitative measures are likewise an insufficient proxy for materiality. Instead, the materiality analysis must consider the unique circumstances of the relevant entity and group.

To that end, APCA recommends developing a list of factors related to whether an entity could adversely impact a group’s ability to pay policyholder claims. Insurers and regulators could then use these factors to undertake a materiality analysis based on the totality of the facts and circumstances by considering the factors and how they apply to the group’s business. After this analysis, a determination can be made as to whether an entity is material. To be clear, no single factor is determinative of materiality of risk, nor should these factors be used as a scorecard or checklist. Below we offer examples of factors that should be considered when determining materiality of risk:

- The nature of the subject entity and specific activity(ies) that give rise to the risk.
- The means by which risk can be transmitted, or prevented from being transmitted, from the entity to the group’s insurance operations.
- The means applied for risk mitigation or transfer to third parties and the extent to which risk is reduced or transformed (e.g., to credit risk).
- Past experience (i.e., the extent to which risk from the entity has impacted the Insurance Group over prior years/cycles).
- The existence of cross-support mechanisms between the entity and the Insurance Group (e.g., guarantees).
- The location of the entity within the Broader Group and how direct or indirect the linkage may be.
- The existence and relative strength or effectiveness of structural safeguards that could minimize the transmission of risk to the Insurance Group (e.g., whether the corporate shell can be broken).

- The existence of sufficient capital within the entity itself to absorb losses under stress and/or if adequate capital is designated elsewhere in the Broader Group for that purpose.
- The extent to which there is risk diversification (e.g., where risks of one or more entities outside the Insurance Group are potentially offset (or exacerbated) by risks of other entities) and whether the corporate structure or agreements allow for the benefits of such diversification to protect the Insurance Group.
- The degree to which capital management across the Broader Group has historically relied on funding by the Insurance Group to cover losses of the subject entity.
- The degree of risk correlation between the subject entity and the Insurance Group.

The GCC Instructions currently contemplate excluding only non-material, non-financial entities from the Scope of Application. However, the Working Group should also consider allowing non-material financial entities within the Broader Group (but outside the Insurance Group) to be excluded from the Scope of Application. We understand that the Working Group views financial entities, in general, to be of greater risk than other affiliates. Even so, all entities that meet the broad definition of “financial” in the GCC Instructions do not necessarily pose material risk (as defined above) under all circumstances. The fact that an entity would be classified as “financial” for purposes of the GCC should be weighed as a factor in the materiality analysis described above, but that alone should not be determinative of materiality.

B. Scope of Application Starting Point

APCIA supports the new starting point proposed in the revised GCC Instructions that would allow large decentralized groups a reduction in Scope of Application up front in some cases. Likewise, we agree with NAIC staff’s suggestion that regulatory evaluation of an up-front reduction in Scope of Application should be based on established guidance that can be applied consistently across states. For this purpose, the GCC Instructions should provide guidance that is similar to the materiality test detailed in the preceding section. We believe utilizing similar guidance would be appropriate since the underlying purpose of excluding entities from the Scope of Application is the same, regardless of whether entities are first listed on Schedule 1 or excluded up front.

II. Risk Charges for Material Non-Insurance Entities

A. Non-Financial Entities

In the short term, risk charges for non-financial entities should be 3% of 3-year average revenue. By “short term” we mean during the first few years of the GCC’s implementation, a period during which experience will be gained that can then be analyzed in more detail and across more groups than was possible in field testing. In the meantime, APCIA recommends using average revenue over a 3-year period as the base for the risk charge in order to minimize volatility.

Once some experience is gained with the GCC, the Working Group should consider a variable risk charge that would be more risk-sensitive based on the industry or activity(ies) in which the subject non-financial entity participates. APCIA does not believe that the variable charge needs to be developed in an overall complex fashion, especially since the published field-test results show this charge had a fairly minor impact overall (e.g., as compared to the inclusion of debt as qualifying capital or the use of scalars). Rather, a future variable charge could be as simple as a

construct based on an assigned risk category (e.g., high/medium/low) with a differentiated charge for each.

B. Financial Entities

APCIA is concerned with the breadth of the expanded definition of “financial entity” in the GCC Instructions. If the Working Group maintains this expanded definition of “financial entity”, we recommend using, in the short term, a capital charge that is roughly equivalent to an entity’s current post-covariance RBC charge, while also developing a high/medium/low-risk construct with differentiated charges for the long term.

The exposed GCC Instructions provide that certain non-insurance affiliates of an insurer are deemed as financial. We understand the Working Group views such affiliates to be of greater risk relative to other types of affiliates, and by deeming them to be financial, they would be listed separately for analytical purposes as well as subjected to a higher capital charge. Specifically, the exposed GCC Instructions add the following to the definition of “financial entity”:

“Affiliates that are integral to the performance of the insurance contract or the provision of insurance or financial products or services to policyholders, members or depositors [Examples include: agents, reinsurance intermediaries, claims adjusters or processors, third party administrators, pharmacy and other benefit managers, provider groups or entities that provide more than X percent of the policy benefits under policies issued by insurers within the group, and] will be treated as financial entities.”

We have some concerns about the language cited above, which would effectively deem some affiliates to be considered financial. There is a wide array of types of non-affiliated entities within insurance groups, and it seems overly simplistic to conclude that all that are somehow associated with assisting the insurer with contract performance or policyholder services are inherently riskier than others. Subjecting these entities to a capital charge for financial entities (12% of 3-year average gross revenue – possibly to be increased to 15%) could result in a significant additional charge as compared to current RBC, for several reasons:

- The base of the entity’s charge would be changed from BACV to gross revenue.
- The factor applied to the base would increase from 7% BACV to 12% of gross revenue.
- Removing the charge from the insurer’s RBC—where it is subject to the covariance adjustment—to a separate line item for the affiliate itself, where the capital charge is aggregated without a similar covariance calculation or other recognition of risk diversification.

Therefore, in the short term, APCIA recommends using a capital charge that is roughly equivalent to the current post-covariance charge for such affiliates in RBC. Over the first few years of the GCC’s implementation, data can be collected and used to derive a more risk-sensitive charge, but also one that is pragmatic to develop and implement (e.g., a differentiated charge for entities of high/medium/low risk as determined by specified criteria).

III. Treatment of Debt as Qualifying Capital

APCIA very much appreciates that the GCC will, in large measure, recognize certain senior and hybrid debt as capital. Debt is a critical capital resource for many of our members. The capital markets are well established and have proven to be a reliable resource for the funding of debt instruments, even during the 2008-2009 financial crisis. Experience has shown time and again that the debt markets can be tapped quickly and utilized to enhance policyholder protection in a flexible and cost-efficient manner. Moreover, in periods of macroeconomic stress such as the financial crisis, the use of debt can be a more attractive alternative to the issuance of stock in depressed markets while also avoiding dilution of shareholder interests.

There is, however, an overarching issue that is presented by the way debt is treated in the proposed GCC Instructions. The treatment of debt differs in some key aspects from that which was adopted by the International Association of Insurance Supervisors (IAIS) in the Insurance Capital Standard (ICS) in 2019—which was the culmination of a long and hard negotiation process with U.S. interests supported by the NAIC, Federal Reserve Board (FED), and Federal Insurance Office (“Team USA”). As a result, and given the nature of the differences, the GCC could be viewed as less credible by other jurisdictional supervisors including those who may be parties to a Covered Agreement. Comparability of the GCC with the ICS is a looming issue on the horizon, the resolution of which can impact the views of many IAIS member jurisdictions about the efficacy of state-based regulation over U.S.-based insurance groups.

At the same time, the FED is working to complete its Building Block Approach (BBA) applicable to insurance groups under its supervision (i.e., savings and loan holding companies). The currently proposed approach in the BBA is more closely aligned with the principles-based criteria in the ICS than with the approach taken in the exposed GCC Instructions. While the proposed BBA approach would disallow debt except for grandfathered surplus notes, in some respects that is due to the unique mandate of the FED. For example, a criterion in the proposed BBA is that financial instruments be “subordinated to depositors and general creditors of the building block parent”, thus reflecting the FED’s mandate to protect the depository institution within the group.

With those high-level comments as an introduction, the following comments are intended as constructive suggestions to address some technical points in the GCC Instructions and template regarding debt. In addition, we offer some thoughts that may be helpful in addressing international perceptions.

A. Qualifying Instruments

APCIA recommends using criteria, rather than defined terms, to identify qualifying capital instruments. The GCC takes the approach of testing whether certain types of debt qualify as capital—specifically, senior debt, hybrid debt, surplus notes and “similar” instruments, and “other debt”. This contrasts with the approach taken by the IAIS in its ICS V.2.0 for the Monitoring Period, and by the FED in its proposed BBA. Both the ICS and the FED focus on criteria (e.g., permanence, loss absorbency, etc.) that are agnostic as to the title or name of a particular instrument.

There are two implications that we see. First, should the GCC go forward as currently proposed, the Working Group may need to supplement the GCC Instructions with definitions for each type of instrument. For example, “hybrid debt” is not defined in the Instructions. We understand that rating agencies treat subordinated debt issued by a parent company as “hybrid debt” as long as it is long-dated and has provisions to defer interest payments for a period of time. This could give rise to variation in treatment of hybrid debt (e.g., it may be unclear to a group if it should classify it as “hybrid” or as “subordinated” debt). On another level, comparability with the ICS needs to be considered, and on this point it seems that the more important issue is not whether types of debt are called out by name or more generically by tier, but whether comparable criteria to the ICS are used.

B. Treatment of Senior and Hybrid Debt

Using the calculation described below, the Instructions provide for an “additional capital allowance”. We first note this terminology has a potential connotation of an amount that is granted, in this case, to qualify as capital. We do not believe that to be the true nature of the calculation. Rather, for instruments that qualify for capital treatment based on specified criteria, it is a calculation to determine whether the aggregate dollar value of those instruments is within supervisory limits, and if not, the excess amount that would then disqualify. APCIA believes that focusing the Instructions’ text on “limits”, rather than “allowance”, will help in some respects with perceptions about comparability.

For subordinated senior and hybrid debt instruments meeting specified criteria, the GCC Instructions are detailed and have certain options remaining for consideration by the Working Group. In brief, the amount that would qualify would be determined based on the following inputs:

- (1) Tracked down-streamed proceeds.
- (2) Total paid-in capital and surplus of U.S. insurers.
- (3) A proxy value, i.e., for senior debt, 30% of available group capital pre-debt plus outstanding senior and hybrid debt (15% in the case of hybrid debt).

The amount that would qualify for treatment as capital in the GCC would be the larger of (3) over the larger of (1) or (2), subject to two caps:

- The total amount of outstanding senior and hybrid debt.
- The amount of senior debt and hybrid instruments allowed in group capital cannot exceed 50% of group capital before such debt.

While APCIA is of course not privy to the confidential, company-specific results of GCC field testing, it appears based on the wording in the GCC Instructions alone that in the vast majority of cases the amount of paid-in capital and surplus will exceed tracked down-streamed proceeds and, possibly, the proxy values as well. (The NAIC reported that field-test results showed only a handful of groups that were impacted by the limit, and only half of those resulted in a “haircut” greater than 10% of reported debt). This, in part, is because the calculation includes the paid-in capital and surplus of all U.S. insurance entities in the group, regardless of the source of that capital (whether from debt proceeds or otherwise).

The GCC Must Test for Subordination to Policyholders. There are indications in the exposed GCC Instructions that consideration is being given to simplifying the process by eliminating the down-streaming criterion altogether such that qualified debt would be the greater of (3) over (2), above, subject to the caps. If so, there would in effect be no explicit test to support that the debt is structurally subordinated. Recognizing that U.S. senior debt is not contractually subordinated, this could raise issues about international perceptions about the GCC. Team USA argued long and hard to support structural subordination in the ICS, finally achieving victory in Abu Dhabi last November. While use of structural subordination in the ICS is termed by the IAIS as a “national discretion”, it is an option nonetheless in the ICS that is now recognized by the IAIS and its key member jurisdictions on the IAIS Executive Committee who voted to adopt ICS 2.0. Therefore, we have concerns with the notion of deleting the down-streaming criteria without any other criteria to support subordination, as explained in the following paragraphs.

At a time when comparability with the ICS is an issue that is quickly coming to the forefront, it is not clear why the GCC would now take a very different route with respect to the treatment of debt. While down-streaming has raised many questions about how debt proceeds can be tracked and verified, the ICS criteria are workable and rely in large measure on each group and its group-wide supervisor to make that determination in light of the unique facts and circumstances surrounding each respective group. The IAIS avoided prescribing detailed rules or criteria for tracking. APCIA believes the NAIC should do the same in the GCC, leaving the determination of the amount down-streamed to the lead state working in conjunction with the group.

APCIA believes a similar approach (to the ICS) can be just as workable in the GCC—focusing on criteria that are agnostic to the type or name of any particular financial instrument. This would include criteria to support that the qualifying amount of debt to be treated as capital is actually subordinated (either contractually by the terms of the instrument, or structurally), and other principle-based criteria, as in the ICS, to support permanence, loss absorbency, etc. Some refinement of the ICS criteria may be necessary to address U.S.-specific nuances for the GCC. Indeed, structural subordination is an example of such a nuance for which Team USA successfully negotiated before the IAIS to accommodate U.S. practices in the ICS. This would avoid a comparability issue with respect to which capital instruments qualify as capital resources. That said, one area where there could be explainable and appropriate differences with the ICS involves limits on the amount of those qualifying capital resources (such as described below with respect to surplus notes, which in our view, and as argued by Team USA before the IAIS in the case of the ICS, should have no limit) given some of the unique features of state-based regulation in the United States.

Therefore, to the questions posed by the exposed GCC Instructions as to whether the down-streaming / tracking test should be maintained and, if so, what criteria should be in place, APCIA recommends keeping the test and using the criteria (with any U.S.-specific refinements necessary) that have been approved in ICS 2.0 for the Monitoring Period. That is, structurally subordinated debt should increase available capital to the extent the group and its lead state have determined such amount supports the insurance operations and is insulated from recourse by the lender, through tracking of down-streamed proceeds of the instruments into insurance subsidiaries.

There is, however, one other criterion for down-streaming that the Working Group could consider as an option to tracking down-streaming. Fundamentally, jurisdictional supervisors who permit subordinated debt to be treated for regulatory purposes as capital do so because policyholders remain protected; whether structurally subordinated or by the terms of the instrument, legally enforced restrictions and safeguards prevent the lender from “pulling the rug out from under” policyholders such that the debt is considered sufficiently permanent and loss absorbing. The issue becomes, to what assets and how much of those assets would the lender nonetheless have recourse?

As a practical matter, the lender would have recourse only to the liquid assets that remain in the entity that issued the debt (i.e., the holding company in the case of senior debt). For many groups, the unconsolidated balance sheet of the holding company (for public companies, the separate financial statements of the registrant are publicly reported in Form 10-K filed annually with the SEC) reflects a very large, illiquid investment in insurance subsidiaries, control over which is subject to regulatory oversight and approval. The amount of other, liquid assets in the holding company is typically much smaller. So, another option to test structural subordination is to limit the amount of senior debt to qualify as capital to that which is in excess of the liquid assets in the holding company. This would be easier to determine and to verify and may produce a value that would satisfy the group. If not, the group could revert to the tracking of down-streaming criterion.

C. Other Debt

Debt other than senior and hybrid debt is not allowed as capital pursuant to the exposed GCC Instructions. However, we understand that data will be collected in the GCC template for purposes of facilitating a sensitivity test based on a 15% allowance (of available group capital pre-debt plus outstanding senior and hybrid debt). We understand that the Working Group may later consider allowing limited amounts of other debt as capital if criteria can be determined. APCIA is open to the possibility of some allowance for other debt in the future. However, we believe that consideration should also be given to comparability with the ICS and adherence to the principle of subordination.

D. Surplus Notes

APCIA agrees surplus notes should be treated as capital in the GCC and with no limit, as proposed in the Instructions. We understand that Team USA argued before the IAIS for a similar outcome in the ICS, especially for mutual insurance companies. The IAIS ultimately decided to make some accommodations for mutual-company surplus notes (included in Tier 2 instruments) but retained limits, albeit limits that are slightly higher than those applied to non-mutuals. Nonetheless, APCIA supports the GCC treatment with no limit, given the well-established supervisory requirements and safeguards that surround all aspects of the issuance, maintenance, and repayment of surplus notes in the U.S.

E. Foreign Debt

APCIA likewise supports the GCC’s treatment of foreign debt. For debt issued by foreign entities, the GCC respects the treatment afforded by the local supervisor while also holding to the principle of subordination, whether that be achieved structurally or through the terms of the

instrument. If subordination is in place and if approved by the local supervisor as capital, the debt would qualify as capital in the GCC, a position with which APCIA agrees.

F. Overall Limitations on Debt as Capital

The exposed GCC Instructions have an overall limit on the use of debt as capital (i.e., senior debt and hybrid instruments allowed in group capital cannot exceed 50% of group capital before such debt). It is unclear if “group capital” as used for this test would include full value for surplus notes and qualifying foreign debt. Given that there is a separate limit applied to senior and hybrid debt – no more than 100% of such debt can qualify – it would seem appropriate that the overall limitation should apply to all debt, including surplus notes and foreign debt. That said, and as noted above, APCIA supports no limit on surplus notes of mutual insurers. It is important that all insurers be able to include unlimited amounts of capital from at least one organic source and one external source. In the case of stock companies, those would be retained earnings and common stock, respectively. In the case of mutuals and similar companies that cannot issue common stock, those would be retained earnings and surplus notes.

We observe that there are members of NAIC staff who participate in the development of the GCC as well as field testing of the ICS through their role on the IAIS Capital and Solvency Field Testing Working Group. Only they would be in a position to assess how the impact of the proposed limits in the GCC compare to those in the ICS for groups that have participated in both the GCC and ICS field testing exercises. Because APCIA is not in the same position, we do not offer a view on the overall limit of 50%. However, we do recognize that the comparability issue is also an important part of navigating the way forward with the GCC and encourage the Working Group to give due consideration in the context of the overall limit.

We look forward to discussing our comments with you and the Working Group.

Sincerely,



Stephen W. Broadie
Vice President, Financial & Counsel



Matthew B. Vece
Manager & Tax Counsel

July 20, 2020

Commissioner David Altmaier
Florida Office of Insurance Regulation
Chair, NAIC Group Capital Calculation (E) Working Group
via e-mail to ddaveline@naic.org and lfelice@naic.org

Re: GCC Working Group Exposures

Dear Commissioner Altmaier:

A coalition of fourteen companies (Brighthouse Financial, CNO Financial, Genworth Financial, Global Atlantic Financial Group, Hannover Life Reassurance Company of America, Jackson National Life Insurance, Lincoln Financial Group, National Life Group, Principal Financial Group, Protective Life, Reinsurance Group of America, Sammons Financial Group, Standard Insurance Company/StanCorp Financial Group, and Transamerica) (collectively, the “Coalition”) appreciates the opportunity to comment on the exposure of the: a) Staff Group Capital Calculation (GCC) PowerPoint (the “PowerPoint”); b) revised draft instructions; c) revised GCC template; and d) FAQs relating to these documents.

The Coalition’s primary area of advocacy has been the need for the GCC to adhere fully to legal entity rules in support of the state-based legal entity solvency system. Accordingly, we welcome significant improvements within the exposed materials that eliminate several proposed “on top adjustments.” In this letter, we specifically want to indicate our support for the proposed treatment of XXX/AXXX captives.

In particular, we understand the revised instructions to include no “on top adjustments” for captives or permitted/prescribed practices. Furthermore, slide 11 of the PowerPoint indicates that a proposed sensitivity analysis for XXX/AXXX captives will be excluded from the GCC template “upon referral to an E Committee Group or Subgroup for Further Risk Assessment.” Once this occurs, we understand that further analysis would be separate from the GCC itself. Assuming our understanding is correct, the Coalition fully supports the proposed treatment and looks forward to working with the relevant group of regulators.

We thank you, the Working Group, and NAIC staff for your attention to this letter and prior Coalition correspondence. We look forward to continuing to work with you and your team as the NAIC moves towards finalization of the GCC.

Sincerely,

Brighthouse Financial
CNO Financial
Genworth Financial
Global Atlantic Financial Group
Hannover Life Reassurance Company of America
Jackson National Life Insurance

Lincoln Financial Group
National Life Group
Principal Financial Group
Protective Life
Reinsurance Group of America
Sammons Financial Group
Standard Insurance Company/StanCorp Financial Group
Transamerica



July 20, 2020

Lou Felice
Solvency and Capital Policy Advisor
National Association of Insurance Commissioners

Dear Mr. Felice,

Global Atlantic appreciates the opportunity to comment on the exposure draft of the revised GCC instructions and the revised GCC template. Our comments address concerns with the following:

- Capital calibration
- Downstream tracking of debt
- Scalar methodology
- Scalar governance

We also seek guidance on whether GAAP equity values should include or exclude OCI when GAAP is used as the accounting method to determine the carrying value of an entity.

Capital Calibration

We have concerns with the current proposed approach of using the trend test level of 300% ACL as the capital calibration level. First of all, 300% ACL is inconsistent with the 200% ACL (= 100% CAL) calibration level widely used in the insurance industry for RBC. We believe this will lead to confusion and misunderstandings when comparing RBC to GCC, potentially undermining the current RBC standard. RBC ratios are typically in the 350% to 450% range, but the GCC ratio will be much lower. For example, if the underlying RBC ratios of the companies in the group average 450% RBC, the resulting group capital ratio will be ~300%.

In addition, we believe the insurance industry's current reporting of two capital calibration levels, (100% ACL and 200% ACL) results in confusion and frequent misinterpretation of reported ratios; adding a third calibration level for the GCC of 300% ACL will compound the problem. We believe this will lead to additional confusion and misunderstanding by users of financial information, including the regulatory, rating agency, and banking communities.

We strongly request that the NAIC adopt a 200% ACL calibration level for the GCC.

Downstream Tracking of Debt

The current instructions rely on downstream tracking in order to count debt proceeds as part of available capital. In practice, our company borrows externally in order to downstream it to the insurance companies; however, we have not found it necessary to track downstream transactions and question whether a tracking system would simply introduce complexity without providing a benefit.

We are in favor of a proposal to eliminate downstream tracking logic and replace it with a simple comparison to paid-in capital and surplus, for the following reasons:

- Simpler, more efficient, and more reliable test
- Avoids complications that could result from debt that has been refinanced by the parent as there would be no contribution of the debt amount issued.
- Avoids complications of tracking upside transactions where debt is borrowed at one date and then down streamed at a different date.
- Avoids complications of tracking the reverse: dividends which are up streamed. Are those upstream transactions to be netted against down streamed capital or not?
- Avoids complications and questions related to M&A transactions – if a company is acquired, does the new parent company automatically assume the historical relationship of down streamed debt, so long as its debt at least equals the debt of the old parent company?

If the downstream tracking approach is maintained, once layers of transactions of the type described above are introduced, a comprehensive downstream tracking system will need to be developed, communicated, applied and reported across the industry in a way which is comparable and reliable. Our view is that industry and regulator efforts to track down streaming will not add value. In our case, the resulting capital adjustment will be the same whether we develop a downstream tracking process or whether we run a simple test ensuring that paid in capital at least exceeds the capital adjustment amount.

Scalar Methodology

We support the Excess Relative Ratio Approach for scaling non-U.S. capital ratios to U.S. RBC. This method utilizes two anchor points for scaling:

1. The respective industry average capital ratio
2. The regulatory intervention level.

The alternative scaling approach, the Pure Relative Ratio, relies solely on the industry average capital ratio to translate a non-U.S. capital ratio to U.S. RBC. It does not take in to account the regulatory intervention level. Since the Pure Relative Ratio approach adjusts required capital only, available capital is not adjusted, resulting in excess capital being distorted. Since the Excess Relative Ratio approach adjusts both available capital and require capital, excess capital is not affected.

Thus, the Pure Relative Ratio lacks a mechanism to ensure that a non-U.S. firm at the regulatory intervention level within it's respective country will be at the U.S. RBC intervention level once scaled. This is a material fault. Again, we support the Excess Relative Ratio Approach, and its ability to align regulatory intervention levels across jurisdictions.

Scalar Formulation

Transparency of how the scalars are calculated will be critical, regardless of which scaling methodology is selected. In order to appropriately manage capital under the group framework, firms must have a thorough understanding of how scalars behave. Many non-U.S. countries rely on market-

value based capital ratios, which have potential to behave differently than the book-value based RBC measure.

We believe the following themes should define the scalars:

Consistency – scalars should be calculated and applied consistently across all non-U.S. regimes.

Specificity – scalars should be discretely computed and applied amongst life, property casualty and health insurance companies.

Stability – the results of applying scalars to Non-U.S. capital ratios should not be volatile; for example, converting to U.S. RBC should not yield a significant headwind in one year, and a significant tailwind in the following year.

Additionally, we believe answers to the following questions are critical for firms to understand the impact of the scalars:

1. How is the country average computed? Is the concept of country average based on equal weighting each firm? Alternatively, is it size weighted, such that a large provider in Country Y may dominate the average of Country Y?
2. How frequently will the scalars be updated?
3. Will scalars derived from Year 20XX be applied to 20XX actual results, or will timing of filings and data availability create a lag?
4. Will scalars take in to consideration only a single year, or alternatively, will a rolling average mechanism be utilized?

GAAP Equity

The GCC instructions are silent on whether OCI should be included or excluded when GAAP equity is used as the carrying value of an entity. Companies typically report GAAP equity excluding OCI to lessen the amount of volatility that can arise when including market value adjustments of assets. Excluding OCI is also consistent with statutory accounting rules that generally do not reflect the market value of assets. We suggest that the GCC instructions include guidance on whether OCI should be included or excluded when reporting GAAP equity. Otherwise there could be inconsistencies in how companies report GAAP equity amounts.

Again, thanks for allowing us to provide our comments on the revised GCC instructions.

Sincerely,



Lauren Scott
Head of Regulatory and Government Affairs
Global Atlantic Financial Group



Ann Kappler

Senior Vice President, Deputy General Counsel and
Head of External Affairs

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July 20, 2020

Via Electronic Delivery

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

Re: The National Association of Insurance Commissioners ("NAIC's") Draft Group Capital Calculation ("GCC") Instructions and Template

Dear Commissioner Altmaier:

Prudential Financial, Inc. ("we") thank the Group Capital Calculation Working Group ("Working Group") for continuing to seek input on key elements of the GCC. We support the development of supervisory tools, such as the GCC, that will enhance state regulators' ability to protect policyholders and insurance markets. Further, we believe the GCC framework – through its employment of an inventory approach to obtain insight into all entities within the group and the location and sources of capital – can achieve the NAIC's stated objective of providing state regulators a *"panoramic, transparent view of the interconnectedness, business activities, and underlying capital support for an insurance group."*

While the foundation of the GCC framework is strong, we believe appropriate outcomes for a number of key design elements is essential to ensure the final version provides state regulators appropriate insight into risks while minimizing the potential for unintended consequences. In the pages that follow, we identify the approaches that we believe would best position the GCC to accomplish these objectives.

We again thank the Working Group for seeking stakeholder input on key elements of the GCC and would welcome the opportunity to discuss the information included in this response should the Working Group or NAIC staff engaged in the GCC project wish to do so.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ann Kappler", with a long horizontal flourish extending to the right.

Ann Kappler
Senior Vice President, Deputy General Counsel and Head of External Affairs
Prudential Financial, Inc.

Overview

We strongly support the Working Group's decision to employ an aggregation based approach in order to *"build on existing legal entity capital requirements where they exist rather than developing replacement / additional standards."* As the Working Group has rightfully noted, such an approach strikes an ideal balance of *"satisfying regulatory needs while at the same time having the advantages of being less burdensome and costly to regulators and industry and respecting other jurisdictions' existing capital regimes."*

As the Working Group takes steps to finalize the GCC, we encourage it to pursue approaches that are aligned with the objective of providing regulators transparency into risks while avoiding the creation of additional standards that are unnecessary and may be burdensome and costly. Further, we also encourage the Working Group to consider the impact the various design choices may have on the ability of the GCC to provide appropriate insight into risks (e.g., avoid false positives and negatives) and how they could affect the ability of supervisors and / or insurers to navigate periods of stress.

Limitations on the Recognition of Senior and Hybrid Debt Should be Removed

We believe the proposed limitations on the recognition of senior and hybrid debt are inconsistent with the NAIC's stated intent for the GCC to serve as tool for obtaining insight into insurance groups rather than a binding constraint and further, could discourage the prudent use of debt instruments as an effective capital and liquidity management tool – particularly during times of stress. We therefore believe the Working Group should eliminate the proposed limits on the degree to which senior and hybrid debt qualify as available capital.

Insurers weigh a number of critical elements when establishing and managing their capital structures such as rating agency targets, cost, tax implications, etc. In practice, these considerations serve as effective guardrails against behavior that may be detrimental to the insurer or policyholders. Similar to the Working Group's decision to leverage the strength of existing solvency regimes rather than developing replacement / additional standards, we believe the GCC should leverage existing market forces that promote sound capital management practices across the sector. The May 19 NAIC Group Capital Calculation Post Field Testing Staff Input presentation highlighted that under the current GCC proposal, 25% of the volunteer companies from the 2019 field test that reported senior and / or hybrid debt would not receive full credit for the capital instruments they have issued. We believe this percent could increase significantly during economic downturns as an insurer's available capital declines and required capital increases, which would further limit the recognition of these resources and inappropriately discourage their use. Eliminating the proposed limits on the recognition of senior and hybrid debt would avoid the potential for the GCC to trigger such procyclicality.

Should the Working Group insist on maintaining limitations, we request the following changes to better acknowledge the presence of existing market guardrails and reduce the potential for the GCC to inhibit an insurer's ability to manage its capital structure in a manner it feels is most appropriate and have procyclical effects during economic downturns. Further, the purpose of any imposed limitations that are retained should be explained in light of the stated intent for the GCC to serve as tool to obtain insight into risks as opposed to a binding constraint.

- The cap of the allowance at 50% of total adjusted carrying value in Inventory B should be eliminated given that the underlying allowances, which are modeled largely after rating agency approaches, already have conservatism embedded in them.
 - Specifically, the 30% factor for senior debt and 15% for hybrid debt are being applied to a more conservative base than rating agencies use for establishing limits – i.e., the GCC intends to apply the factors to the sum of total adjusted carrying value + outstanding senior and hybrid debt while rating agencies typically base their assessment on the group’s total consolidated U.S. GAAP equity.
 - Adding a limit of 50% of total adjusted carrying value to the conservative 30% and 15% limits for senior and hybrid debt (relative to total adjusted carrying value + outstanding senior and hybrid debt) effectively lowers the 45% permitted (i.e., 30% + 15%) to approximately 33%.
- More broadly, the different objectives of the GCC versus rating agency frameworks must also be considered. For example, S&P’s capital model is calibrated to much higher confidence levels (e.g., 97.2% for “BBB”) and views 20% to 40% financial leverage, based on a group’s total consolidated U.S. GAAP equity, plus outstanding debt, as “neutral”.
- Requirements for tracking the down-streaming of debt issuance proceeds to regulated entities should be eliminated. Keeping funds at the holding company level is a prudent strategy that provides insurance groups flexibility to quickly and easily manage capital and liquidity needs across the group. We believe a tracking requirement could give rise to unintended consequences such as reducing the availability and fungibility of capital resources and forcing U.S. insurance groups to issue greater amounts of debt.

The Base GCC Should Use the Excess Capital Ratio Scalar Approach

Prudential disagrees with the suggested change to apply the Pure Relative Ratio option at 300% RBC Calibration in the Base GCC. We believe that a total balance sheet approach to scalars – as embodied in the Excess Capital Ratio Approach – is necessary to adequately account for key differences across insurance regimes, such as the level of conservatism embedded in reserves versus required capital, different valuation and asset admissibility standards, etc. and avoid distorting the measure of required, available, and excess capital. Further, we believe embedding a scalar methodology with shortcomings (i.e., the Pure Relative Ratio Approach) in the Base GCC could undermine the NAIC’s ongoing work at the global level to secure recognition of the Aggregation Method (“AM”). Therefore, while we believe the Excess Capital Ratio Approach is an appropriate method for including in the Base GCC we would also support using a scalar of 100% (i.e., not scaling foreign insurance regimes) until there is greater clarity on what scaling approach will ultimately be included in the AM.

Through its simplistic approach of only focusing on required capital, the Pure Relative Ratio Approach fails to adequately account for key differences in insurance regimes (e.g., level of conservatism embedded in reserves versus required capital, different valuation and asset admissibility standards, etc.). While the limited analysis to date may suggest the two approaches yield similar results, we believe they would diverge in cases where individual insurer or industry capitalization levels change and that the conceptual shortcomings of the Pure Relative Ratio Approach could result in false positives or negatives.

More broadly, we are concerned that adopting the Pure Relative Ratio Approach for purposes of the Base GCC would undermine the ongoing work at the NAIC's work at the global level to secure recognition of the AM as comparable to the reference method version of the Risk-based Global Insurance Capital Standard ("ICS"). Specifically, we believe that the decision would prejudice the Pure Relative Ratio Approach as the methodology that should be adopted for the AM. Further, we believe it will be essential for the comparability assessment work to take a holistic approach to accounting for the different tools and methods supervisors employ to ensure insurers hold adequate loss absorbing resources to protect policyholders; of the two approaches the Working Group has considered, the Excess Capital Ratio Approach – with its total balance sheet approach – is the only one of the two that would accomplish this.

In the May 19 NAIC Group Capital Calculation Post Field Testing Staff Input presentation, NAIC staff noted the need to continue to explore the topic of scaling in conjunction with similar work for ICS – AM. We support this recommendation and believe it highlights the importance of keeping the GCC and AM in step with each other and taking time to consider the appropriateness of the methodology relative to a suite of criteria, including the reasonableness of the assumptions, ease of implementation, and stability of the parameterization. That said, while we strongly believe the Excess Capital Ratio Approach should be used in the Base GCC (and the Base AM), an alternative path that should be considered is to use a scalar of 100% for the Base GCC until there is greater clarity on what scaling approach will ultimately be included in the AM. Such an approach would avoid prejudging that the AM should employ the Pure Relative Ratio Approach and avoid the potential need to modify the Base GCC in the future if a different scaling methodology is embraced for the AM.

The Calibration of the Base GCC and Scalars for Foreign Insurance Regimes Should be 200% ACL RBC

Prudential disagrees with the suggestion to calibrate the Base GCC ratio or scalars for foreign insurance regimes at 300% authorized control level ("ACL") RBC – i.e., the Trend Test level. Instead, we believe they should be calibrated to 200% ACL RBC – i.e., Company Action Level ("CAL") as it has long been common practice for insurers to communicate and stakeholder to assess financial strength on this basis. We believe using 300% as the calibration would unnecessarily interrupt well-established market norms and introduce unwarranted confusion for insurers and stakeholders without any discernable benefit. Further, we believe calibrating to a 300% ACL RBC level could create confusion over, or trigger an unwarranted reset of, how the NAIC's time tested ladders of intervention approach to the supervision of capital adequacy works in practice.

We recognize a relationship has been established between the 300% ACL RBC level and 100% Solvency Capital Requirement ("SCR") for Solvency II in the U.S.-EU and U.S.-UK Covered Agreements and further, that the NAIC's Evaluations of Reciprocal Jurisdictions have similarly established relationships between the 300% ACL RBC level and intervention points under the solvency regimes of Bermuda, Japan, and Switzerland. However, we do not believe these developments justify upending years of industry norms, and the likely confusion that would result from calibrating the Base GCC or scalars of foreign insurance regimes at a 300% ACL RBC level. While we speculate that international considerations may be contributing to the interest in using the 300% ACL RBC level for calibration purposes, we believe it is incumbent on the Working Group to confirm its rationale so a more informed debate could be held with interested parties before a final decision is made.

The Sensitivity Analysis Tab Should Be Removed from the GCC Template

Prudential believes the GCC template should be limited to reporting of the Base GCC (and the required inputs thereto) and that the Sensitivity Analysis tab should be deleted. Narrowing the design of the GCC will ensure insurers, supervisors (domestic and foreign) and other stakeholders have a clear vision and understanding of what the GCC is (e.g., it would eliminate the need to distinguish between a “Base” view and alternative measures). Notwithstanding the comments above regarding scalar methodology, we believe clarity in the design of the GCC is critical as insurers and supervisors move to introduce the GCC as an additional metric to monitor and manage and would provide a stronger foundation for the NAIC’s ongoing efforts to advance the AM at the global level.

To the extent broader information on the insurance group is of interest to a state regulator, we believe it should be obtained through discretionary powers as opposed to embedding it in the GCC template. We believe “Input 6 – Questions” should be transitioned to a Microsoft Word document as it is more user friendly format (note that the NAIC employs such an approach for its work on the AM at the global level). A word based file could serve as a more flexible vehicle for insurers and state regulators, including potential instances where the regulator wishes to receive information beyond that which is included in the GCC template (note a fillable PDF could also be used).

Grouping of Similar Non-insurance Entities and / or Relaxing De-stacking Requirements for Non-Insurance Entities Should Be Permitted

Prudential appreciates the Working Group’s consideration of permitting grouping of similar non-insurance entities and / or relaxing the requirement for de-stacking as we believe such flexibility would reduce the burden of completing the GCC template. While we support such flexibility, we believe state regulators should retain the option of requesting more granular information should they feel it is needed to obtain a sufficient view of risks within the group.

Simple Approaches Should be Adopted for Financial Entities and Non-financial Entities Without Regulatory Capital Requirements

For simplicity, Prudential supports adopting a single approach for establishing a proxy capital measure for all financial entities that are not subject to a regulatory capital requirement. Further, we believe it would be beneficial for the Working Group to select the method it believes most aligns with how the AM will ultimately treat this item. Per our comments above, we support grouping of similar entities and thus support the netting of non-operating holding companies. We similarly support adopting a single approach for establishing a proxy capital measure for all non-financial entities that are not subject to a regulatory capital requirement.

We believe ensuring state regulators obtain adequate insight into the entities within the insurance group and risks associated with them is the key point of consideration for these entities and this is best accomplished through the inventory element of the GCC as opposed to an arbitrary proxy capital calculation. To the extent a state regulator believes a non-regulated entity poses material risk to the group, they have discretion to request additional information to understand the risks. Further, such situations would be better addressed through in-depth analysis on a case-by-case basis as a formula driven proxy capital calculation would likely fail to reflect the underlying risk exposures. That said, we believe further consideration of approaches is unwarranted and the Working Group should narrow the

GCC template to single approach for each respective category of entities rather than continuing to test multiple approaches.

The Draft Financial Analysis Handbook Guidance Should Be Exposed for Comment

Materials for the May 19 public meeting of the Working Group included an Attachment C – “Draft Regulatory Guidance on GCC”, which was not part of the materials recently exposed for comment. We request that the Working Group provide interested parties an opportunity to provide input on this material before it is finalized.

Below are some initial thoughts on the draft version that was included in the May 19 meeting materials.

- Establishing a minimum threshold that must be maintained to avoid triggering a more in depth supervisor review and/or the need to develop a plan to reduce risks would be inconsistent with the NAIC’s stated intent for the GCC to serve as a tool rather than a binding standard.
- The detailed nature of the guidance seems premature given the range of design elements that have yet to be finalized, which could have a material impact on GCC ratios, and ongoing consideration of which insurers will be exempt from having to file the GCC.



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Via Electronic Delivery

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

RE: Draft Instructions from the Chair of the Group Capital Calculation (E) Working Group
to the Chair of the Group Solvency Issues (E) Working Group

Commissioner Altmaier:

State Farm Mutual® Automobile Insurance Company and its affiliates ("State Farm"), appreciate the opportunity to submit these comments concerning the Draft Instructions from the Group Capital Calculation (E) Working Group (the "Working Group"). As you know State Farm participated as a volunteer group and provided feedback as to the Group Capital Calculation ("GCC") and its supporting informational elements during its development. State Farm understands that the GCC provides an evaluation tool for domestic regulators to consider along with various other risk information already being provided by groups, such as the Own Risk Solvency Assessment ("ORSA") Report filing.

State Farm urges the Working Group to consider the entirety of the regulatory structure when evaluating whether to include additional measures through the Draft Instructions on insurers or the holding company of those insurers that are not entirely exempted, especially when the group structure is simplistic, focused on insurance operations and when such parent of the holding company is a regulated insurer.

As a volunteer participant State Farm benefitted from the effort and transparency the Working Group has utilized all along in developing the GCC and appreciates that the Draft Instructions incorporates many of the industry's clarifications and suggested additions. However, State Farm suggests a few more amendments to the Draft Instructions to recognize today's overall financial regulatory scheme and limit duplication as much as possible for regulators and those being regulated when such groups are not exempted from GCC and are substantially an insurance group.



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Scope

State Farm requests that the same isolation method of excluding non-financial entities be available for other entities in a group.

State Farm supports the Draft Instructions statement in paragraph 12 that recognizes there are groups that have material diverse non-financial activities that are isolated from the financial/insurance group and that could lead to a narrowing of the scope of the GCC in agreement with the Lead State Regulator. However, State Farm questions why the Draft Instructions do not similarly recognize financial or insurance entities that are also similarly isolated from the group. The purpose of the GCC is to evaluate a group's solvency soundness through a numerical calculation to ensure the primary regulated insurance entities within the group remain sound. Acknowledging the isolation of financial and insurance entities fits within already existing regulatory arrangements as well as the GCC, and acknowledges that capital is not freely fungible for use by the group or entities within the group. Since the same mechanisms recognized by the Draft Instructions to isolate the non-financial entities can be and are being used to isolate financial or insurance entities, the Draft Instructions should recognize the isolation no matter the entity type.

The GCC should not ignore the other existing provisions of the Holding Company Act or solvency provisions applicable to the individual insurance member of the group, such as the Risk Based Capital (RBC) calculation that provides a similar numerical calculation of soundness, financial statements and other applicable regulatory requirements. These provisions, commonly referred to as the windows and walls regulatory scheme, protect the capital of that insurance entity such that capital is not freely available for the use by the group or any other entity within the group. Similar to the recognized ability of non-financial entities to be isolated from the rest of the group, the windows and walls approach isolates the insurance entities from material transaction with affiliates and in a sense isolates the entities. Expanding the acknowledgement of the ability to isolate financial and insurance entities is not radical and fits within the overall goal of the current windows and walls regulatory approach as well as the GCC, to protect the solvency of the insurance members of a group. Just as a non-financial entity may be isolated and pose no risk to an insurance entity in the group, if a financial entity is isolated from the group, it does not pose a solvency risk to the insurance entity. Finally, an argument could also be made that if the insurance entity is isolated from the group in a similar fashion, the group does not pose a risk to the isolated insurance entity. For these reasons, State Farm requests that groups be allowed to present a narrower scope for entities that are otherwise isolated to the Lead State Regulator who would have discretion to accept such narrowing of the scope for that group's GCC.

State Farm requests that excluded entities not be required to be included on the Inventory Tab or discretion be provided to the Lead State Regulator to exclude, especially when the information is otherwise provided.



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In paragraph 14, the third bullet provides that “All entities, whether to be included in or excluded from the Scope of Application are to be reported in the Inventory Tab of the template.” Presumably, this includes the non-financial entities that are isolated and excluded under paragraph 12 or paragraph 30 and financial/insurance entities that are excluded under paragraph 10 and 18. If this is accurate, preparers will be required to provide the required information on entities that are excluded from the scope of the GCC. While there may be certain situations when such information would not otherwise be provided to the Lead State Regulator, in an insurer parent lead group this information is already provided through other required regulatory submissions including but not limited to, financial statements and RBC calculations of the parent insurer or the insurance entities. Gathering information under the GCC from entities that are excluded from the GCC seems counterintuitive and duplicative in certain situations. State Farm requests that excluded entities not be required to be on the Inventory Tab or, at least, the Lead State Regulator have the discretion to not require excluded entities on the Inventory Tab if requested by the preparer.

State Farm requests a baseline materiality definition be provided while maintaining Lead State Regulator discretion to determine if a higher or lower material threshold is appropriate.

The Draft Instructions use the term “material” in discussion whether an entity can be excluded or is to be included in the GCC. State Farm believes discretion should remain with the Lead State Regulator, however, it is important to have a clear understanding of what is meant by “material” and to create some consistency in application. For paragraphs 10 and 18 there is no guidance, but for paragraph 30, which addresses determining what is an “affiliate” to be included in the GCC, it states in part:

For purposes of the GCC, affiliates will NOT include those affiliates reported on Schedule A or Schedule BA, EXCEPT in cases where there are financial entities reported as or owned indirectly through Schedule A or Schedule BA affiliates or where a non-financial, non-insurance Schedule A or Schedule BA affiliate represents greater than X percent of an insurance entity’s adjusted available capital.

The paragraph provides a Drafting Note providing guidance to regulators:

DRAFTING NOTE: Initial suggestion is to set “X” threshold for material non-financial entities no higher than 5%.

State Farm suggests adding to the Draft Instructions, additional Drafting Notes in the paragraphs using the term “material”, a baseline for materiality of 5% of the group’s net worth while still allowing the Lead State Regulator and the preparer to use a higher or lower threshold given the particular circumstances presented by the preparer.

State Farm believes that there should be some consistency in application under these provisions and that materiality should be based on the group’s net worth given the GCC is measuring risk of the group and not a particular entity in the group. RBC calculation along with other regulatory

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requirements provides the Lead State Regulator the information necessary to evaluate the solvency risk of an individual insurance entity and the GCC should be focused on information that a Lead State Regulator doesn't already receive and be focused on the impacts to the group. Including a Drafting Note provides guidance, allows the Lead State Regulator and the preparer to utilize a different value for unique situations, and allows the focus of the GCC on those matters that truly impact a particular group.

State Farm offers these comments on the Draft Instructions to help streamline the process for those groups required to conduct the GCC. The intent of the comments is to help the focus of the preparer and Lead State Regulator to be on the insurers of that group and the material impacts of other members of the group that may have on the solvency of the insurance members.

Thank you for your time and consideration in this project and to our comments. If there are any questions concerning the comments, please contact me.

Sincerely,

A handwritten signature in blue ink that reads "Charles M. Fein".

Chuck Feinen
State Farm Mutual Automobile Insurance Company

UNITEDHEALTH GROUP

Corporate Finance – Actuarial Services Division
185 Asylum Street, CityPlace I • Hartford, CT 06103

July 20, 2020

Hon. David Altmaier
Commissioner
Florida Office of Insurance Regulation
Chair, Group Capital Calculation Working Group
The Larson Building
200 East Gaines Street
Tallahassee, FL 32399-0305

Via electronic mail to Lou Felice

Re: Comments on GCC Instructions and Template

Dear Commissioner Altmaier:

We write today on behalf of UnitedHealth Group, one of the nation's largest managed care and healthcare services companies, which, through its UnitedHealthcare business platform, administers and provides healthcare benefits to more than 45 million individuals in all fifty states and the District of Columbia. UnitedHealth Group's Optum business segments provide health services, including pharmacy services, health care delivery, population health management, collaborative care delivery, information technology, and health care financial services to 115 million individuals and more than 100,000 physicians, practices, and other health care facilities nationwide. We thank you for the opportunity to provide comments on the recently released draft Group Capital Calculation ("GCC") template and instructions.

We appreciate the simultaneous disclosure of the template, instructions, confidentiality provisions and the handbook draft. This is helpful context for understanding the working group's intent for this initiative.

Comments on the Instructions

The GCC Instructions address not only the mechanics of filling in the template, but also many considerations that regulators are supposed to apply when using the template. We have comments about both aspects of the Instructions. We have divided our comments on the instructions into two sections – our key concerns, and additional concerns that do not rise to the level of a key concern but nevertheless are important to consider as these instructions are finalized.

Our comments in both sections are labeled according to the paragraph labels in the GCC Instructions.

Instructions Comments – Key Concerns

Key Concern #1: Calibration Level

V.A.40: As we have explained previously, with supporting numerical examples, the method being used to produce the “scalars” [sic] for alien insurers is incorrect, as it takes into account only differences in the average capital being held, and not the relative conservatism of reserves. While there are other conceptual problems with the concept of scalars as being employed here, this particular error should be corrected; we had previously offered a suggestion as to how to make the correction.

VI.57 and VI.58: For entities that file an RBC report, the requirement is to report “entity required capital” at 150% of Company Action Level (CAL). There is no justification for this. Reference is made to the trend test in the RBC formula, which may result in an action level event for entities with Total Adjusted Capital below 150% of CAL; however, that can only occur if certain other, relatively unusual conditions exist, and those other conditions are not tested for in the GCC. Consider the illogical result this would produce for a group where the ultimate controlling person was an RBC filer with Total Adjusted Capital equal to 130% of CAL: the entity would be considered well capitalized from an RBC standpoint, and yet would fall below the 100% level in the GCC. This seems especially misguided given that early drafts of the Financial Analysis Handbook procedures suggest further scrutiny of a group when the GCC ratio is below 175%—i.e., is below 262.5% of CAL.

Furthermore, 100% of CAL may itself be excessive. Early in the development of the GCC, the question was raised as to how the diversification benefit of large, heterogeneous groups would be reflected. Clearly, such a group is less risky than its individual components standing alone would be. The NAIC’s decision at that time was not to have an explicit diversification adjustment (like the covariance adjustment in RBC) built into the GCC, but instead to take diversification into account when interpreting the results. Accordingly, a diversified group should have a capital benchmark that is less than the corresponding benchmark for an individual entity—which in the case of an RBC filer would be CAL. From that standpoint, calibrating the GCC even to 100% of CAL would be conservative; using 150% of CAL is unjustifiably conservative. The mere addition of legal entity capital and capital requirement, without any provision for diversification should is not be interpreted as group risk-based capital regulation.

These concerns about calibration are heightened by the language in paragraph I.A.2 (discussed above) indicating that the GCC will be a basis for regulators to take actions with respect to a group. Even if the GCC will be used solely as an analytical tool, the analysis should be based on an appropriate calibration, to avoid unnecessary follow-up questions and prolonged discussions. However, if the GCC will, in and of itself, be grounds for regulatory action (as suggested by some of the language in the instructions), it is absolutely critical that the calibration not misstate the riskiness of the group.

Key Concern #2: Definition of “Financial Entity”

IV.22: We believe that the definition of “Financial Entity” is far too broad, in that it sweeps in “Affiliates that are integral to the performance of the insurance contract or the provision of insurance or financial products or services to policyholders, members or depositors,” such as “claims adjusters or processors, third party administrators, pharmacy, medical provider groups, and other benefit managers,” etc., even when those entities are not material to the group or calculation as a whole. Affiliates that merely provide contracted services to a carrier should not be defined as “financial”: they do not create any more financial

risk to their affiliated insurers than do non-affiliates that provide the same services to other insurers. In fact, given that regulators have oversight over inter-affiliate service agreements, we suggest that affiliated service providers present less risk than do non-affiliates. In the case of health groups, some of the examples given actually diversify risk for the insurance entity in the group, facilitating more access to capital by the insurance entity. The aim of the working group should not be to promote smaller, less integrated or diversified groups.

VI.61: We again object to the notion that “entities that derive a majority of their gross revenue from services that are integral to the performance of the insurance contracts within the group or from the provision of other financial services to policyholders within the group will be considered a Financial Entity without a regulatory capital requirement” [emphasis added]. As noted in our comments on paragraph IV.22, the fact that those services are being performed by an affiliate does not add risk to the group, but in fact because of greater regulatory oversight should be considered to reduce the group’s risk. We also point out that the “Financial Entity” designation is being applied only to such entities that provide services primarily to affiliates; clearly, therefore, it is not the activities of those service entities that are considered risky, since if they provide those services primarily to non-affiliates they are not considered “Financial Entities.” Again, the working group should not want the GCC to limit the scale, diversification, integration or efficiency of groups, given historical evidence of the benefit of size, diversification, and efficiency to group credit standing, as evidenced in public credit ratings.

Key Concern #3: Intangible Assets

VI.83: We question the rationale for collecting information on intangible assets (such as deferred acquisition costs, provider contracts, customer lists, and goodwill). The focus on intangible assets, to the exclusion of other types of assets, seems unwarranted. While it may not always be possible to sell intangibles quickly for cash equal to their reported value, that is true of a wide variety of tangible assets (such as real estate, plant and equipment, and airplanes) that are not being singled out. Furthermore, regardless of their availability for sale, intangible assets do produce a stream of income to the group; otherwise, GAAP accounting would require that they be written down in value or written off entirely. As businesses rely more and more on digital assets and intellectual property as the basis for their operations, and less and less on fixed assets, there is more scrutiny of the value of those assets, and there should be less concern about whether the stated values are appropriate. We believe that any focus on intangible assets—which has not previously been discussed by the working group—is unwarranted, and there is no valid reason to collect information in the GCC or otherwise differentiate this specific category of assets.

We note that securities in a “tangible” investment portfolio are valued on the net present value of expected cash flows to the investor in the private and public markets—despite the tangible nature of the issuers’ assets or capital producing these cash flows. Just over one-third of the S&P 500, which is well represented in corporate debt and equity investment asset classes, have negative tangible net worth. The differential treatment of “tangible” financial investments and physical assets versus income-producing intangible assets is inconsistent.

We note also that the increasingly digital economy is based on software and information assets. Under GAAP, the capitalization of software assets is narrow, and amortization relatively short, compared to traditional fixed assets. Furthermore, changes made to GAAP in 2001 eliminated both the “pooling of interests” accounting in acquisitions and the amortization of goodwill. Accordingly, both business trends and accounting changes have made the differentiation of “intangible” assets increasingly less relevant.

Key concern #4: Use of the GCC

I.A.2.: We suggest several revisions to this paragraph.

One key area of concern is the statement that “insurance companies may be subsidizing the operations of non-insurance entities, potentially undermining the insurance company’s financial condition.” Whether or not all or any of the insurance companies in a group are “subsidizing” other operations within the group is not relevant to the insurance company’s financial condition. Insurance regulators are already empowered to monitor and restrict the flow of capital out of the insurance entities, by means of restrictions on dividends, oversight of transactions with affiliates, and application of the statutory provisions regarding hazardous financial condition, among other methods. If the outflows from insurers to other members of the group are endangering the solvency of the insurers, that points to a regulatory failure that cannot be solved by the GCC. The GCC was never, in our understanding, intended to be a tool for each legal entity regulator to use for legal entity solvency monitoring. That is a function of U.S. risk-based capital (RBC) and state-based insurance regulation, not group-level supervision.

That same sentence in paragraph I.A.2 suggests that another consequence of “subsidization” may be “upward pressure on premiums to the detriment of insurance policyholders.” The GCC was never intended to be a tool for the regulation of insurance premium rates, and we find it highly concerning that this consideration is being introduced in this fashion.

The idea that non-insurance operations within the group pose a proximate risk to the solvency of the group’s insurers has little historical evidence to support it. The real lessons of the financial crisis of 2008 proved that even when an insurer belonged to a group with significant financial risk in other areas of operations, its policyholders were not subjected to significant risk, because the legal entity structure in the United States effectively protected them, especially relative to other group-oriented insurance regulatory regimes. It is clearly not the case that risk within a complex, diversified holding company system necessarily translates to risk to the individually regulated insurance entities or to their policyholders. Each state is responsible for reviewing the financial condition of the legal entities within its jurisdiction, and for decades, including the financial crisis of 2008, that first line of review has proved to be the most effective system worldwide. The GCC may identify “risk” in the larger holding company system, but that will not necessarily translate to better identification of risks to any insurer within that system. We suggest that the Financial Analysis Handbook is the more appropriate location for commentary about how to interpret the risks identified by the GCC.

Another concern arises from the statements in paragraph I.A.2 that the GCC “provides 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” and will “allow them to make informed decisions on both the need for action, and the type of action to take.” It seems inappropriate to suggest that the GCC, in and of itself, would be grounds for regulatory action to protect policyholders; that is the function of a regulatory standard, not an analytical tool. The ratio produced by the GCC as well as the additional information provided in the GCC template may provide grounds for a regulator to have discussions with a group about its risks, but they would not be grounds for inferring that policyholders must be “protected” so that the regulator must “take action” by requiring the group to “resolve concerns.”

We also have a concern that the instructions as written may not make clear that the GCC is intended to be used solely by the lead state regulator. In the statement that the GCC “provides an additional early warning signal to regulators so they can begin working with a company to resolve any concerns,” the use

of the word “company,” rather than “group,” could be taken to suggest that the GCC is intended to be a tool for any regulator responsible for any legal entity within a group. Likewise, the statement, “State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to ... allow them to make informed decisions on both the need for action, and the type of action to take,” suggests that the GCC will be used by the domiciliary regulator of each insurer. We do not believe that is intended to be the function of the GCC.

In accordance with the foregoing comments, we propose revising paragraph I.A.2 as follows.

2. More specifically, the GCC and related reporting provides more transparency to insurance regulators regarding the insurance group and make risks more identifiable and more easily quantified. In this regard, the tool assists 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. This calculation provides 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.~~ The GCC is an additional reporting requirement but with important confidentiality protections built into the legal authority. State insurance regulators already have broad authority to take action when an insurer is financially distressed, ~~and~~ ~~the~~ GCC is designed to provide lead state regulators with further insights into the risks of the group as a whole, to allow them to reach ~~make~~ informed conclusions ~~decisions~~ about ~~on~~ the financial condition of the group ~~both the need for action, and the type of action to take.~~

I.A.3. This paragraph contains a statement indicating that the GCC could be used “in conjunction with group-specific risks and stresses identified in the Own Risk and Solvency Assessment (ORSA) Summary Report as well as risks identified in Form F filings that may not be captured in legal entity RBC filings.”

While the GCC, the ORSA, and Form F are all intended to evaluate the risks of the group, we think it likely will be misleading to financial analysts to suggest that the GCC can be used together with the other two. They lack comparability to each other, for several reasons.

- The ORSA report and Form F reflect a company’s own internal risk analysis, whereas the GCC depends largely on rules prescribed by the regulators.
- The ORSA is forward-looking, and typically considers multiple future years. The GCC relies on historical data, mostly from the single most recent year.
- The “capital” that is considered for purposes of ORSA may be defined differently than the “capital” identified by the GCC.

The last sentence of the paragraph states, “Finally, it’s important to understand that regulators believed that a group capital calculation would be another valuable tool to complement the states’ legal entity focused solvency assessments.” Again, we are concerned that this statement could be construed to encourage use of the GCC by individual state regulators other than the lead state. The stated purpose of the GCC has always been to provide a tool to allow *the lead state* to better understand the risks to the group as a whole.

In light of those two concerns, we recommend that the paragraph be revised as follows.

3. 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, they do not have the benefit of a consolidated statutory accounting system

and financial statements to assist them in these efforts. It was noted prior to development that a consistent method of calculating group capital for typical group risks would provide a very useful tool for state financial regulators to utilize in their group assessment work. It was also noted that a group capital calculation could serve as a baseline quantitative measure to be used by regulators, ~~to supplement in conjunction with the view of group-specific risks and stresses provided by identified in the Own Risk and Solvency Assessment (ORSA) Summary Report filings and as well as risks identified in Form F filings that may not be captured in legal entity RBC filings. Finally, it's important to understand that regulators believed that a group capital calculation would be another valuable tool to complement the states' legal entity focused solvency assessments.~~

II.E.20.: We are concerned about the potential for an annual redetermination of scope. If the scope of application were revised frequently, then year-over-year trends in the GCC would not be meaningful. There should be a materiality standard developed to determine when and if a group's scope is reconsidered; e.g., something based on the cumulative increase in the amount of the group's capital that is out-of-scope. To reduce burden on the group, such redetermination should be based upon material changes in the group, not changes in the reviewer.

V.A.33: This paragraph refers to "the lead state regulator and template reviewer." We question whether this is intended to suggest that the template reviewer can be someone other than the lead state regulator. If not, we suggest removing the phrase "and template reviewer" as it appears to be redundant and confusing. If there are intended to be multiple reviewers, we renew our concerns about the use of this tool by any party other than the lead state regulator.

V.A.37: Given that the GCC analytical procedures in the Financial Analysis Handbook are still undergoing development, it is not possible to speak in any but the broadest way about analytics. Probably, the description should be limited to the statement, "This tab includes or draws from entity-category-level inputs reported in the Tab or elsewhere in the GCC template to be used in GCC analytics."

Instructions Comments – Additional Concerns

We provide the following as some additional considerations for revisions to the instructions.

I.A.7. In the third sentence of this paragraph, the phrase "similar such as" appears to be an editing error. We suggest revising the sentence as follows.

The GCC instructions and template are intended to be modified, improved and maintained by the NAIC in the future, ~~similar such as~~ are existing tools such as the *Accounting Practices and Procedures Manual*, the *Annual Statement Instructions* and *Risk-Based Capital formula and Instructions*.

Also, we suggest deleting the final sentence of the paragraph. While "additional items, such as stress testing" may still be considered open, they are not relevant to the instructions for the current version of the GCC.

II.C.12: It is not clear exactly what is meant to be included in "cross support mechanisms." We would ask the work group to consider the following when working to define "cross support mechanisms":

- Is this limited to formal, legally enforceable financial guarantees among members of the group?
- Does it matter whether such guarantees can only result in payment to insurers, not from insurers?

- Can the definition of “cross support mechanisms” ever result in the ultimate controlling person being out of scope?
- If the ultimate controlling person is always in scope, would all of its subsidiaries of material size automatically be in scope, since they could have a material impact on the ultimate controlling person?

II.C. 13.: The last sentence of this paragraph says, “Consistent with sound regulation, the benefits of the quantitative analysis facilitated by the GCC should exceed the cost of implementation.” We question why this is referenced as part of the instructions. We do not believe there has been an attempt to quantify the benefit of the GCC; and, in fact, the procedures for how the GCC will be used in practice are only now being developed. Until we know how the GCC will be employed, it seems to be premature to include an assertion about its benefits here. We also suggest that any attempt at determining the “cost of implementation” needs to take into consideration other tools regulators are mandating that carriers complete, such as the ORSA and Form F, and the legal entity grid, all of which were similarly described as tools to assist in group supervision.

II.E.17.: Early in the development of the GCC, the NAIC stated that one of the fundamental principles underlying the calculation was that it would ignore group structure; an entity would be treated essentially the same, regardless of where it was positioned in the group. That principle was relaxed somewhat for subsidiaries of insurers, to try to maintain consistency with RBC as much as possible. Now it seems to have been abandoned altogether, since a non-financial entity that is not part of the “Insurance Group” may be excluded from the scope of the GCC, whereas an otherwise identical entity that is part of the “Insurance Group” must be included. In the current draft, it appears that even the ultimate controlling entity may be excluded from group scope, despite clear influence in the group on corporate governance and capital allocation. Given the definition of “Insurance Group” (paragraph IV.23), this could lead to the inclusion of a non-financial subsidiary that has no connection to the insurance operations other than being owned by the same holding company as the insurers in the group. The rationale for this disparate treatment is not at all clear. Overall, the working group should not create a GCC that leads to preferential group organizational structure.

II.E.18.: This paragraph introduces the concept of exclusion being justified by the determination that the entities excluded “do not pose material risk to its [i.e., the group’s] insurance operations.” This seems eminently reasonable. It is not clear why that same concept should not be adopted to resolve the problem noted in the comment above on paragraph II.E.17.

Section III: There is no Section III. We assume this is merely a tabulation error and not an entire section that has been omitted.

IV.23: With regard to the definition of “Insurance Group,” please see our comment above on paragraph II.E.17. As currently defined, the “Insurance Group” is not limited to the insurers within a group and their own subsidiaries. Merely being owned by the same intermediate holding company that happens to own the insurers in the group is enough to make a non-financial entity part of the insurance group. This does not seem reasonable. The “Insurance Group” should be defined to exclude any non-financial entities that are not actually owned by the insurers.

IV.28: The “Ultimate Controlling Person” is defined to be, “As used in the NAIC’s Insurance Holding Company System Regulatory Act (Model #440).” Model #440 does indeed use the term, but while it defines “control” and “person,” “ultimate controlling person” itself is never defined—that is, there is no

explanation of what “ultimate” means. This seems an important concept that should be defined more precisely, especially since the “head of the Insurance Group” may be distinct from the “Ultimate Controlling Person.”

IV.30: The definition of “Affiliate” applies an inappropriate threshold for materiality to Schedule A and Schedule BA assets, based on the capital of the insurance entity that owns the asset. The GCC is intended to be a measure of the group’s capital, and any materiality threshold should be set relative to the entire group (insofar as it is in scope), and not relative to any individual entity within the group. Note, in fact, that paragraph VI.51 states a materiality criterion for Schedule A and Schedule BA assets based on the capital of the group, not the entity that owns them.

VI.54: The instructions call for the reporting of all dividends paid within the group. This is significant—and, in the context of a balance-sheet-oriented calculation, unnecessary—additional burden. We note that in many cases, a dividend may pass through one or more holding companies before it reaches its final destination (e.g., from insurer to intermediate holding company to ultimate controlling person). Seeing the same dividend being recorded multiple times is very likely to create confusion. We suggest it would be more useful to show, for each entity, only the net of dividends paid and dividends received. In that case, the columns for Dividends Paid and Dividends Received could be collapsed into a single column. Also, it is not clear that the Yes/No response in the Dividends Received and Not Retained column is useful, as it relies on what is “expected” rather than what is certain; a better approach might be to include dividends declared but unpaid in the column for dividends.

Also with regard to paragraph VI.54, we question how meaningful it is to designate some capital contributions as being funded from debt proceeds. There may be a lag between when debt proceeds are received by the debt issuer and when capital is contributed to a downstream entity; how long may the lag be before the capital contribution is no longer considered to be “from debt proceeds”? Also, if a parent makes a capital contribution when needed, and then subsequently replenishes its own capital through debt issuance, shouldn’t that be deemed to be essentially the same as receiving the debt proceeds and then infusing them into the subsidiary? Furthermore, debt-funded capital injections may well survive the maturity of the debt. Because cash is fungible, it does not seem to be a worthwhile effort to try to determine the particular source from which a capital contribution was funded. We recommend that if holding company debt is to be included in capital, then the limitation should be the insurance entities’ total paid-in capital.

VI.56: We point out that intra-group guarantees, solvency reinsurance, and capital maintenance agreements typically do not have notional values. Moreover, triggering of these arrangements has historically been very unlikely. In an earlier communication from the NAIC on this subject, the estimated notional value was weighted by expected utilization. This weighted approach should be used here.

Comments on the Template

Although we understand the need to have a tool that quantitatively calculates group results, we suggest it is inappropriate to use the tool as a way to simply gather information about unregulated entities that do not impact the results of the GCC calculation itself, especially as most of this information is available to regulators from other filings. The following are examples of the information being collected that does not impact the results of the calculation:

- a significant amount of information related to trend analytics, which - on the legal entity basis- are not meaningful to the calculation;
- Reinsurance Assumed from Affiliates and Reinsurance Ceded to Affiliates. We question the relevance of the information to the calculation and note that this information is readily available in the annual statements;
- the notional values of both Intercompany Guarantees and Capital Maintenance Agreements, because 1) most, like insolvency reinsurance, have no stated value or have values that are based upon a calculation and not a fixed amount; and 2) in practice, these have extremely low probability of triggering guarantor action (earlier versions of this analysis weighted any notional amount by currently expected use);
- the value of intangible assets;
- descriptions related to intragroup assets; the values of some intragroup assets are also asked for on the Questions tab;
- descriptions related to reported adjustments;
- dividends paid and received;
- how downstream debt proceeds are tracked; and
- a listing of Schedule A and BA assets, which can easily be found in the NAIC financial statements.

Thank you for the opportunity to provide our input. We believe that addressing the issues we raise above will lead to the GCC being a more useful tool for regulators.

Sincerely,



James R. Braue
Director, Actuarial Services
UnitedHealth Group

cc: Kathryn Belfi, Vice-Chair, Group Capital Calculation Working Group
Dan Daveline, NAIC
Randi Reichel, UnitedHealth Group

**Comment Summary - GCC Template and Instructions
 July 29, 2020 (Revised August 27)**

Issue 1	Commenter	Essence of Comment	Primary Rationale
<p>Use of the GCC</p>	<p>ACLI</p>	<p>Concerned that some aspects of the instructions and preliminary Draft Analysis Handbook infer a GCC that goes beyond its objective and would turn the GCC into a binding standard or constraint.</p>	<p>General comment but likely consistent with United HealthCare rationale</p>
	<p>United HealthCare</p>	<p>key area of concern is the statement that “insurance companies may be subsidizing the operations of non-insurance entities, potentially undermining the insurance company’s financial condition.”</p> <p>Another concern arises from the statements in that the GCC “provides an additional early warning signal so regulators can begin working with a company to resolve any concerns” and will “allow them to make informed decisions on both the need for action.”</p> <p>Concern that the instructions as written may not make clear that the GCC is intended to be used solely by the lead state regulator.</p>	<p>The idea that non-insurance operations within the group pose a proximate risk to the solvency of the group’s insurers has little historical evidence to support it.</p> <p>It seems inappropriate to suggest that the GCC, in and of itself, would be grounds for regulatory action to protect policyholders; that is the function of a regulatory standard, not an analytical tool.</p> <p>The statement, “State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to “allow them to make informed decisions on both the need for action, and the type of action to take,” suggests that the GCC will be used by the domiciliary regulator of each insurer.</p>

<p>Initial NAIC Staff Comments: Some of the Introductory wording could be revised and / or moved to the Analysis Guidance being drafted & reviewed by the drafting subgroup, particularly with reference to cross subsidization. Comments on other thresholds applied in the analysis guidance can be addressed there. Staff notes that industry representatives are assisting in revising and reviewing the analysis guidance. Although the GCC in totality can be viewed as an early warning vehicle, the GCC ratio itself is just one piece. This is similar to other analytical tools. Early warning is distinct from capital standard driving statutorily authorized regulator action. Although made clear throughout the GCC process that it will not be a capital standard, clarification of language to avoid any such inference will be considered. As a group rather than entity-based tool, the submission itself is limited to the lead-State regulator (s/b addressed in Model Holding Company Act), it seems logical that post review regulatory concerns may be shared with other involved regulators in collaborative forums. Staff will look at the suggested language.</p>			
<p>Issue 2</p>			
<p>Calibration Level</p>	<p>ACLI Global Atlantic Prudential</p>	<p>Adopt a 200% ACL calibration level for the GCC. In addition, calibrations of other factors and regimes should be based on 200% ACL level RBC as well.</p>	<p>Inconsistent with RBC reporting and industry's current reporting of two capital calibration levels, (100% ACL and 200% ACL) results in confusion and frequent misinterpretation of reported ratios; adding a third calibration level for the GCC of 300% ACL will compound the problem. This will lead to additional confusion and misunderstanding by users of financial information, including the regulatory, rating agency, and banking communities. The calibration does not adequately consider the capital mitigation in diversified integrated holding company systems.</p>
<p>United HealthCare</p>	<p>Lower 300% Calibration (consider lower than 200%) and / or add a diversification component</p>	<p>Initial NAIC Staff Comments: Staff recommends that a 300% calibration be retained for a group-wide analytical tool that compliments entity-based RBC. The working group should consider whether using CAL or lower could imply that some specified regulatory action is imminent, especially within the context recommended by some commenters that risk charges mirror entity RBC. Staff believes that would add confusion between RBC as a standard and GCC as an analytical tool. Using a level above CAL RBC is consistent with a regulator analytical tool and consistent with an RBC reference point (Trend Test). Further it applies a reference point that is agnostic to the structure of the group. A secondary issue is ability to be somewhat consistent with the AM – ICS being proposed by the NAIC in cooperation with other U.S. regulatory partners. Staff believes that issues related to calibration are better addressed via the working group decisions on the definition of a financial entities, level of post covariance charges to be applied to non-financial entities, and definition of material risk for purposes of potential exclusion of entities from the calculation. Staff agrees that there should be careful coordination between the GCC Template, and the analysis guidance as regards the level of the GCC ratio. Staff notes that industry representatives are assisting in revising and reviewing the analysis guidance.</p>	

Issue 3 Scope of Application	Commenter	Essence of Comment	Primary Rationale
	AHIP APCIA	GCC Instructions should explicitly state that non-material entities (including financial) within the Broader Group (but outside the Insurance Group) should be excluded from the Scope of Application.	All entities that meet the broad definition of “financial” in the GCC Instructions do not necessarily pose material risk (as defined above) under all circumstances. The fact that an entity would be classified as “financial” should be weighed as a factor in the materiality analysis.
	State Farm	Requests that excluded entities not be required to be on the Inventory Tab or, at least, the Lead State Regulator have the discretion to not require excluded entities on the Inventory Tab if requested by the preparer.	Gathering information under the GCC from entities that are excluded from the GCC seems counterintuitive and duplicative in certain situations.
		State Farm questions why the Draft Instructions do not allow exclusion of immaterial financial or insurance entities that are isolated from the group as are non-financial entities.	Acknowledging the isolation of financial and insurance entities fits within already existing regulatory arrangements as well as the GCC and acknowledges that capital is not freely fungible for use by the group or entities within the group.
<p>Initial NAIC Staff Comments: Staff believes that given prior problems (e.g. during the financial crisis) with financial entities, some that appeared immaterial at the time, all financial entities should initially be included in the calculation for both risk and consistency purposes. Staff does appreciate the comments on the breadth and targeting of defining certain affiliates as financial entities as that was one of several areas of the instructions where comments were specifically requested and agrees that revisions are appropriate. The prior and current versions of the instructions do identify some financial entities without regulatory capital requirements with closer reference to their activities, so the working group could consider revisions targeted more specificity related to activities of financial entities.</p> <p>The instructions currently limit the amount of data that is required from entities that the lead-State regulator agrees should be excluded.</p>			

Issue 4	Excluded entities / Material Risk	Committer	Essence of Comment	Primary Rationale
		ACLI AHIP APCIA	GCC Instructions should provide a definition of “material risk” for purposes of the Scope of Application as follows “risk emanating from a non-insurance entity that is of a magnitude that would adversely impact a group’s insurance operations and its ability to pay policyholder claims.” GCC Instructions should provide a principles-based definition of “material risk” for purposes of the Scope of Application. Suggest that “material risk” should be defined as “risk emanating from a non-insurance entity that could adversely impact a group’s insurance operations and ability to pay policyholder claims.”	<ul style="list-style-type: none"> Follows the fundamental reason for state insurance regulation and the stated objective of the GCC: policyholder protection. Is in accordance with international standards. For example, under ICP 23. Given the diverse structures and business models of insurers, it would be impracticable to develop a one-size-fits-all checklist of guidelines that would be useful for materiality determinations across all groups. Form B and D processes and Enterprise Risk Reports entail similar considerations and are already enshrined in the state regulatory process.
		State Farm	APCIA recommends developing a list of factors related to whether an entity could adversely impact a group’s ability to pay policyholder claims. (List included in letter – Page 2). No single factor is determinative of materiality of risk, nor should these factors be used as a scorecard or checklist.	Insurers and regulators could then use these factors to undertake a materiality analysis based on the totality of the facts and circumstances by considering the factors and how they apply to the group’s business
			Requests a baseline materiality definition be provided while maintaining Lead State Regulator discretion to determine if a higher or lower material threshold is appropriate. Suggests a group equity threshold for materiality with a drafting note suggesting 5% threshold subject to regulator discretion	There should be some consistency in application under these provisions and that materiality should be based on the group’s net worth given the GCC is measuring risk of the group and not a particular entity in the group. Baseline for materiality while still allowing the Lead State Regulator and the preparer to use a higher or lower threshold given circumstances presented by the preparer.
<p>Initial NAIC Staff Comments: Staff agrees that materiality of risk is important in deciding whether to exclude non-financial entities. Staff supports a definition to promote consistency in completion of the GCC. We are supportive of principles-based criteria being included in the instructions. We are also supportive of quantitative Criteria if preferred by the working group but recognize that there has not up until now been coalescence around a single quantitative benchmark. See staff comments above under Scope of Application (Issue #3) regarding financial entities.</p>				

Issue 5		Commenter	Essence of Comment	Primary Rationale
Grouping		Prudential	Supports flexibility of current grouping language, but state regulators should retain the option of requesting more granular information should they feel it is needed to obtain a sufficient view of risks within the group.	Self-Explanatory
<p>Initial NAIC Staff Comments: Although staff believes this is implicit, we support adding explicit language.</p>				

Issue 6 Definition of Financial Entities	Commenter	Essence of Comment	Primary Rationale
	AHIP	Disagrees with the notion that certain affiliates are inherently riskier than others and more generally with the expanded definition of financial affiliates.	<ul style="list-style-type: none"> There is a wide array of types of non-affiliated entities within insurance groups, and it is overly simplistic to conclude that all that are somehow associated with assisting the insurer with contract performance or policyholder services are inherently riskier than others. Form B and D processes recognize that transactions with affiliates may have risks.
	APCIA	Third-party administrators and pharmacy benefit managers, provider groups, and pharmacy benefit managers should not be considered financial entities. APCIA is concerned with the expanded definition of financial entity in the GCC.	<ul style="list-style-type: none"> Affiliates that merely provide contracted services to a carrier should not be defined as “financial”; they do not create any more financial risk to their affiliated insurers than do non-affiliates that provide the same services to other insurers. Some of the examples given diversify risk for the insurance entity in the group, facilitating more access to capital by the insurance entity. The aim of the working group should not be to promote smaller, less integrated or diversified groups. Greater regulatory oversight to certain currently defined entities and regulatory review of intercompany agreements should be considered to reduce the group’s risk.
	United HealthCare	Base comments are similar to AHIP Comments. This is amplified by lack of diversification credit for the wide array of entities defined as “financial”	
<p>Initial NAIC Staff Comments: Staff appreciates the comments on the breadth and targeting of defining certain affiliates as financial entities as that was one of several areas of the instructions where comments were specifically requested. The issue of an appropriate definition of financial entities impacts other concerns identified in the comments including, calibration, scope of application, materiality of risk, and consistency across group structures. The instructions currently do identify some specific financial entities without regulatory capital requirements and some associated activities, so the working group could consider more specificity related to activities based on the activities of those identified entities. As intended, staff also believes that the quantitative aspects of the GCC in the context of a regulatory view, as well as the additional data supporting analytics does compliment rather than overlap the benefits of other regulatory filing requirements.</p>			

Issue 7 Treatment / Charges Financial Entities	Commenter	Essence of Comment	Primary Rationale
ACLI		<p>To the extent that there are differences in the GCC and legal RBC treatment for subsidiaries that have been de-stacked and reported separately from their legal entity parent, then it seems desirable for the GCC and RBC treatment to align.</p> <p>To the extent that there are differences between the two, we recommend the Working Group explain the rationale for the difference (e.g., achieving substantial consistency in charges regardless of corporate organizational structure) and, if appropriate, refer the issue to the appropriate RBC working for further dialogue.</p>	<p>ACLI believes that the GCC should be consistent with the legal entity rules applied to insurance legal entities – including the subsidiaries of insurance legal entities.</p> <p>In the long run, we believe this approach will benefit regulators and the industry by promoting a more consistent and up-to-date risk framework.</p>
AHIP		<p>Recommends applying the equity-based capital charge that is recommended for non-financial affiliates to all affiliates that are not subject to a regulatory capital requirement.</p>	<p>Subjecting these entities to a capital charge for financial entities (12% of 3-year average gross revenue – possibly to be increased to 15%) could result in a significant additional charge as compared to current RBC.</p>
APCIA		<p>in the short term, use a capital charge that is roughly equivalent to the current post-covariance charge (presumably equity charge) for such affiliates in RBC.</p>	<p>Over the first few years of the GCC's implementation, data can be collected and used to derive a more risk-sensitive charge that is pragmatic (e.g., a differentiated charge for entities of high/medium/low risk as determined by specified criteria).</p>
Prudential		<p>Supports adopting a single approach for establishing a proxy capital measure for all financial entities that are not subject to a regulatory capital requirement. Supports a method that most closely aligns with how the AM - ICS will ultimately treat this item.</p>	<ul style="list-style-type: none"> Ensuring state regulators obtain adequate insight into the entities within the insurance group and risks associated with them is the key point of consideration for these entities and this is best accomplished through the inventory element of the GCC as opposed to an arbitrary proxy capital calculation. To the extent a state regulator believes an entity poses material risk to the group, they have discretion to request additional information to understand the risks.

Initial NAIC Staff Comments:

Staff notes that as a complimentary group analytical tool covering entities other than those owned by RBC filer, total consistency with RBC is not entirely relevant, particularly for financial entities. Staff does agree that the Capital Adequacy Task Force should determine whether the treatment of financial entities in the GCC is relevant for U.S. Insurer entity-based RBC. This can be tasked to the current Ad Hoc Affiliates Subgroup or directly to the RBC Working Groups

Staff agrees that an overarching explanation of where differences exist is helpful.

Staff does not recommend using a post covariance charge for most financial entities that are not subject to a regulatory capital charge. Properly defined Financial entities can pose additional non-diversifiable risk. Staff agrees that a narrower more activities focused definition of such financial entities will address many stated concerns.

Staff recommends continuing a revenue-based / enhanced operational risk type charge. Up until this point there seems to have been more agreement around a revenue-based charge for these entities.

Staff has no issue with treating all financial entities that are not subject to a regulatory capital charge the same at least initially. The only current difference is whether to use a 3-year average revenue (currently used for asset managers) or current year revenue only (currently used for other financial entities that are not subject to a regulatory capital charge) as the base used to apply the charge.

Staff supports the .15% charge as reflective of a 300% calibration and consistency whether where international standards are headed but understands that the working group may consider a scaled version as a starting point for the near-term. Staff supports the proposal to consider refinements over time for financial entities not subject to a regulatory capital requirement in order to be more risk sensitive along the lines of the low / medium / high approach suggested by APCA (e.g. lower risk entities could go with the post covariance non-financial entity charge / medium risk entities, a scaled revenue-based charge / and high risk entities, the full revenue based charge).

Issue 8	Commenter	Essence of Comment	Primary Rationale
Treatment / Charges - Non-Financial Entities (incl. material non-financial A / BA)	ACLI	ACLI was unable to discern how the proposed charges for "other non-insurance/non-financial entities" and "material Schedule A/BA entities" were created.	Further clarification on this issue is necessary, including an explanation of why the Working Group is recommending a novel approach that has not been subject to field testing.
	AHIP	Risk charges for non-financial entities should be equal or very similar to the current charge in the sectoral RBC formulas, i.e., 3% post-covariance charge in the case of health insurers.	<ul style="list-style-type: none"> The GCCWG has not provided data to suggest that a more substantial risk charge is needed to protect policyholders. Form B and D processes are already in place to ensure that the regulated legal entity is protected from the non-regulated, non-insurance entity.
	APCIA	During the first few years of the GCC's implementation use 3% of 3-year average revenue. Once some experience is gained with the GCC, the Working Group should consider a simple variable risk charge (low / medium / high risk charge) that is more risk-sensitive based on industry and activity.	A period during which experience will be gained that can then be analyzed in more detail and across more groups than was possible in field testing.
	Prudential	Supports adopting a single approach for establishing a proxy capital measure for all non-financial entities	See rational for financial entities.
	United HealthCare	Charge should be based on the group specific after covariance equity charge.	Using an average industry post covariance charge is not reflective of the proportion of insurance vs. non-insurance business within a group.
<p>Initial NAIC Staff Comments: Once materiality of risk has been established, Staff supports a post covariance equivalent equity-based charge that is broadly consistent with RBC treatment for non-financial entities that are "included" in the GCC. The current template uses a single average post covariance factor across all industry types, but Staff believes that an industry specific charge has merit. A group specific charge was previously tested and could be considered by the working group, but unlikely to have a significant impact on the GCC. However, NAIC Staff would be interested in information to the contrary by a group that has run the numbers given that the NAIC will not be receiving the GCC filings.</p> <p>Staff supports the suggestion to make future refinements based on continued collection of data but again notes that NAIC will not have access to the submissions.</p>			

Issue 9 Allowance for Debt	Commenter	Essence of Comment	Primary Rationale
	ACLI	The current debt caps are too restrictive.	<ul style="list-style-type: none"> • Could have procyclical effects in times of stress, when available capital tends to contract and capital requirements tend to increase. • Could negatively impact a group’s ability to prudently manage capital and liquidity risks. • Tying the constraint to a percentage of the group’s available capital embeds an undesirable element of procyclicality into the GCC, because a company’s available capital is likely to decrease in times of stress, especially if markets crash. • The 30% factor for senior debt and 15% for hybrid debt are being applied to a more conservative base than rating agencies use for establishing limits • Adding a limit of 50% of total adjusted carrying value to the conservative 30% and 15% limits for senior and hybrid debt (relative to total adjusted carrying value + outstanding senior and hybrid debt) effectively lowers the 45% permitted (i.e., 30% + 15%) to approximately 33%.
Prudential	United HealthCare		<ul style="list-style-type: none"> • Interpretations related to how to support “tracking” will be difficult to verify and may lead to inconsistencies across groups. • Keeping funds at the holding company level is a prudent strategy that provides insurance groups flexibility to quickly and easily manage capital and liquidity needs across the group. • A tracking requirement could give rise to unintended consequences such as reducing the availability and fungibility of capital resources and forcing U.S. insurance groups to issue greater amounts of debt.
ACLI	Prudential United HealthCare	Requirements for tracking the down-streaming of debt issuance proceeds to regulated entities should be eliminated.	<p>Relative to the 5-year term, the presence of call options should not prevent a capital instrument’s inclusion as a qualifying instrument. Call options are a common feature of U.S. issued capital instruments.</p>
ACLI		Remove the call option criteria, because the exercise of a call option is typically followed by refinancing of the instrument which supports its permanence and structural subordination.	

<p>Allowance for Debt</p>	<p>Global Atlantic</p>	<p>Eliminate downstream tracking logic and replace it with a simple comparison to paid-in capital and surplus.</p>	<ul style="list-style-type: none"> • Simpler, more efficient, and more reliable test • Avoids complications that could result from debt that has been refinanced by the parent as there would be no contribution of the debt amount issued. • Avoids complications of tracking upsize transactions where debt is borrowed at one date and then down streamed at a different date. • Avoids complications of tracking the reverse: dividends which are up streamed. Are those upstream transactions to be netted against down streamed capital or not? • Avoids complications and questions related to M&A transactions – if a company is acquired, does the new parent company automatically assume the historical relationship of down streamed debt, so long as its debt at least equals the debt of the old parent company?
<p>APCIA</p>	<p>The treatment of debt differs in some key respects from that which was adopted by the International Association of Insurance Supervisors (IAIS) in the Insurance Capital Standard (ICS) in 2019. FED BBA is more closely aligned with the principles-based criteria in the ICS than with the approach taken in the exposed GCC Instructions Working Group may need to supplement the GCC Instructions with definitions for each type of instrument. For example, “hybrid debt” is not defined in the Instructions</p>	<p>The GCC could be viewed as less credible by other jurisdictional supervisors including those who may be parties to a Covered Agreement. Comparability of the GCC with the ICS is a looming issue on the horizon, the resolution of which can impact the views of many IAIS member jurisdictions about the efficacy of state-based regulation over U.S.-based insurance groups.</p> <ul style="list-style-type: none"> • Rating agencies treat subordinated debt issued by a parent company as “hybrid debt” if it is long-dated and has provisions to defer interest payments for a period of time. This could give rise to variation in treatment of hybrid debt (e.g., it may be unclear to a group if it should classify it as “hybrid” or as “subordinated” debt) • Comparability with the ICS needs to be considered, and on this point it seems that the more important issue is not whether types of debt are called out by name or more generically by tier, but whether comparable criteria to the ICS are used. 	

Allowance for Debt	APCIA	<p>Replace terminology “additional capital allowance” with “within supervisory limits”.</p> <p>Add criteria supporting structural subordination to “Tracked Down-streamed Debt” proceeds rather than eliminate that test.</p> <p>Another option to test structural subordination is to limit the amount of senior debt to qualify as capital to that which is in excess of the liquid assets in the holding company.</p> <p>APCIA is open to the possibility of some allowance for other debt in the future. It would seem appropriate that the overall limitation should apply to all debt, including surplus notes and</p>	<p>Focusing the Instructions’ text on “limits”, rather than “allowance”, will help in some respects with perceptions about comparability.</p> <ul style="list-style-type: none"> • Team USA argued long and hard to support structural subordination in the ICS. • While down-streaming has raised many questions about how debt proceeds can be tracked and verified, the ICS criteria are workable and rely in large measure on each group and its group-wide supervisor to make that determination in light of the unique facts and circumstances. • The IAIS avoided prescribing detailed rules or criteria for tracking. APCIA believes the NAIC should do the same in the GCC, leaving the determination of the amount down streamed to the lead state working in conjunction with the group. • This would include criteria to support that the qualifying amount of debt to be treated as capital is actually subordinated (either contractually by the terms of the instrument, or structurally), and other principle-based criteria, as in the ICS, to support permanence, loss absorbency, etc. Some refinement of the ICS criteria may be necessary to address U.S.-specific nuances for the GCC. <p>As a practical matter, the lender would have recourse only to the liquid assets that remain in the entity that issued the debt (i.e., the holding company in the case of senior debt). The unconsolidated balance sheet of the holding company (reflects a very large, illiquid investment in insurance subsidiaries, control over which is subject to regulatory oversight and approval.</p> <p>Self-Explanatory</p>
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APCIA	foreign debt. That said, and as noted above, APCIA supports no limit on surplus notes of mutual insurers. we do not offer a view on the overall limit of 50%. However, the ICS comparability issue is also an important goal and encourage the Working Group to give due consideration in the context of the overall limit.	See Staff Comments
<p>Initial NAIC Staff Comments:</p> <p>Staff is open to eliminating the tracked down-streamed option as suggested by some commenters especially since current debt issued generally refinanced expiring or called debt which would have required tracking for debt issued potentially years ago. The arguments put forth by APCIA are relevant, however, structural subordination is strongly represented by insurer paid in capital and surplus which has the most rigorous regulatory control over distributions. If there is down-streaming on newer debt, it would most likely become part of paid in capital or surplus thus raising the amount allowed (subject to the limitations)</p> <p>If an option for tracked down-streamed is retained criteria for tracking will need to be developed. Here are some suggested criteria:</p> <ul style="list-style-type: none"> ➢ Evidence of infusion of proceeds ➢ Description of the method used for tracking the proceeds ➢ Explanation of excess over what is reported as paid-in and contributed capital and surplus ➢ Default is paid-in and contributed capital and surplus <p>Staff is sympathetic to the point that the proxy allowance for Senior Debt is applied to regulatory available capital rather than GAAP available capital and the 50% limit of otherwise available capital could be adjusted upward if the working group concurs. Staff would initially suggest no more than 75% in order to balance the point raised with recognizing that there is no tiering of capital in reference to the ICS and that the GCC applies the limits to the larger base of available capital rather than required capital.</p> <p>Staff understands the issue of including Foreign Debt in the limit. However, fully including contractually subordinated debt already recognized by a regulatory authority as capital and included in the carrying values in Inventory B (e.g. U.S. surplus notes and contractually subordinated foreign debt) seems consistent from a regulatory perspective. Staff agrees that foreign senior and hybrid debt that is not included in the value of an entity in Inventory B should be included within the limit.</p> <p>Staff has some concerns about the APCIA alternative methodology as it may provide too much of an allowance since large groups may rely on illiquid assets at the holding company level and the method would seem to result in including the entire book value of insurers in the group.</p> <p>Staff supports the suggestion to continue to collect data on “Other Debt” for future refinements but notes that NAIC will not have access to the filings.</p>		

<p>Staff will review language for clarity considering edits provided and definitions of debt instrument types.</p> <p>Staff will follow-up on the issue of terminology “additional capital allowance” vs. “within supervisory limits” but notes that there is currently no GAAP or SAP allowance for subordinated debt other than surplus notes (so the supervisory limit is essentially zero per accounting requirements). The GCC provides an on top allowance that reflects a supportable proxy alternative for structural subordination.</p> <p>Allowance for Debt as additional capital is an area of <u>potential divergence</u> between the GCC and AM- ICS.</p>			
Issue 10	Committer	Essence of Comment	Primary Rationale
Scalars	ACLI Global Atlantic Prudential	Use the Excess Approach over the Pure Approach. Use the Excess Relative Ratio Approach for scaling non-U.S. capital ratios to U.S. RBC.	<ul style="list-style-type: none"> This method utilizes two anchor points for scaling. The Pure Relative Ratio lacks a mechanism to ensure that a non-U.S. firm at the regulatory intervention level within its respective country will be at the U.S. RBC intervention level once scaled. The Pure Relative Ratio Approach fails to adequately account for key differences in insurance regimes (e.g., level of conservatism embedded in reserves versus required capital, different valuation and asset admissibility standards, etc.). The decision would prejudice the Pure Relative Ratio Approach as the methodology that should be adopted for the AM and could undermine the ongoing work at the NAIC’s work at the global level to secure recognition of the AM
	Global Atlantic	Transparency of how the scalars are calculated will be critical, regardless of which scaling methodology is selected	<ul style="list-style-type: none"> Consistency – scalars should be calculated and applied consistently across all non-U.S. regimes. Specificity – scalars should be discretely computed and applied amongst life, property casualty and health insurance companies. Stability – the results of applying scalars to Non-U.S. capital ratios should not be volatile; for example, converting to U.S. RBC should not yield a significant headwind in one year, and a significant tailwind in the following year

<p>Initial NAIC Staff Comments: Scalars remains an open issue. The use of the Pure Relative Ratio appeared to strike a good balance between precision, simplicity and ease of explanation.</p> <p>However, staff has no strong feelings between the two approaches and believes that the working group should be open additional approaches while maintaining a placeholder methodology.</p> <p>Staff notes the argument put forth by Prudential that selection of a scalar methodology even as a placeholder at this juncture may send a stronger signal than anticipated relative to the AM – ICS. The suggestion to use 100% scalars as the placeholder pending further work on scalars is worth consideration by the Working Group.</p> <p>The working group should be aware of ongoing work on the AM-ICS as scalar methodology is an area of potential convergence between the GCC and AM- ICS.</p>			
<p>Issue 11</p>	<p>Commenter</p> <p>ACLI Prudential</p>	<p>Essence of Comment</p> <p>Eliminate Sensitivity Analysis Tab altogether</p>	<p>Primary Rationale</p> <ul style="list-style-type: none"> Narrowing the design of the GCC will ensure insurers, supervisors (domestic and foreign) and other stakeholders have a clear vision and understanding of what the GCC is (e.g., it would eliminate the need to distinguish between a “Base” view and alternative measures). To the extent broader information on the insurance group is of interest to a state regulator, we believe it should be obtained through discretionary powers as opposed to embedding it in the GCC template.
<p>Coalition</p> <p>Coalition</p>	<p>Supports Eliminating the XXX/ AXXX analysis in favor of a referral.</p>	<p>Initial NAIC Staff Comments:</p> <p>Staff recommends against deleting the sensitivity analysis tab in its entirety. The XXX/ AXXX sensitivity test is in process of removal. The information contained in most other analysis points informs future decisions on capital charges, and more generally is consistent with the primary purpose of the template as an analytical tool and should be retained for a period of time for further assessment of its value.</p> <p>Staff understands that some of the sensitivity analysis may fall away as more finalized decisions on treatment of financial entities not subject to regulatory capital requirement and for treatment of non-financial entities and perhaps on scalars are incorporated into the GCC template.</p> <p>Staff believes that the data is more readily accumulated in the Sensitivity Tab from other parts of the template. Separating it would require additional work particularly for non-insurance entities.</p>	

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Issue 12	Other Information Collected	Commenter	Essence of Comment	Primary Rationale
		United HealthCare	Questions the rationale for collecting information on intangible assets (such as deferred acquisition costs, provider contracts, customer lists, and goodwill).	<ul style="list-style-type: none"> The focus on intangible assets, to the exclusion of other types of assets, seems unwarranted. Regardless of their availability for sale, intangible assets do produce a stream of income to the group; otherwise, GAAP accounting would require that they be written down in value or written off entirely. As businesses rely more and more on digital assets and intellectual property as the basis for their operations, and less and less on fixed assets, there is more scrutiny of the value of those assets, and there should be less concern about whether the stated values are appropriate. We Both business trends and accounting changes have made the differentiation of “intangible” assets increasingly less relevant.
<p>Initial NAIC Staff Comments: Staff notes that the GCC represents a regulatory view of group available capital. It is not intended that the value of intangibles allowed under GAAP, SAP or another accounting basis should be excluded. However, staff believes that there is some value in quantifying the extent that group capital is comprised of illiquid non-physical assets. This can provide good regulatory information in addition to the views of rating agencies or other group stakeholders.</p> <p>Staff is comfortable with assessment of the value of the data collected in the Tab by the Analytics Guidance Drafting Group and making any adjustments accordingly.</p>				
Issue 13	Other Technical Comments, Language Edits, Clarification requests and Second Tier Concerns	Commenter		
		AHIP, APCA, UHG		
<p>Initial NAIC Staff Comments: These items will be reviewed and accepted, adjusted or rejected after this meeting based on the direction taken in response to the comments discussed today.</p>				

From: Jamie Walker <Jamie.Walker@tdi.texas.gov>
Sent: Friday, October 30, 2020 9:28 AM
To: Daveline, Dan <DDaveline@naic.org>
Subject: Comments on Models 440 and 450

Texas appreciates the opportunity to provide comments on the latest versions of NAIC Model Law 440 and Model Regulation 450 exposed after the Group Capital Calculation (E) Working Group's meeting on October 20, 2020.

Model Law Section 4(L)(2)(a)

The exposed language currently reads:

- a. An insurance holding company system that that has only one insurer within its holding company structure that only only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer;

Comment:

The second "only" should be removed. This appears to be a drafting error.

The exemption should apply to insurers that only assume business in their domestic jurisdiction. Therefore, I would suggest replacing "assumes no business from any other insurer" with "does not assume business in any manner written in another jurisdiction."

Model Law Section 4(L)(2)(e)

The exposed language currently reads:

- e. Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead-state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

Comment:

While I agree this is a step in the right direction to align with the provisions in the covered agreement and maintain state insurance regulatory oversight of US operations when needed, this modified language does not go far enough to give the flexibility needed to state insurance regulators. I would suggest modifying "shall" to "may" and

eliminating “or for ensuring the competitiveness of the insurance marketplace” from the language.

Article 4(b) of the covered agreements, in part, provide, “Host supervisory authorities may exercise group supervision, where appropriate, with regard to Home Party insurance or reinsurance group at the level of the parent undertaking in its territory.” In Article 2 (e) of the covered agreements, “group supervision” is defined as “ the application of regulatory and prudential oversight by a supervisory authority to an insurance or reinsurance group for purposes including protecting policyholders and other consumers, and promoting financial stability and global engagement.” Our focus in this model amendment should be solely on the provisions needed to fulfill our obligations to assess an insurance holding company’s ability to meet its policyholder obligations and the potential effect on overall financial stability. The reports that are required to be filed should be limited to those needed for regulators to make these assessments. There is no provision in the covered agreement for Host supervisory authorities to consider competitiveness in the insurance marketplace when determining the appropriateness for group supervision at the sub-group level. Therefore, the clause “or for ensuring the competitiveness of the insurance marketplace” does not align with the provisions of the covered agreements. This clause in the exposed model changes appears to provide for state insurance regulators to consider the treatment of US-based insurance holding company groups by non-US supervisory authorities which may or may not be complying with the terms of the covered agreements. These concerns should be raised through the joint committee resolution process laid out in the agreements.

Model Regulation Former Section 21B(1)

The following language was removed from the currently exposed language:

The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act], and the holding company system conducts no insurance operations in a Reciprocal Jurisdiction that is not a qualified jurisdiction as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations;

Comment:

While concerns were raised that large insurance holding company groups could be exempted from the filings under the provision as previously written, the decision to completely remove the exemption from the model means that groups that are well understood by lead state commissioners because there is a carrier that holds all of the

other companies in the group adds little value for the regulators. For carriers that are not operating outside of the US and are, therefore, not internationally active insurance groups (IAIGs), receiving the full group capital calculation filing will only add regulatory costs to those groups with little to no value being added to the regulatory oversight of the group. The outcome of the testing of the group capital calculation so far has indicated that there is no material difference in the result from the RBC ratio and the GCC ratio.

However, I understand that for those groups that are IAIGs, there is considerable value in having filed a complete GCC with the lead state commissioner. Therefore, I think the most appropriate resolution to this change would be to include option 2 that was laid out in NAIC staff's comments on issue 2 in attachment A of the October 20, 2020 meeting materials. That option reads:

The ultimate controlling person is a U.S. regulated insurer that already completes an annual Risk-Based Capital filing [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act], and the holding company system does not meet the criteria of an internationally active insurance group as defined in [insert cross-reference to appropriate section of Insurance Holding Company Model Act], and the lead-state commissioner has determined that any non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations;

Incorporation by Reference

Throughout the model law edits there are references to the NAIC Group Capital Calculation Instructions, the NAIC Financial Analysis Handbook, and the NAIC group supervision approach. Keep in mind as those provisions are made that states may be required to adopt those documents or the imbedded requirements by rule in order to effectuate the provisions of law. In Texas, we are required to adopt by rule all changes that are made to those documents in order to apply the requirements. This comment is more of a caution that implementing changes in these documents will take significant time because of the rulemaking process that may be necessary.

Conclusion

Texas has been vocal that the applicability of the GCC should be to those groups that operate internationally and are at risk of subject to more than one group capital framework. Additionally, the process laid out in the covered agreements should be used to resolve issues between the jurisdictions that are subject to the agreements. Our model laws should focus on the assessment of each group's ability to meet its policyholder obligations, not how non U.S. jurisdictions are regulating their markets.

Jamie Walker
Deputy Commissioner
Financial Regulation Division
(512) 676-6368



October 30, 2020

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

By email to ddaveline@naic.org

Re: NAIC Group Capital Calculation (E) Working Group's October 20, 2020 Exposure of the Model Holding Company Act (#440) and Model Holding Company Regulation (#450)

Dear Commissioner Altmaier:

America's Health Insurance Plans (AHIP), the Blue Cross Blue Shield Association (BCBSA) and the National Association of Mutual Insurance Companies (NAMIC) are pleased to offer the following joint comments on the above-captioned exposures.

First, thank you for this opportunity to comment. We appreciate your hard work and that of all the members of the NAIC's Group Capital Calculation Working Group (GCCWG) as well as of NAIC staff in developing the Group Capital Calculation (GCC). We also appreciate very much the opportunities for engagement throughout the process.

That said, we are concerned by the action of the GCCWG on its call of October 20, 2020 to expose for purposes of fatal flaw review a revised version of the Model Holding Company Regulation (#450) with the omission of Section 21B(1). That section would have provided regulators the discretion to accept from a group, in lieu of the group capital calculation, a limited group capital filing if: (i) the ultimate controlling person ("UCP") is an RBC filer; (ii) the group

has filed a full GCC at least once, (iii) the group does not have insurance operations in the EU or UK; and (iv) the non-insurance operations do not pose a material threat to policyholders.

Our members include many companies who, if Section 21B(1) is reinstated, would benefit from its provisions. These include property/casualty mutual companies, non-profit health plans, and many other health plans whose top-tier parent company/UCP is an RBC-filing insurance legal entity. If they have more than \$1billion of gross (i.e., direct and assumed) premium, they would not be able to avail themselves of the filing exemption of Section 21A in the Model Regulations. Thus, if Section 21B(1) is deleted, as currently proposed, they would be subjected to an additional filing requirement (for the GCC) that provides little, if any, incremental benefit compared to their existing filings at the top-tier legal entity level.

We understand that the following concerns were raised which led to the GCCWG's action to delete Section 21B(1) from the most recent exposure of the Model Regulation. We believe those concerns are unfounded and appreciate this opportunity to express our views.

The exemption covered by Section 21B(1) is overly broad and creates too many exemptions from filing the GCC: It is true that there are many mutual insurance companies and other similar non-stock companies such as hospital service organizations to whom Section 21B(1) would apply. Proponents of deleting that section point to the disparity in filing requirements that would then seem to exist between stock and non-stock forms of organization.

However, there is nothing in Section 21B(1) that says the exemption from filing a full GCC could not also apply to a group with a stock insurance company as the UCP. While it is true that a stock insurance company is less likely to be the ultimate controlling person (UCP) of a group (i.e., than a mutual or similar entity in the case of a mutual-controlled group), nothing in the Section 21B(1) language would prevent a group with a stock insurance company as the UCP from taking advantage of the exemption if the section's criteria is met.

Proponents of deleting Section 21B(1) might have a valid concern if the GCC filing exemption it would provide to groups with RBC-filing UPCs would result in the Lead State having a materially different view of the amount of available capital and calculated capital at the group level (as compared to what the Lead State's view might be if the group prepared a GCC). However, and as noted by the American Council of Life Insurers (ACLI) in its comment letter to the GCCWG which was included in the October 20, 2020 meeting materials, "... the GCC calculation for many groups with an RBC filer as the ultimate controlling person is likely to be highly consistent with the RBC calculation for that UCP insurer." We agree, and given changes made to the proposed GCC Instructions and template since field testing occurred, as discussed below, that should now be even more apparent.

The ACLI also asserted that Section 21B(1) presents the "risk of an unlevel playing field, because potentially complex groups could qualify for the exemption, whereas simpler groups with less risk would not, solely because of their corporate structure." AHIP, BCBSA, and NAMIC disagree with that assertion. First, Section 21B(1) is not predicated on having a mutual or stock-based structure, simply that the UCP be an RBC filing entity. The section simply

recognizes that the legal entity RBC filing of the UCP, by virtue of the design of RBC, is in effect a group-wide calculation inasmuch as all entities in the group are underneath the UCP and are covered by risk charges in the UCP's RBC. That is true whether the UCP is a stock or a mutual RBC-filing insurer. Thus, by reinstating Section 21B(1), the GCCWG would not be letting mutual (or other mutual-like) UCPs "off the hook" from filing a group capital result – the UCP's RBC filing, by design, already provides it. If an unlevel playing field exists, it is not the result of Section 21B(1); rather, an unlevel playing field inherently tilts against mutuals and similar organizations that are constrained from establishing holding companies; from being able to raise capital through sales of stock in the capital markets; and from limiting the scope of operations to what can be accomplished only within or under the RBC-filing UCP – none of which is the result of, or changed by, Section 21B(1).

Second, If the GCC calculation for groups with an RBC filer as the ultimate controlling person is "highly consistent" with the RBC calculation for that UCP insurer, there can be no unlevel playing field. The exemption that Section 21B(1) affords would simply save some time and effort for the RBC-filing UCP and its Lead State as there is no cost-benefit in taking unnecessary extra steps to file a report that has the same or a "highly consistent" capital ratio as another report (the UCP's RBC report) which would have been filed.

The Section 21B(1) exemption would deprive regulators of valuable analytical data:

Proponents of deleting Section 21B(1) assert that doing so would ensure that Lead State regulators of all large groups have access to the full array of detailed information contained within the GCC's schedules. We disagree. An RBC-filing UCP's legal entity's filings report the applicable data requested in a GCC filing, and more, and it is already reported on a group-wide basis and is already subject to electronic data gathering and analysis (there is some GCC data that would not apply to such a group, i.e., regarding senior debt, scaling, etc.). That is in contrast to existing legal entity filings of insurers in groups that would not be subject to 21B(1) and for which legal entity data is not synonymous with "group-wide;" thus the GCC filing is necessary to complete a group-wide picture.

As compared to field testing, the current GCC Instructions ease the level of detail required for de-stacking, provide more opportunities for grouping of entities, and provide risk-charges for non-insurance non-financial entities that are based on the same post-tax post-covariance risk charge of the sectoral RBC formula, i.e., the same risk charge will apply whether the entity is held downstream of an RBC filing insurer, or outside the insurance group but in the broader group. That is not to say that the current iteration of the GCC is not a source for valuable analytical data – it is – rather, that the nature and extent of data that is available in the Annual Statement and other legal entity filings of a group with an RBC-Filing UCP that would be subject to Section 21B(1) is more extensive, more detailed (just as one example, every affiliated investment is displayed individually – without groupings), is already group-wide in scope, and in schedules that are already subject to electronic data gathering and analysis..

Where the GCC template provides additional "valuable analytical data" is with respect to entities within the broader group that are outside the insurance group. Groups with a RBC filing entity as UCP that would thus be subject Section 21B(1), as initially drafted, do not have entities outside

the insurance group; the insurance group and the broader group, as those terms are defined by the GCC instructions, are synonymous in such situations.

Finally, we observe that many of the non-stock company/groups that would fall under the Section 21B(1) exemption are single-state writers for which the Lead State is the only state regulator and who would be knowledgeable about all aspects of the insurer/group's operations, structure, and financial profile.

* * * * *

We thank the GCCWG members for this opportunity to express our views. We ask, and hope, that the working group will reconsider the action taken on October 20, 2020, and reinstate Section 21B(1) in the Model Regulation for consideration of its approval at its November 4 meeting. We will be glad to address any questions you or working group members have on the November 4 call, or otherwise at your convenience.

Sincerely,

America's Health Insurance Plans (AHIP)

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From: Matthew Horvath-Wulf <Matthew_HorvathWulf@swissre.com>
Sent: Friday, October 30, 2020 1:45 PM
To: Daveline, Dan <DDaveline@naic.org>
Cc: Altmaier, David <David.Altmaier@flood.com>
Subject: FW: Exposure Draft Notice: Group Capital Calculation (E) Working Group due 10/30/20

Dan,

Swiss Re supports the current language, believes it is a good compromise and does not support reinserting the "recognize and accept" language in 4(L)(2)(e) for all the reasons previously stated related to confusion and international relations.

Best,
Matt



October 30, 2020

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

via email to ddaveline@naic.org

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

Dear Commissioner Altmaier,

Allianz Life Insurance Company of North America ("Allianz") and the Transamerica Companies ("Transamerica") welcome the opportunity to comment on the Group Capital Calculation Working Group's "fatal flaws" exposure of proposed changes to the NAIC's Model Insurance Holding Company System Regulatory Act (Model 440) and the Insurance Holding Company System Model Regulation (Model 450). We have two comments, including a request for a wording clarification.

1. We support the proposed approach for a GCC for "U.S. operations" in Model 440, Section 4L(2)(e)

Allianz and Transamerica support the approach, as originally proposed by California, for subgroup reporting in Model 440, Section 4L(2)(e), as indicated in the exposure:

Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead-state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

We support providing lead state regulators with clear legal authority to gather, at their discretion, collective capital information relative to the entities under their purview. The Working Group's decision to define "U.S. operations" as comprising insurance legal entities and their subsidiaries facilitates this outcome by aligning "U.S. operations" with the direct scope of lead state authority.

We also support the concerns conveyed by the Federal Insurance Office that a retaliatory motivation would not necessarily be considered an "appropriate" basis for requiring "U.S. operations" reporting under the U.S.-EU and U.S.-UK Covered Agreements. While the exposed language would permit discretionary application of the GCC to be motivated by a variety of factors, we do not perceive an inherent conflict between the revised language and the Covered Agreement. We therefore support 4L(2)(e) as drafted.

2. We request a clarifying change to the description of Reciprocal Jurisdictions in Model 440, Section 4L(2)(c)

As noted in a prior comment letter, we welcome the added clause, marked below, describing Reciprocal Jurisdictions in Model 440, Section 4L(2)(c), as it attempts to correct for a shortcoming in Model 786.

An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital;

In reviewing the “fatal flaws” draft, we have a lingering concern that this language, which references Model 785—which, in turn, is supported by the problematic portion of Model 786—could still be interpreted as indicating that only non-Covered Agreement Reciprocal Jurisdictions recognize the U.S. state regulatory approach to group supervision and group capital. This interpretation would subject EU-based and UK-based insurance groups to worldwide GCC and place Model 440 in conflict with the U.S.-EU and U.S.-UK Covered Agreements.

This potential misinterpretation might be most easily addressed by splitting 4L(2)(c) into two sentences, as follows:

An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law]. ~~that~~ Reciprocal Jurisdictions recognize the U.S. state regulatory approach to group supervision and group capital;

We request this or a substantially similar clarification in the final draft.

We appreciate the Working Group’s consideration of these comments.

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cc: Grace Arnold, Temporary Commissioner, Minnesota Department of Commerce
Doug Ommen, Commissioner, Iowa Insurance Division



October 30, 2020

VIA EMAIL

ddaveline@naic.org

Commissioner David Altmaier
NAIC Group Capital Calculation Working Group
National Association of Insurance Commissioners
1100 Walnut Street
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Mr. Dan Daveline
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National Association of Insurance Commissioners
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Re: Draft Amendments to the NAIC Insurance Holding Company System Regulatory Act (Model 440) and the NAIC Insurance Holding Company System Model Regulation (Model 450)

Dear Commissioner Altmaier:

Munich Re US appreciates the opportunity to comment on the recently exposed amendments to NAIC Insurance Holding Company System Regulatory Act (Model Act 440) and NAIC Insurance Holding Company System Model Regulation (Model Regulation 450) to implement the Group Capital Calculation provisions.

We reviewed the changes to Section 4L(2)(e) of draft Model Act 440 that were exposed for comment on October 20, 2020. Munich Re US believes that the exposed language reflects a thoughtful compromise that synthesizes the various stakeholder positions, and we support adoption of Section 4L(2)(e), as exposed.

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

Sincerely,

Bonnie L. Guth
Munich Re America Services, Inc.

Paige S. Freeman
Munich American Reassurance Company

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

October 30, 2020

Re: Comments on Group Capital Calculation Working Group’s October 20, 2020 Amendments to the Model Insurance Holding Company System Regulatory Act (“Model Act”) and Regulation (“Model Regulation”))

Dear Commissioner Altmaier:

With respect to the October 20, 2020 version of the Model Act, we support the decision to retain text in Section 4L(2)(e) to expressly reserve a state commissioner’s authority to apply the GCC to the U.S. operations of a non-U.S. based insurance holding company system (“subgroup”) to ensure policyholders of these insurers are afforded the same level of protection as policyholders of U.S. insurance groups.

The latest version of the Model Act would permit consideration of whether the home supervisor of the foreign based group imposes subgroup capital reporting requirements or measures on U.S. subgroups. However, we believe it is important to expressly incorporate this concept into the Model Act. We therefore strongly encourage the Working Group to reconsider and adopt the language proposed by Connecticut, New Jersey, and Nebraska for Section 4L(2)(e) – included below for reference:

Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system, where, after consultation with other supervisors or officials, (i) it is deemed appropriate by the commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace; and/or, (ii) the non-U.S. insurance holding company’s group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. based insurance group’s operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to “recognize and accept” the group capital calculation.

This Provision Promotes Mutual Respect for and Recognition of the U.S. System

It is critical for the U.S. to promote mutual respect for and recognition of the U.S. state system of group supervision, not only with respect to the application of the GCC to non-U.S. groups at a worldwide level, but also when determining if the GCC should be applied to the U.S. operations of a non-U.S. based insurance holding company system. The recommended language for Section 4L(2)(e) strongly supports the goal of mutual recognition by clarifying to other jurisdictions that states will not relinquish their inherent prudential oversight authority to regulate subgroups operating within their own borders in situations in which there is a lack of trust and recognition

between jurisdictions, particularly as this could result in an unlevel playing field for U.S. insurance groups, which is a legitimate regulatory concern. Foreign jurisdictions should confer the same respect and recognition to U.S. group supervision and practices that state insurance regulators provide them.

The explicit reference to “recognize and accept” is important to the goal of mutual recognition as it will encourage diplomacy as well as uniformity among the states. As provided in the Model Regulation, state regulators will be able to utilize a list of jurisdictions published through a new NAIC Committee Process to assist the lead-state commissioner in determining under Section 4L(2)(d) whether a jurisdiction recognizes and accepts the GCC as the world-wide group capital assessment for U.S. insurance groups who operate in a non-U.S. jurisdiction.

This process should also be leveraged to assist a commissioner’s determination as to whether a jurisdiction imposes capital reporting requirements on U.S. subgroups in that jurisdiction. Each individual state should not have to conduct a separate review without this NAIC assistance. Instead, for jurisdictions that are included on the list and recommended to be exempted under Section 4L(2)(c) or Section 4L(2)(d), the review should also separately address whether the jurisdiction imposes a group capital reporting requirement on any U.S. based insurance group’s operations in that non-U.S. jurisdiction. This process would encourage discussion among the regulators and interested parties, and would help promote uniformity among the states, while giving the commissioner the authority to make the final decision.

This Provision Does Not Conflict with the Covered Agreement

The proposed language we support is not in conflict with the Covered Agreement. The Covered Agreement sets out restrictions on *worldwide* group supervision. The September 22, 2017 Statement of the United States on the Covered Agreement clarifies that, “[t]he [Covered] 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.” It further clarifies that “[t]he reporting provisions of the Agreement will protect U.S. insurance groups that have affiliates in the EU from expansive EU reporting requirements relating to *worldwide* operations at the group level, while enhancing regulatory cooperation.” (Emphasis added.) The statement is silent as to subgroup supervision.

With respect to group capital reporting specifically, the Covered Agreement sets out clear parameters: “Acknowledging the need for a group capital requirement or assessment for insurers and reinsurers forming part of a group that operates in the territory of both parties and that a group capital requirement or assessment at the level of the *worldwide* parent undertaking can be based on the approach of the Home Party.” (Emphasis added.) Article 4(h) of the Covered Agreement expressly addresses group capital, and states, “the Host supervisory authority does not impose a group capital assessment or requirement *at the level of the worldwide parent undertaking* of the insurance or reinsurance group”. (Emphasis added.) Importantly, Article 4(h) does not limit the ability of prudential regulators to impose a group capital requirement or assessment below the level of the worldwide parent.

With respect to group supervision more broadly, Article 4(b) of the Covered Agreement states that “Host Party” prudential regulators continue to retain the right to “exercise group supervision,

where appropriate, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its [the Host Party's] territory.” The Covered Agreement does not define what is appropriate, and we believe the determination of how to define “where appropriate” for the purposes of such subgroup supervision is at the sole discretion of the prudential insurance regulator. Indeed, former Federal Insurance Office (FIO) Director Michael McRaith, who was a chief negotiator of the Covered Agreement, testified before Congress that the EU is free to apply Solvency II group supervision to the EU operations of U.S. based groups:

“The Covered Agreement limits the application of the EU’s Solvency II global *group* supervision practices to the *operations and activities of U.S. insurers that occur in or originate from the EU.*”¹ (Emphasis added.)

Similarly, the European Commission describes the scope of the Covered Agreement concerning group supervision as follows and does not suggest there is any limitation on the regulation of subgroups:

“US groups active in the EU will not be subject to Solvency II requirements at the level of the *ultimate parent undertaking for their non-European activities.*”² (Emphasis added.)

The FIO and EU have thus explicitly acknowledged that the EU and U.S. regulators are limited only with respect to global, or worldwide, group supervision (including capital), and that prudential regulators make the decisions about group supervision of operations and activities within or that originate within their own jurisdiction. As such, U.S. state regulators determine when it is appropriate to engage in subgroup supervision and have the right to impose such subgroup supervision, without interference from the federal government or the EU.

We note that even if concerns remain that the Covered Agreement somehow limits state commissioners’ authority to determine what is “appropriate” supervision of activities taking place within the U.S., the ability to impose group supervision over the U.S. operations of groups from jurisdictions where there is not mutual recognition of group capital regimes promotes the goals of marketplace competition, a level playing field for U.S. groups, and protecting U.S. groups from the burden and expense of multiple capital standards or requirements, all of which serve to protect policyholders’ interests. Protection of policyholders would surely be considered appropriate prudential regulatory prerogatives under the Covered Agreement. We believe it is well within the state insurance regulators’ prudential authority, and thus it is “appropriate” under the Covered Agreement, for state insurance regulators to reserve the right to engage in prudential group supervision for these purposes over activities that are taking place within their own borders, particularly when there is a lack of understanding or recognition of each other’s regulatory regimes.

¹ Written Testimony of Michael T. McRaith, U.S. Senate Committee on Banking, Housing and Urban Affairs, “Examining the U.S.-EU Covered Agreement”, May 2, 2017. P. 8. (Link to testimony is here: <https://www.banking.senate.gov/imo/media/doc/McRaith%20Testimony%205-2-17.pdf>.)

² European Commission memo press release “EU-US Agreement on insurance and reinsurance,” dated September 22, 2017. Link: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_3426

Moreover, the Covered Agreement memorializes the validity of reciprocal recognition and thus, even if one argued that subgroup supervision is limited by the Covered Agreement, and that the FIO could dictate to the states what is “appropriate” prudential supervision, subgroup supervision based on a lack of reciprocal treatment is appropriate under the Covered Agreement. Former FIO Director Michael McRaith testified that:

“The cross-conditional nature of the Covered Agreement allows for the United States to provide the benefits of the Covered Agreement only insofar as the EU also provides the benefits. Both sides are disciplined into compliance with the Covered Agreement.”³

Thus, by enacting Section 4L(2)(e) of the Model Act, states would simply be codifying what the Covered Agreement permits them to do if the EU did not extend reciprocal recognition to the GCC.

While we support any diplomatic effort to resolve the issue of subgroup reciprocity, including using the Covered Agreement Joint Committee process, the Covered Agreement does not prohibit the imposition of subgroup capital reporting. Consequently, it is not clear that the issue would be raised or that this process would result in a solution. Moreover, preemption is not applicable to the group capital provision in Section 4L(2)(e). Preemption on capital or solvency measures is limited only to state insurance measures that “result in less favorable treatment of an EU insurer or reinsurer than a U.S. insurer or reinsurer.”⁴ Section 4L(2)(e) would not result in less favorable treatment; rather this provision ensures the U.S. would be able to respond to less favorable treatment by the EU, and would support a level playing field and policyholder protections.

Alternative Text

While we strongly support the language Connecticut, New Jersey, and Nebraska have proposed, we believe the following text could serve as a potential compromise if Working Group members continue to have concerns vis-a-vis the Covered Agreement:

“Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system, where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the commissioner for prudential oversight and solvency monitoring purposes, and/or for ensuring the competitiveness of the insurance marketplace, including consideration of whether the non-U.S. insurance holding company’s group-wide supervisor recognizes and accepts the group capital calculation required by an insurance commissioner for any U.S. based insurance group’s operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to “recognize and accept” the group capital calculation.”

³ May 2, 2017 McRaith testimony, p. 9.

⁴ 31 U.S.C. § 313(j).

Amendment to the Model Regulation

Regardless of which text is adopted for Section 4L(2)(e) of the Model Act, including the language in the existing draft, we recommend clarifying in the Model Regulation that the NAIC “recognize and accept” Committee Process should also include a review of subgroup supervision to assist states with their review under Section 4L(2)(e). We recommend the following language be added to Section 21E(1) of the Model Regulation:

- E. A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process:
 - 1. A list of jurisdictions that “recognize and accept” the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)], is published through the NAIC Committee Process to assist the lead-state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to Section 4L(2)(d)]. To assist with a determination under 4L(2)(e), the list will also identify whether a jurisdiction that is exempted under either [insert cross-reference to Sections 4L(2)(c) and 4L(2)(d)] requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.

Comments on other elements of the Model Act and Model Regulation

Section 4L(2)(f) should be deleted, as exemptions to the GCC should be limited to the provisions outlined in Sections 4L2(a) through 4L(2)(e). The ability to permit an exemption beyond this finite set of cases should be restricted to insurance holding company systems that meet the criteria of Section 21A of the Model Regulation.

Finally, we also seek confirmation that the Section 21B of the Model Regulation will be deleted entirely as discussed during the Working Group call on October 20.

Sincerely,

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

November 6, 2020

To: Group Capital Calculation Working Group Members

Re: Sub-Group Reciprocity

As you all know, New Jersey, Nebraska and Connecticut (the tri-state proposal) have jointly been working on a solution regarding Sub-Group reporting and reciprocity. Given the new compelling information and analysis of the Covered Agreement provided by our US Groups in support of sub-group reciprocity, we felt this was a conversation we would like the GCC WG to re-evaluate. Because our November 4th call has been postponed, we wanted to give you all ample time to review our proposal along with our thoughts for you to consider.

The proposal currently being exposed was changed considerably from the original language due to the recent FIO conversation with NAIC Staff and potential concerns raised around “appropriate” and “states authority”. We understand FIO has not and will likely not provide a written opinion in order for the NAIC and states to assess the legal merits of their concerns. Therefore, regulators have had no choice but to develop their opinions without this appropriate analysis. Our US Groups provided a compelling written opinion supported by examples which can be referenced on pages 2-4 of the Coalition letter dated October 30, 2020. It clearly states that sub-group reporting is not under the Covered Agreement authority.

The arguments against the tri-state proposal predominately come from non-US Groups. Several of us believe there has been nothing compelling put forth that should prevent US Regulators from supporting our domestic industry and ensuring consistent solvency protection for policyholders. The words “cooperation”, “insulting other jurisdictions” and “hurting the adoption of the GCC” have been liberally used both in letters and conversation. Several Commissioners deeply involved in the international negotiations with the EU actually have the opposite opinion. Not standing strong for our domestic industry may put us at a disadvantage. We want to reiterate that US Regulators believe that resolving conflicts among jurisdictions should always start with cooperation and transparent Supervisory College communication. The proposed lever within the Model is to be used where everything else has failed.

Regulators have asked some great questions regarding the sense of urgency our US industry has regarding reciprocity. Why is the sub-group reporting issue so important to you? What current requirements are being asked? We did ask these questions and those companies willing to talk about the issues cited Germany, France and Japan as jurisdictions that frequently ask for additional local reporting and requirements. We did push back and stated that states also have “local requirements” that may differ so how is this different. Their explanation was there are two issues that materially differ when dealing with sub-group reporting. First the resource burden to run two group capital calculations has to be considered. In addition, the likelihood that additional capital may have to be infused is a material threat that could lead to a competitive disadvantage to US companies. We also feel subgroup reporting provides a level playing field in policyholder considerations, including solvency analysis and protection.

When analyzing the three proposals (current exposure, tri-state, and Coalition) we note that all three proposals allow for GCC sub-group reporting, in addition to including consultation language for those

regulators still concerned with FIO. The material difference is centered around Commissioner discretion. While most of the time flexibility through Commissioner discretion is very crucial to state specific issues, this is not one of those times, in our view. This is a US industry issue and if there is no consistency in application, it puts our US Groups at a disadvantage and jeopardizes the whole purpose for a uniform US approach.

Given the additional information provided to the working group, we request discussion and reconsideration of our proposal on our call scheduled for November 17th. Due to timing of the E Committee meeting, and the fact that this option has been discussed in other open meetings, we would like to take this matter up for adoption on the 17th.

"Notwithstanding the provisions of Sections 4L(2)(c) and 4L(2)(d), a lead-state commissioner shall require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system where, after consultation with other supervisors or officials, (i) it is deemed appropriate by the commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace; and/or, (ii) if the non-U.S. insurance holding company's group-wide supervisor does not recognize and accept the group capital calculation required by the insurance commissioner for any U.S. based insurance group's operations in that non-U.S. jurisdiction. The commissioner shall promulgate regulations necessary for the administration of this subsection, to address jurisdictions deemed to "recognize and accept" the group capital calculation."

We also would like to propose an amendment to the model regulation, to add the following language. Note that this language was taken from page 5 of the Coalition letter.

E. 1. A list of jurisdictions that "recognize and accept" the group capital calculation pursuant to [insert cross-reference to Sections 4L(2)(d)], is published through the NAIC Committee Process to assist the lead-state commissioner in determining which insurers shall file an annual group calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under [insert cross-reference to Section 4L(2)(d)]. To assist with a determination under 4L(2)(e), the list will also identify whether a jurisdiction that is exempted under either [insert cross-reference to Sections 4L(2)(d) requires a group capital filing for any U.S. based insurance group's operations in that non- U.S. jurisdiction.

Thanks in advance for reading our letter and considering this proposal.

Kathy Belfi- Director Financial Regulation, Connecticut Insurance Department

Justin Schrader, Chief Financial Examiner, Nebraska Department of Insurance

Dave Wolf, Deputy Executive Director, New Jersey Department of Banking and Insurance

Supplemental Appendix to October 30, 2020 Comment Letter from Berkshire Hathaway Group of insurance companies, Liberty Mutual Insurance Group, MetLife, Inc., Odyssey Reinsurance Company, Prudential Financial, Inc., Reinsurance Group of America, Incorporated, The Travelers Companies, Inc., Transatlantic Reinsurance Company

As discussed in the October 30, 2020 U.S. companies coalition letter, the tri-state proposal for 4L(2)(e) does not conflict with the Covered Agreement. Should any doubts remain concerning the scope of the Covered Agreement’s application, below is additional support regarding states’ subgroup supervisory authority and the meaning of “where appropriate”. Former FIO Director Michael T. McRaith’s written Senate testimony in support of the Covered Agreement included a “paragraph-by-paragraph description of the legal benefits of the Covered Agreement for the United States.”¹

With respect to **Article 1 – Objectives**, of the Covered Agreement, McRaith clarified that “these goals [i.e., objectives] describe the outcome of the Agreement,” including the goal to “(c) Prohibit the application of *group* supervision by an EU regulatory authority *except to the extent that the U.S. insurer has operations or activities occurring in or originating from the EU*, including with respect to solvency and capital, governance and reporting.” (Emphasis added.) (P. 2 of Annex A.)

With respect to **Article 4—Group Supervision**, McRaith explained the meaning of Article 4(a) of the Covered Agreement:

“[Article 4](a) Recognizing the value of supervisory colleges, the Agreement clarifies that only U.S. insurance supervisors will supervise the U.S. insurers *at the worldwide group level*. In other words, *EU supervisors can apply EU law and regulation to U.S. insurers only for operations and activities that occur in or originate from the EU. The limitation applies to all aspects of group supervision*, including solvency and *capital*, governance, and reporting.

In other words, U.S. insurers are supervised at the *worldwide* group level as determined by U.S. state insurance regulators.”² (Emphasis added.) (P. 4 of Annex A.)

The provision in Article 4(b) stating “Host supervisory authorities may exercise group supervision, *where appropriate*, with regard to a Home Party insurance or reinsurance group at the level of the parent undertaking in its territory,” has been cited as a potential limitation on state regulator’s authority to engage in subgroup supervision and enforce subgroup reciprocity based on the purpose or motive of the regulators. McRaith spoke directly to the meaning of Article 4(b), making clear no such limitation exists:

“[Article 4](b) Subject to Article 3 [Reinsurance], U.S. insurers and reinsurers operating in the EU are subject to EU law and regulation *only for purposes of operations and activities occurring in or originating from the EU*.”³ (Emphasis added.) (P. 4 of Annex A.)

¹ Written Testimony of Michael T. McRaith, U.S. Senate Committee on Banking, Housing and Urban Affairs, “Examining the U.S.-EU Covered Agreement”, May 17, 2017, Annex A – Replies to Questions for the Record. Link: <https://www.banking.senate.gov/imo/media/doc/McRaith%20Testimony%205-2-17.pdf>.

² For reference, Article 4(a) of the Covered Agreement provides: “(a) Without prejudice to subparagraphs (c) to (h) and participation in supervisory colleges, a Home Party insurance or reinsurance group is subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by its Home supervisory authorities, and is not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by any Host supervisory authority.”

³ For reference, Article 4(b) of the Covered Agreement provides: Notwithstanding subparagraph (a), Host supervisory authorities may exercise supervision with regard to a Home Party insurance or reinsurance group as set out in subparagraphs (c) to (h). Host supervisory authorities may exercise group supervision, **where appropriate**, with regard to a Home Party insurance or reinsurance

Supplemental Appendix to October 30, 2020 Comment Letter from Berkshire Hathaway Group of insurance companies, Liberty Mutual Insurance Group, MetLife, Inc., Odyssey Reinsurance Company, Prudential Financial, Inc., Reinsurance Group of America, Incorporated, The Travelers Companies, Inc., Transatlantic Reinsurance Company

McRaith also provided further clarification regarding the application of Solvency II group capital under Article 4(h) of the Covered Agreement: “For that five (+) year period [after the date of signature of the Covered Agreement], and upon completion, U.S. insurers operating in the EU are not thereafter subject to reporting or maintaining the Solvency II *worldwide* group capital requirement. (Emphasis added.) (P. 5 of Annex A.)

These statements explaining the benefits to the U.S. of the Covered Agreement make clear that the EU and U.S. regulators are prohibited from engaging in *worldwide* group supervision (including group capital). Exercising subgroup jurisdiction “where appropriate” simply means “for purposes of operations and activities occurring in or originating from the EU [i.e., the host jurisdiction]”. This concerns only the reach of the regulator’s authority outside of its own territory. Whether, how, and why to engage in subgroup supervision for “operations and activities occurring in or originating from a host jurisdiction” is left entirely to the determination of the host prudential supervisors, e.g., state regulators.

group at the level of the parent undertaking in its territory. Host supervisory authorities do not otherwise exercise worldwide group supervision with regard to a Home Party insurance or reinsurance group, without prejudice to group supervision of the insurance or reinsurance group at the level of the parent undertaking in the territory of the Host Party.” (Emphasis added.)

**Comment Summary - GCC Template and Instructions
 November 17**

Issue 1	Commenter	Essence of Comment	Primary Rationale
<p>300% Sensitivity Test</p>	<p>ACLI</p>	<p>As noted in the Working Group meeting, the adjustment to 300% seems more like a straightforward mathematical adjustment as opposed to a sensitivity test; as a result, we are unsure as to the necessity of adding that calculation to the template.</p>	<p>We would also like to understand more about how the 300% sensitivity test results are intended to be used, or if they will be addressed in the Financial Analysis Handbook ("FAH"). Finally, we believe efforts to consider the topic of capital stress testing, which was identified in the framing of the recommendation on calibration, warrants a broader discussion and coordination with the Financial Stability (EX) Task Force. For these reasons, we hope that the retention of the 300% sensitivity test will remain eligible for further examination and consideration in 2021, particularly with respect to how it may be used by regulators once the FAH is finalized</p>
<p>Staff recommendation: No change</p> <p>Staff continues to support careful coordination between the GCC Template, and the FAHB analysis guidance as regards the use calibration and sensitivity analysis.</p> <p>With the exception of scalars and debt allowance the 300% calculation is a mathematical exercise just as it is in RBC. The FAHB guidance should address how to incorporate that sensitivity analysis (and other sensitivity analysis) into the lead-State review. Particularly in cases where any RBC filers in the group are triggering the trend test and / or if other analytics suggest a negative trend in the group data.</p> <p>Staff notes that industry representatives are assisting in revising and reviewing the analysis guidance.</p>			

Issue 2	Allowance for Debt	Committer	Essence of Comment	Primary Rationale
	AHIP	ACPIA	<p>...the 30%/15% proxy allowance for senior/hybrid debt be increased, consistent with the GCCWG's prior action to increase the overall limit from 50% to 75% of Total Adjusted Carrying Value.</p> <p>Proposed language on "call" / "make whole" provisions in qualifying debt.</p>	<p>The logic that was stated for increasing the overall limit but not the proxy limit seems fraught with some inconsistency. Book value is lost by re-stacking insurers at statutory values, and that impacts both limits. While it is true that the proxy calculation includes a provision for debt that is not subject to that re-stacking impact, both limits can nonetheless be impacted adversely by stress which introduces potential procyclicality.</p> <p>Borrows from ICS language</p>
<p>NAIC Staff Recommendation: No changes to the proxy percentages. The APCIA alternative has been incorporated into the GCC: No other changes to the Debt allowance calculation.</p>				
<p>We reiterate that for the proxy limits of 30% / 15%, the value of the qualifying debt is added to TACV for purposes of applying the limit so is distinct in that respect from the increase to the overall limit.</p>				
<p>The APCIA approach may increase the debt allowance compared to the proxy approach, subject to the overall 75% limit. Staff will rerun the field test data including the APCIA method.</p>				
<p>With regard to call / make whole provision, some edits to the proposed language can be considered.</p>				
<p>See further comments under Issue 4, below.</p>				

Issue 3 Treatment of Financial Entities without Capital Requirements	Commenter	Essence of Comment	Primary Rationale
		<p>...asset managers tend to be low risk and require very little capital from the insurer or group parent as they mostly contain separate account assets. The primary risk to insurers is loss of revenue in a market downturn, though the risk can vary. The stratification methodology needs to be clear and constructed in such a way that ensures comparability across firms.</p>	<p>In some cases, asset managers may be subject to SEC/FINRA capital requirements. We acknowledge, in response to our prior comment seeking clarification for the treatment of asset managers subject to SEC/FINRA capital requirements, that the NAIC intends the GCC to disregard those requirements (which would otherwise determine both local regime available capital (carrying value) and local regime calculated capital) and instead apply its stratification methodology based on average revenue. It will be important that the NAIC's stratification methodology appropriately differentiate according to risk as does the sectoral regulatory regime.</p>
<p>Staff Recommendation: No change</p> <p>If there are risk-based (i.e. not a simple stated dollar capital) standards applied to entities that are overseen by FINRA or SEC they should be provided along with how they are applied (e.g. action levels), and their future use for a given financial entity can be considered. However, for GCC purposes, use of a stratified risk approach should allow for addressing level of risk selected and reviewed, since specific entity activities may vary from group to group.</p>			

<p>Issue 4 Next Steps / Data collection</p>	<p>ACLI</p>	<p>...the elimination of the 5% materiality threshold (para. 9) may impact how groups complete the template, and therefore could lead to different results than the NAIC received in the previous field test exercise. As such, reviewing the data collected in 2019 against the 2020 template is not an adequate substitute...</p> <p>Now that a number of foundational decisions have been made, we believe it is important for the NAIC to perform a holistic review of the framework using up-to-date data provided by the companies that will be subject to the tool to ensure it meets its objective of providing insight into risks without creating the potential for unintended consequence</p>	<p>While we agree that the 5% threshold, as drafted, might be too high to prove useful, we do believe that a quantitative backstop was helpful for our analysis. NAIC staff noted that regulators never agreed on the 5% threshold and therefore recommended removal – we would suggest that this is an area where more field-testing data could assist in calibrating an appropriate quantitative measure for materiality.</p> <p>We believe it is possible to pursue a robust field testing and refinements where they are determined to be necessary, in a way that supports and promotes the forward progress, adoptions and implementation of the GCC in time to satisfy the requirements under the Covered Agreements with the EU and the UK.</p>
<p>Staff Recommendation: Support data collection in 2021</p> <p>Staff is open to reinstating a quantitative benchmark but are skeptical as to whether field testing can provide an agreed upon benchmark that would override the remaining principles for material risk.</p> <p>Staff will run the field test data through the agreed upon version of the template as a first step.</p> <p>Staff supports data collection in 2021 to continue exploring appropriate scalars for foreign insurer capital and the impact of the current debt allowance structure and limits, as well as making other clarifications. It is noted that all applicable groups will have the opportunity to fill in the adopted template and provide feedback to the Working Group via the lead-State.</p>			

Issue 5 Other Comments	Commenter	Essence of Comment	Primary Rationale
	ACLI	Suggested Wording for the Definition of a Financial Entity Staff Recommendation: Accept revision.	
	AHIP	Reporting of Intangible Assets: Staff Recommendation: Addressed via changes in the Other Information Tab	



Mariana Gomez
Vice President & Associate General Counsel
202-624-2313 t
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Nov. 13, 2020

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

Re: Fatal Flaws Exposure of GCC Instructions and Template (Oct. 30) and the 11/17 vote on the Model Holding Company Act (#440) and Regulation (#450)

Dear Commissioner Altmaier,

The ACLI is pleased to offer these comments in response to the fatal flaws exposure of the NAIC's Group Capital Calculation ("GCC") Instructions and Template and the upcoming GCC Working Group's vote on the revisions to the Model Holding Company Act and Regulation. ACLI congratulates you and the Working Group members and NAIC staff on reaching this milestone in the development of the GCC – it represents a tremendous amount of work by regulators and NAIC staff, and another positive step forward in the development of a group capital calculation.

ACLI looks forward to continuing to work with the NAIC and state insurance departments on the GCC throughout its next phase of development.

A brief technical appendix is attached with a few detailed comments on the Instructions. These items are not necessarily fatal flaws, as much as they are areas that demonstrate where further refinement may be needed after the adoption of the Instructions and Template in November 2020.

In response to the exposure, we wish to offer the following points for your consideration as well as a brief technical appendix that includes a few detailed comments on the Instructions that are intended to demonstrate where further refinement may be needed.

ACLI supports the adoption of the GCC Instructions and Template and we strongly encourage the NAIC to proceed with a robust field-testing program in 2021.

ACLI supports the advancement of the GCC Instructions and Template on November 17, 2020, but we also believe there are areas within the GCC, such as the recent addition of risk stratification charges for asset-managers (para. 64) that warrant additional field testing. Other items, such as the elimination of the materiality threshold (para. 9) may impact how groups complete the template,

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and therefore could lead to different results than the NAIC received in the previous field test exercise. As such, reviewing the data collected in 2019 against the 2020 template is not an adequate substitute, as firms will complete the Template differently now based on subsequent revisions to the Instructions. In addition, now that a number of foundational decisions have been made, we believe it is important for the NAIC to perform a holistic review of the framework using up-to-date data provided by the companies that will be subject to the tool to ensure it meets its objective of providing insight into risks without creating the potential for unintended consequence. We believe it is possible to pursue a robust field testing and refinements where they are determined to be necessary, in a way that supports and promotes the forward progress, adoptions and implementation of the GCC in time to satisfy the requirements under the Covered Agreements with the EU and the UK.

ACLI strongly supports and appreciates the Working Group's decision to adopt a 200 % calibration for the GCC

ACLI strongly supports and appreciates the Working Group's recent adoption of 200% Authorized Control Level RBC as the calibration level for the GCC.

We are pleased to have had the opportunity to express support during the 10/30 meeting for the NAIC staff's recommended path forward on the calibration level. Discussion with our members after the 10/30 call highlighted a few items that we hope can be further explored as the Working Group continues to advance the GCC in 2021. As noted in the Working Group meeting, the adjustment to 300% seems more like a straightforward mathematical adjustment as opposed to a sensitivity test; as a result we are unsure as to the necessity of adding that calculation to the template. We would also like to understand more about how the 300% sensitivity test results are intended to be used, or if they will be addressed in the Financial Analysis Handbook ("FAH"). Finally, we believe efforts to consider the topic of capital stress testing, which was identified in the framing of the recommendation on calibration, warrants a broader discussion and coordination with the Financial Stability (EX) Task Force. For these reasons, we hope that the retention of the 300% sensitivity test will remain eligible for further examination and consideration in 2021, particularly with respect to how it may be used by regulators once the FAH is finalized.

ACLI supports the Working Group's vote (14-4) to eliminate the limited filing exemption in 21(B)(1) and we believe the proposed definition of limited filing report demonstrates why it was appropriate to eliminate the exemption.

The GCC Working Group voted, 14 to 4, to eliminate section 21B(1), in response to concerns that the exemption would deprive regulators of valuable analytical data, and hurt the credibility of the GCC by potentially exempting large, complex groups that include material financial entities and non-U.S. insurance operations. ACLI supports the Working Group's decision to strike the exemption.

NAIC staff exposed a definition of "limited filing report" to clarify that a limited filing report consists of Schedule 1 and any supplementary data that is necessary to populate Input 4 – Analytics, of the GCC template. However, a group that submits a limited filing report would not generate enough data to create a GCC ratio, and these groups would also not be required to submit the sensitivity analysis tab that analyzes the impact of permitted and prescribed practices on groups. This type of limited reporting, is appropriate when applied to small groups (i.e., those small groups eligible for exemption under 21A or 21B(2)), but we believe this would make much less sense and could

damage the credibility of the GCC if it was applied to large and complex groups that would otherwise be eligible for exemption if section 21B(1) was reinstated.

Conclusion

Thank you for the opportunity to share our views on the 10/30 exposure of the NAIC GCC Instructions and Template. As a reminder, we have attached some technical comments in an appendix to this letter. We appreciate the opportunities that we have had over the years to engage in a meaningful dialogue with regulators on this topic, and we welcome the chance to answer any questions or comments that you may have about our letter.

Sincerely

A handwritten signature in cursive script that reads "Mariana Gomez Hock".

Appendix – Technical Comments

- I. **Paragraph 64** – we urge the NAIC to field test and allow for comment on the stratification of entities based on risk level. A major category of entities that might fall into this category are asset managers, which can often be a sizable portion of an insurance group’s non-insurance business. These asset managers tend to be low risk and require very little capital from the insurer or group parent as they mostly contain separate account assets. The primary risk to insurers is loss of revenue in a market downturn, though the risk can vary. The stratification methodology needs to be clear and constructed in such a way that ensures comparability across firms. Hence, once developed, the stratification methodology should be opened for comment and field tested in 2021. In some cases, asset managers may be subject to SEC/FINRA capital requirements. We acknowledge, in response to our prior comment seeking clarification for the treatment of asset managers subject to SEC/FINRA capital requirements, that the NAIC intends the GCC to disregard those requirements (which would otherwise determine both local regime available capital (carrying value) and local regime calculated capital) and instead apply its stratification methodology based on average revenue. It will be important that the NAIC’s stratification methodology appropriately differentiate according to risk as does the sectoral regulatory regime.
- II. **Paragraph 16** – the revisions to this paragraph include the removal of the 5% quantitative benchmark for determining materiality. While we agree that the 5% threshold, as drafted, might be too high to prove useful, we do believe that a quantitative backstop was helpful for our analysis. NAIC staff noted that regulators never agreed on the 5% threshold and therefore recommended removal – we would suggest that this is an area where more field-testing data could assist in calibrating an appropriate quantitative measure for materiality.
- III. **Paragraph 9** correctly recognizes that groups often set up entities to manage the general account assets of the insurance operations; these assets are already accounted for in RBC and hence may be considered “non-financial.” However, these entities might also manage assets for third parties on a fee for service basis and hence, the GCC must ensure that the proportion of those assets are small compared to the insurer’s own general account assets or otherwise require de-stacking as a “financial entity”. However, groups might split up the general account assets into several small entities or one large entity and the language should be adjusted to accommodate either structure. That is, the 90% threshold may, based on the structure, be measured individually for each entity or in the aggregate for all such entities. Our edits are below, for your consideration.

9. Financial Entity: *A non-insurance entity that engages in or facilitates financial intermediary operations (e.g., accepting deposits, granting of credits, or making loans, managing, or holding investments, etc.). Such entities may or may not be subject to specified regulatory capital requirements of other sectoral supervisory authorities. The primary examples of financial entities are commercial banks, intermediation banks, investment banks, saving banks, credit unions, savings and loan institutions, swap dealers, and the portion of special purpose and collective investment entities (e.g., investment companies, private funds, commodity pools, and mutual funds) that represents the Broader Group’s aggregate ownership in such entities, whether or not any member of the Broader Group is involved in that entity’s management responsibilities (e.g., via investment advisory or broker/dealer duties) for those entities. For purposes of this definition, a subsidiary of an insurance company whose predominant purpose is to manage or hold investments or act as a broker / dealer for those investments on behalf of the insurance company and its affiliated insurance (greater than 90% of all such investment*

subsidiaries' assets under management or held are owned by or for the benefit of these insurance affiliates) should NOT be considered a Financial Entity. In the case where an insurer sets up multiple subsidiaries for this purpose, the 90% may be measured in the aggregate for all such entities. Similarly, in the case of collective investment pools (e.g. private funds, commodity pools, and mutual funds) the 90% may be measured individually, or in the aggregate for each subtype (e.g., private funds, commodity pools, and mutual funds). In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through the offering of products or transactions outside the group such as a mortgage, other credit offering, or a derivative, and intra-group cross support mechanisms (as defined below).



November 13, 2020

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

By e-mail to Lou Felice (LFelice@naic.org)

Re: GCC Instructions Exposed for “Fatal Flaw” Comments

Dear Mr. Altmaier:

America’s Health Insurance Plans (AHIP) appreciates the opportunity to comment on the Working Group’s proposed revisions to the Group Capital Calculation (GCC) Instructions and the related Staff Revisions Summary.

To begin, we again acknowledge the active engagement we have experienced over the past several months with the GCC Working Group (GCCWG) and with NAIC staff. The process has been productive and in a spirit of cooperation and collaboration, and we believe has resulted in demonstrative improvement in the proposed GCC. We look forward to continuing the dialogue to assure a GCC that is appropriate for the U.S. insurance market and our system of state-based supervision.

As a result of that productive engagement with the GCCWG, AHIP’s comments that follow on the “fatal flaw” exposure of the GCC Instructions are few, and brief.

Treatment of Debt: In our prior letter of October 15, 2020, we commented on the treatment of debt, and suggested that the 30%/15% proxy allowance for senior/hybrid debt be increased, consistent with the GCCWG’s prior action to increase the overall limit from 50% to 75% of Total Adjusted Carrying Value. Our suggestion was not accepted by the GCCWG on its call of October 30, 2020.

As we revisit the discussion of the October 30 call however, the logic that was stated for increasing the overall limit but not the proxy limit seems fraught with some inconsistency. Book value is lost by re-stacking insurers at statutory values, and that impacts both limits. While it is true that the proxy calculation includes a provision for debt that is not subject to that re-stacking impact, both limits can nonetheless be impacted adversely by stress which introduces potential procyclicality. A modest increase in the proxy, say from 30-40%, would be directionally consistent with the prior action taken on the overall limits, would recognize the potential for

procyclical impacts, and be of some benefit to our members (who otherwise would not receive any benefit from the increase in the overall limit alone).

Thus, we respectfully ask the GCCWG to reconsider increasing the proxy limit in that light.

Intangible Assets: Our members are increasingly concerned about the focus of the GCCWG on the collection of data on intangible assets through a template the purpose of which is to calculate the GCC, yet that calculation does not itself require any data on intangibles. They understand the intent of the GCC to be an analytical tool and the interest in intangibles, e.g., as to their liquidity. That said, they question the template as the best way to consider intangibles.

Our members have intangible assets in the form of goodwill, the excess of the purchase price of subsidiaries over the value of tangible assets acquired. In some cases, goodwill has been reallocated to other intangible assets, such as the value of customer relationships or trade names. Regardless, the amounts represent valuable assets that can be monetized in various ways if need be to support various needs across the enterprise. The topic is, however, inherently complex, and circumstances will vary across firms. SAPWG has some matters on its agenda relating to purchase accounting, goodwill, and push-down accounting. And regulators have access to Form 10-Ks of public companies that already transparently report the nature, amounts, and activity involving intangible assets.

Consequently, we believe that this is an area that can best be addressed through guidance in the Financial Analysts Handbook. AHIP and its members would be glad to assist in providing information and helping to develop that guidance.

* * * * *

Again, we thank you for this ongoing climate of cooperation, patience, and collaboration. We look forward to continuing to work with you as we all begin to see the light at the end of the tunnel.

Sincerely,

America's Health Insurance Plans
Bob Ridgeway
Bridgeway@AHIP.org
501-333-2621

Cc: Tom Finnell

Summary of Revisions Post October 30, 2020 Fatal Flaw Exposure:

Only the new revisions made in response to general comments are marked in the November 16 Version of the GCC Instructions are shown. In all applicable sections the revision to a 200% x ACL calibration have been made.

Section II - Definitions

- Paragraph 9 clarifies treatment of financial entities regulated by SEC and FINRA.
- Paragraph 9 Further clarifies when to treat affiliated investment managers and underlying collective investment entities as non-financial entities
- Paragraph 16 (New) adds a definition of a limited GCC filing

Section IV – General Instructions

- Adds instructions on which Tabs / Data to include in a Limited GCC Filing

Input 2 - Inventory

- Paragraph 66 (Page 32) clarifies treatment of non-operating holdcos and their related debt.

Input 3 - Capital Instruments

- Paragraph 69 (Page 36) adds call criteria for qualifying debt.
- Paragraph 70 (Page 39) add NEW Y/N Column 13 relating to “call” provisions.
- Paragraphs 70 71 (Page 39) replaced “Downstream Tracked” with the APCIA suggested approach.

Input 5 – Sensitivity Analysis

- Paragraph 74 (Page 40) Adds new Analysis 1 – 300% ACL sensitivity analysis.

Input 6 – Other Information

- Paragraph 80 (Page 44) Revised data required for Intangible Assets.

The GCC Template will be updated in line with the revised instructions where applicable.

Draft: 9/2/20

NAIC/AICPA (E) Working Group
Conference Call
August 26, 2020

The NAIC/AICPA (E) Working Group of the Financial Condition (E) Committee met via conference call Aug. 26, 2019. The following Working Group members participated: Doug Stolte, Chair (VA); Laura Clements and Susan Bernard (CA); Rylynn Brown (DE); Kevin Clark (IA); Judy Weaver (MI); Levi Nwasoria (MO); Lindsay Crawford (NE); Doug Bartlett (NH); Dale Bruggeman (OH); Melissa Greiner (PA); Johanna Nickelson (SD); and Jake Garn (UT). Also participating was: Jessie Li (DC).

1. Discussed the Premium Threshold

Mr. Stolte said the Working Group is responsible for reviewing the premium threshold amounts contained within the *Annual Financial Reporting Model Regulation* (#205) on an annual basis. Bruce Jenson (NAIC) gave an update on the results of the annual review, noting that as of Dec. 31, 2019, 92.5% of all direct written premiums and 94% of all gross written premiums would be subject to reporting requirements. Mr. Stolte noted that these results were within the Working Group's expectations and that no action to adjust the threshold was deemed necessary at this time.

2. Heard an Update on Recent Auditing Pronouncements

Jean Connolly (PricewaterhouseCoopers) provided an overview of recent accounting and auditing pronouncements affecting statutory audit reports. Ms. Connolly highlighted that the effective dates of Statement on Auditing Standards (SAS) Nos. 134–140 have been delayed to Dec. 15, 2021, to provide more time for firms to implement due to the coronavirus pandemic. Ms. Connolly stated that the most significant of these pronouncements for statutory audits is *SAS No. 139—Amendments to AU-C Sections 800, 805 and 810 to Incorporate Auditor Reporting Changes from SAS No. 134*. Ms. Connolly stated that SAS No. 139 will affect audits of financial statements prepared in accordance with special-purpose frameworks by requiring a statement indicating that the financial statements may not be suitable for another purpose outside of that intended by the framework. Ms. Connolly stated that the change is not viewed as substantive as insurance regulators are the primary users of the statutory audit reports and understand their intended purpose. Mr. Stolte thanked Ms. Connolly for her overview and encouraged Working Group members to continue educating themselves on new auditing standards.

3. Heard an Update on the Completeness and Accuracy Training Project

Mr. Stolte said that this project was first discussed during a Working Group conference call last year and came about due to questions received and issues identified through NAIC accreditation reviews and the NAIC Peer Review Program. The project is intended to provide training to address how the completeness and accuracy of data underlying reserve estimates can be verified during financial statement audits and financial examinations. Members of the American Institute of Certified Public Accountants (AICPA) agreed to work with NAIC staff in preparing and presenting the training.

Miguel Romero (NAIC) provided an update on the status of the training project and said that a two-part webinar series is scheduled for Sept. 1 and Sept. 3 to provide training to financial regulators in this area. The first session will focus on the overall audit approach and control testing, whereas the second session will focus on substantive testing. Mr. Romero stated that the training covers key concepts and best practices in testing the completeness and accuracy of data underlying the reserving estimates for each major line of insurance business (i.e., Property/Casualty [P/C], Life and Health). The training was largely prepared by AICPA member firm volunteers, including individuals from Baker Tilly; BKD; Crowe; Deloitte & Touche; EisnerAmper; Ernst & Young (EY); Johnson Lambert; KPMG; PwC; and RSM. Mr. Romero thanked the firms for their participation in the project, with special thanks to Kim Kushmerick (AICPA), Ms. Connolly and Art Salvadori (Crowe) for organizing and leading the project.

Ms. Connolly thanked Mr. Romero and Mr. Jenson for their role in supporting the project. Ms. Greiner asked whether financial analysts would benefit from the training even though it is primarily designed for financial examiners. Mr. Stolte stated that he would be encouraging his analysts to participate and that they can benefit from the training as well. Mr. Jenson stated that the training was prepared to meet the needs of financial examiners, but analysts may also be able to benefit from some of the concepts.

Ms. Li asked whether registration is still open for the training sessions. Mr. Romero stated that the sessions are likely full at this point as there is a limit of 500 participants, but the sessions will be recorded and posted for online viewing after the fact.

4. Discussed Questions Received on Audit Awareness and Qualification Letters

Mr. Stolte stated that the next agenda item is to discuss questions that have come up regarding the audit awareness and qualifications letters, both of which are required under Model #205. These questions relate to topics that are unclear based on the text of Model #205.

Mr. Jenson stated that the first question received relates to audit awareness letters required to be filed by the independent certified accountant or accounting firm retained by an insurer to conduct its annual audit. The model requires a letter to be filed whenever a new accountant or firm is appointed, indicating their awareness of the provisions of the insurance code and regulations that apply to the audit. However, the model does not clarify the frequency at which the letter should be filed, and questions have arisen regarding state expectations in this area.

Ms. Connolly stated that her firm typically sends annual letters to Florida, New York and Texas, but she is not aware of any other states that expected letters more frequently than whenever there is a change in audit firms. Mr. Stolte asked NAIC staff to conduct a survey of states to determine which states expect awareness letters more frequently than when there is a change in audit firm and why to support discussion in this area. Mr. Stolte also stated that the Working Group may be able to update guidance in the *Model Audit Rule Implementation Guide* if states can reach a consensus on this issue.

Mr. Jenson stated that the other question that has come up recently relates to auditor qualifications letters that are required under Model #205. While the auditor qualifications letter is required to be filed annually, it requires general information on the background and experience of staff members involved in the audit and does not explicitly require the name of the audit engagement partner to be provided. As such, some regulators have found it difficult to use the information provided in the letter to verify an audit firm's compliance with partner rotation requirements and have suggested clarifying the expectation for the audit engagement partner to be named in the letter.

Mr. Bruggeman stated that he expects the insurer's audit committee and the audit firm itself to take responsibility for ensuring compliance with partner rotation requirements. Mr. Bruggeman also stated that compliance could be checked during an exam, without the need to include the partner's name in the qualifications letter. Ms. Weaver stated that her state has taken steps to verify compliance outside of the exam process and that including the partner's name in the annual letter could make it easy to do so. Mr. Stolte stated that while he agrees that compliance is the responsibility of the audit committee and the firm itself, it does not hurt for regulators to have tools to verify. Mr. Stolte asked Ms. Connolly if AICPA members would be open to including the audit engagement partner's name in the annual qualifications letter. Ms. Connolly stated that firms are not opposed to including the name of the audit engagement partner as it is provided to the U.S. Securities and Exchange Commission (SEC) for audits of public companies.

Mr. Jenson suggested that NAIC staff could poll states on their interest in obtaining the audit engagement partner's name in the annual qualifications letter through the survey intended to gather information on awareness letter expectations. Mr. Stolte agreed and asked NAIC staff to include a question on this in the survey.

5. Discussed Other Matters

Mr. Stolte stated that there was one other matter brought to his attention for discussion today from NAIC staff regarding the need for input on a project of the Statutory Accounting Principles (E) Working Group. Jim Pinegar (NAIC) stated that the Financial Accounting Standards Board (FASB) exposed a proposed statement of financial accounting concepts that would potentially revise the definitions of assets and liabilities. As such, the Statutory Accounting Principles (E) Working Group will be discussing the proposed exposure and would welcome comments and input to this process. Mr. Bruggeman stated that NAIC staff have developed some initial thoughts regarding the exposure for regulators to consider, but additional input would be welcome.

Having no further business, the NAIC/AICPA (E) Working Group adjourned.

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Draft: 10/30/20

National Treatment and Coordination (E) Working Group
Virtual Meeting
October 13, 2020

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met Oct. 13, 2020. The following Working Group members participated: Debbie Doggett, Co-Chair (MO); Linda Johnson, Co-Chair (WY); Cindy Hathaway and Jacline Nguyen (CO); Joan Nakano (CT); Alisa Pritchard (DE); Alison Sterett (FL); Stewart Guerin (LA); Michelle Scaccia (MT); Cameron Piatt (OH); Kimberly Rankin (PA); Robert Rudnai (TX); Jay Sueoka and Dava Ann Neal (UT); Susan Baker and Ron Pastuch (WA); and Amy Malm (WI).

1. Adopted it Aug. 26 Minutes

The Working Group met Aug. 26 and took the following action: 1) received a referral from the Chief Financial Regulator Forum regarding domestic surplus lines insurers; 2) exposed proposal 2020-01; 3) exposed proposal 2020-02; and 4) discussed Form 14.

Mr. Piatt made a motion, seconded by Mr. Guerin, to adopt its Aug. 26 minutes (Attachment Five-A). The motion passed unanimously.

2. Adopted Proposal 2020-02

Ms. Doggett said that one comment was received regarding the proposal to include the corporate governance annual disclosure (CGAD) on the primary application checklist, and that was to either identify that this requirement was a redomestication-only requirement or move it from its current location under item 7 Holding Company Act Filings to new item 21 under Filing Requirements – Redomestications Only.

Ms. Malm asked if the CGAD requirement could be located in both places for companies that are not part of a holding company structure. Ms. Nguyen concurred.

Jane Barr (NAIC) asked if both locations would hold the new requirement; i.e., should the instructions be updated to show it both under Holding Company Act Filings and Filing Requirements – Redomestications Only.

Mr. Piatt asked if a start-up would not have a CGAD, then would the checklist need to indicate that.

Ms. Malm said that if a start-up company is part of a group, then state insurance regulators would want the CGAD included in the application.

Ms. Scaccia suggested adding the words “if applicable” for the CGAD requirement under item 7 of the checklist for Holding Company Act Filings.

Mr. Piatt said that if a start-up company is part of a group and a CGAD is available, it should be attached.

Ms. Nguyen asked if the title could be changed to “Additional Filing Requirements for Redomestications.”

Ms. Barr said the checklist is derived from the application instructions, so any changes to the checklist would also need to be made to the instructions. She said the primary application will remain combined for another year until the electronic application is developed for start-ups and redomestications. She asked for clarification on the location of the instruction for CGAD under Filing Requirements – Redomestications Only as new item 21.

Ms. Malm made a motion, seconded by Ms. Nguyen, to adopt including the CGAD requirement under item 7 with a friendly amendment to also include it as new item 21 on the primary checklist and in instructions (Attachment Five-B). The motion passed unanimously.

3. Adopted Proposal 2020-01

Ms. Johnson said the purpose of proposal 2020-01 is to include the option of online notarization of the biographical affidavit and affidavit of lost certification of authority. She said that due to the COVID-19 pandemic, many states and companies have found the need to rely on online processes. Comments were submitted by First Advantage and the American Property Casualty Insurance Association (APCIA).

Ms. Barr added that no state indicated the need to modify the language.

Gina Hudson (Liberty Mutual) asked what the effective date would be for this update.

Ms. Johnson said that the effective date could either be if/when the Financial Condition (E) Committee adopts this change during its Dec. 8 meeting; or, to be cleaner, the effective date could be Jan. 1, 2021.

Ms. Hudson asked if companies could start using the amended form now.

Ms. Barr explained that the form's revision date will be the effective date the Working Group agrees upon, noting that the form will not be made available until that date. She reminded the states and the industry that the forms are valid as long as the signature date is not older than six months, so companies that are currently working on applications those affidavits are valid for up to six months from that original signature date; after that, the newer revision date must be used.

Ms. Sterett made a motion, seconded by Ms. Scaccia, to adopt proposal 2020-01 with an effective date of Jan. 1, 2021 (Attachment Five-C). The motion passed unanimously.

4. Discussed Form 14 Survey Results

Ms. Johnson said 32 states responded to the Form 14 survey. She added that the remaining states that did not respond will be contacted to provide a response prior to posting the information on the Uniform Certificate of Authority Application (UCAA) website by Nov. 1.

Ms. Barr added that for the states that provided multiple conflicting responses, NAIC staff will be contacting them for clarification so that only one response/requirement will be posted in the chart for that state.

Ms. Nguyen asked if the form had been recently modified to remove the additional contact information.

Ms. Barr explained that the form that is posted on the website and the electronic form when printed will appear different. The benefit of using the online form is that when multiple contact changes are selected, then contact information space is available for every contact selected. If filed in hardcopy the company would need to attach multiple copies of Page 2 of the form to provide the appropriate contact information for the number of changes selected on Page 1 of the form.

Ms. Neal asked how a company would provide different address information per state for specific contacts if using the electronic submission.

Ms. Barr clarified that if the contact information is different based on the state, then the company should file those contact changes separately. In the electronic application, the contact/address information would be submitted to every state selected.

Ms. Barr added that there has been discussion with the developers of the NAIC State Based Systems (SBS) application, so information entered into the UCAA can also be transmitted to SBS. Once the hardcopy applications are created in the electronic database, then enhancements can be made to the existing electronic UCAA functionality by allowing them to communicate with other NAIC databases.

5. Discussed Other Matters

a. Form 3

Ms. Johnson said statutory changes the states have made to their lines of business have caused Form 3 issues in the electronic application when amended and will change the form revision dates. By limiting the amendment time frame of two years from the original submission date, the number of changes on the form will be reduced.

Ms. Barr added that when a state closes an application because the company withdrew its application, the close date should not be removed and allow the company to amend their application to reapply. Instead, the company should submit a new application to that state by either cloning or starting a new application.

b. Biographical Third-Party Review (E) Subgroup

Mr. Piatt said the Biographical Third-Party Review (E) Subgroup met Oct. 6 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to review an application from Renaissance Associates. This vendor was approved, and its contact information has been added to the “Independent Third-Party Vendors for Furnishing Background Investigation Reports in All States” listing.

c. Examination Requests

Ms. Doggett asked if other states are using the tools available on the NAIC website to obtain examinations instead of requesting certified copies. She asked if the states were aware that this information is readily available.

Mr. Piatt said Ohio uses whatever it can from the NAIC instead of requesting certified copies. Wyoming and Idaho concurred. Wisconsin said it posts examination results on its website.

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

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Draft: 9/2/20

National Treatment and Coordination (E) Working Group
Conference Call
August 26, 2020

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call Aug. 26, 2020. The following Working Group members participated: Debbie Doggett, Co-Chair (MO); Cindy Hathaway (CO); William Mitchell (CT); Alisa Pritchard (DE); Virginia Christy (FL); Stewart Guerin (LA); Ursula Almada (NM); Cameron Piatt (OH); Greg Lathrop (OR); Cressinda Bybee (PA); Robert Rudnai (TX); and Jay Sueoka (UT).

1. Received a Referral from the Chief Financial Regulator Forum

Ms. Doggett summarized the referral regarding domestic surplus lines insurers' (DSLIs) recent legislation adoption and its request that the Working Group work closely with the Surplus Lines (C) Working Group to develop guidance on active runoff; admitted and non-admitted premiums; the review of admitted policies; and the eligibility of guaranty fund protection. Ms. Doggett suggested forming an ad hoc group to draft guidance. Mr. Guerin, Surplus Lines (C) Working Group chair, volunteered to assist. Mr. Rudnai, also a member of both working groups, volunteered as well. Ms. Doggett said that Missouri will also provide a member. NAIC staff will collect information on the domestic surplus line insurers prior to the first ad hoc group call.

2. Exposed Proposal 2020-01

Jane Barr (NAIC) said the purpose of this proposal is to include an option for online notarization to the biographical affidavit and the affidavit of lost certificate of authority, which was present by Florida. With the recent stay at home order in place due to COVID-19 and state statutes to allow for electronic notarization, the state requested that the forms be updated to allow for this option. Ms. Barr did note that in 2019, the Working Group did agree that no further changes to the biographical affidavit would be adopted. Therefore, she said that due to the current remote working schedules of states and insurance employees, this change may be warranted. She added that if adopted by the Working Group, the effective date would be governed by the Financial Condition (E) Committee's subsequent adoption.

Mr. Rudnai said that most states have adopted specific language for online notarization. Therefore, if adopted, the states may need the flexibility to add their state-specific language to the form. Ms. Barr said she would check with the NAIC Legal Division to find out how many states this could affect.

Ms. Doggett suggested exposing proposal 2020-01 for a 30-day public comment period ending Sept. 25. The Working Group unanimously agreed.

3. Exposed Proposal 2020-02

Ms. Doggett said the purpose of proposal 2020-02 for the inclusion of the corporate governance annual disclosure as a requirement of the primary redomestication application is to ensure that states receive the original and subsequent updates since the applicant company is not required to restate the disclosure but only note the changes. The proposal adds this as a required document to the primary application checklist if applicable to the applicant company in addition to the redomestication instructions explaining the purpose of the attachment.

Ms. Doggett suggested exposing proposal 2020-02 for a 30-day comment period ending Sept. 25. The Working Group unanimously agreed.

4. Discussed Other Matters

Ms. Barr summarized a concern she received from interested parties regarding the disconnect between Form 14, change of mailing address/contact notification form, and the state's use of State Based Systems (SBS) or other NAIC databases to reflect current contact information. When a company submits a form 14 update, either the state does not acknowledge receipt or waits several months to contact the company regarding the change when the NAIC company demographics are updated due to the

change noted on the Jurat page of the financial filing. Ms. Hathaway also noted the disconnect between the Uniform Certificate of Authority Application (UCAA) and the company demographics.

Jan Shemanske (W.R. Berkley Corp.) asked if the states' preference could be provided on the UCAA website. Ms. Barr said that they will survey the states and post a Form 14 specific information chart on the website with the states' information on receiving Form 14 updates.

Ms. Barr also informed the members and interested state insurance regulators that a call notice may be sent out by the end of this month regarding a change of control application that was submitted to 47 states.

The Working Group plans to meet after the conclusion of the comment period.

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

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

DATE: <u>8/6/20</u>	<u>FOR NAIC USE ONLY</u>
CONTACT PERSON: <u>Jane Barr</u>	Agenda Item # <u>2020-02</u>
TELEPHONE: <u>816-783-8413</u>	Year <u>2020</u>
EMAIL ADDRESS: <u>jbarr@naic.org</u>	<u>DISPOSITION</u>
ON BEHALF OF: <u>National Treatment and Coordination WG</u>	<input type="checkbox"/> ADOPTED _____
NAME: <u>Debbie Doggett</u>	<input type="checkbox"/> REJECTED _____
TITLE: <u>Financial Analysis Supervisor</u>	<input type="checkbox"/> DEFERRED TO _____
AFFILIATION: <u>MO Dept of Commerce</u>	<input type="checkbox"/> REFERRED TO OTHER NAIC GROUP _____
ADDRESS: _____	<input type="checkbox"/> EXPOSED _____
_____	<input type="checkbox"/> OTHER (SPECIFY) _____

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

- 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 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)

Include the Applicant’s corporate governance annual disclosure (CGAD) as a requirement to the checklist for primary redomestication application.

REASON OR JUSTIFICATION FOR CHANGE **

It is important for redomestications, as it is a document that explains how the Applicant is governed by management. The CGAD is just required to be updated and not restated each year. Because of that, we may need to require the original and all updates through the most recent filing if never restated.

Additional Staff Comments:

** This section must be completed on all forms.

Revised 01-2019

Applicant Company Name: _____

NAIC No. _____

FEIN: _____

**Uniform Certificate of Authority Application (UCAA)
Primary Application Checklist
For Primary Application Only**

The application checklist is intended to help guide the insurer (herein after referred to as “Applicant Company”) with the assembly of a complete Primary Uniform Certificate of Authority Application (UCAA). Please be sure to complete the checklist by appropriately marking the boxes on the left side of the page prior to submitting the application for review. The completed checklist should be attached to the top of the application.

Regulator Use Only

- | | | |
|-----|---|--------------------------|
| 1. | Application Form, containing: | <input type="checkbox"/> |
| | <input type="checkbox"/> Completed UCAA Primary Application Checklist (Form 1P) | |
| | <input type="checkbox"/> Original UCAA Primary Application executed and signed (Form 2P) | |
| | <input type="checkbox"/> Include all lines of insurance the Applicant Company is licensed to transact, currently transacting, and requesting authority to transact in all jurisdictions (Form 3). | |
| 2. | Filing Fee (pursuant to Section II Filing Requirements Item 2), containing: | <input type="checkbox"/> |
| | <input type="checkbox"/> Payment of required filing fee | |
| | <input type="checkbox"/> Copy of check | |
| 3. | Minimum Capital and Surplus Requirements (pursuant to Section II Filing Requirements Item 3) | <input type="checkbox"/> |
| | <input type="checkbox"/> Provide explanation of compliance with minimum capital & surplus requirements for state for which application is prepared | |
| 4. | Statutory Deposit Requirements (pursuant to Section II Filing Requirements Item 4) | <input type="checkbox"/> |
| | <input type="checkbox"/> An original Certificate of Deposit prepared by state of domicile (Form 7) | |
| 5. | Name Approval (pursuant to Section II Filing Requirements Item 5) | <input type="checkbox"/> |
| | <input type="checkbox"/> Evidence of name approval request | |
| 6. | Plan of Operation (pursuant to Section II Filing Requirements Item 6) | <input type="checkbox"/> |
| | <input type="checkbox"/> Completed questionnaire (Form 8) | |
| | <input type="checkbox"/> Pro Forma | |
| | <input type="checkbox"/> Narrative | |
| 7. | Holding Company Act Filings (pursuant to Section II Filing Requirements Item 7) | <input type="checkbox"/> |
| | <input type="checkbox"/> Include Holding Company Act Filings, including Form B, Form F or substantially similar Statement | |
| | <input type="checkbox"/> Include Corporate Governance Annual Disclosure and any updates | |
| 8. | Statutory Memberships (pursuant to Section II Filing Requirements Item 8) | <input type="checkbox"/> |
| | <input type="checkbox"/> Submit documentation as listed in Section II Filing Requirements Item 8 | |
| 9. | SEC Filings or Consolidated GAAP Financial Statement | <input type="checkbox"/> |
| | <input type="checkbox"/> Submit documentation as listed in Section II Filing Requirements Item 9 | |
| 10. | Debt-to-Equity Ratio Statement | <input type="checkbox"/> |
| | <input type="checkbox"/> Submit documentation as listed in Section II Filing Requirements Item 10 | |
| 11. | Custody Agreements | <input type="checkbox"/> |
| | <input type="checkbox"/> Submit documentation as listed in Section II Filing Requirements Item 11 | |

Applicant Company Name: _____

NAIC No. _____

FEIN: _____

Regulator Use Only

12. **Public Records Package – Submit ALL items in chart in Section II Item 12, including:**
- a. Articles of Incorporation, including:**
- Original certification by domiciliary state
- b. Bylaws, including:**
- Original certification by the Applicant Company’s corporate assistant
- c. Statement with attachments, including:**
- Current year annual statement*, verified and signed, including actuarial opinion
- Current year quarterly statements (one copy for each quarter), verified and signed
- *1. Updated statements should be submitted on a timely basis while application is pending.
2. If annual statement for two preceding years has not been filed with the NAIC, one copy of each year must be submitted with the application.
- d. Independent CPA Audit Report**
13. **NAIC Biographical Affidavit (Form 11) for the following:**
- Officers (as listed on Jurat Page of most recent or upcoming financial statement)
- Directors (as listed on Jurat Page of most recent or upcoming financial statement)
- Key managerial personnel (including heads of risk management, compliance, internal audit or other individuals who will control the operations of the Applicant Company or have binding authority over the Applicant Company)
- Any individual (including management not represented of the Jurat Page or not in key managerial positions) with 10% or greater ownership of the Applicant Company and/or the Applicant Company’s ultimate controlling entity
- Affidavit originally signed and notarized within six months of application date
- Affidavit certified by independent third party
14. **State-Specific Information**
- Some jurisdictions may have additional requirements that must be met before a Certificate of Authority can be issued. Before completing a UCAA Primary Application, the Applicant Company should review a listing of requirements for the state to which it is applying.

Filing Requirements – Redomestications Only

The requirements of this section are only for those Applicant Company’s seeking to redomesticate from one state to another and are in addition to the requirements of Section II, items 1-14 of the Primary Checklist. A Redomestication is defined as the process where any insurer organized under the laws of any other state may become a domestic insurer that transfers its domicile to another state by merger or consolidation or any other lawful method. The Primary Application when used for a redomestication is filed with the Applicant Company’s new state of domicile.

15. **Annual Statement with Attachments**
- Submit documentation as listed in Section III Filing Requirements Item 1
16. **Quarterly Statements**
- Submit documentation as listed in Section III Filing Requirements Item 2
17. **Risk-Based Capital Report**
- Submit documentation as listed in Section III Filing Requirements Item 3

Applicant Company Name: _____

NAIC No. _____

FEIN: _____

Regulator Use Only

18. **Independent CPA Audit Report** Submit documentation as listed in Section III Filing Requirements Item 4
19. **Reports of Examination** Includes a copy of the most recent Report of Financial Examination from its domiciliary state and a note of all more recent examinations, completed by any state, including market conduct examinations along with a description of each examination.
20. **Certificate of Compliance (pursuant to Section III Filing Requirements Item 6** Original certification of compliance (Form 6) completed by domiciliary state insurance regulatory agency

UNIFORM CERTIFICATE OF AUTHORITY APPLICATION (UCAA)
Management Information Form
Complete Listing of Incorporators*, Officers
Directors and Shareholders (10% or more)

Incorporators*

Titles:

Ownership Percentage:

Officers:

Directors:

Shareholders:

* Primary Application Only

**Primary Application Section II
Filing Requirements (New Insurers and Redomestications)**

This section provides a guide to understanding the focus of each document of the Primary Application. However, the application typically uses the documents for multiple purposes. 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 contact states individually if you have questions about a specific document.

All forms required for the Primary Application are available on the UCAA Web site and insurers can download these documents for printing and submission.

Table of Contents

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 Form "B" Registration Statement
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



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6. Plan of Operation

The plan of operation has three components, a brief narrative, pro-forma financial statements/projections and a completed Questionnaire (Form 8). The narrative should include significant information not captured as a part of the Questionnaire that the company submits in support of the application, such as the reason for redomestication. Provide a company-wide three-year pro-forma balance sheet and income statement. For the lines requested, provide three-year premium and loss projections by line for the state in which you have requested lines of business. 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. The Questionnaire is available on the UCAA website. Submit the completed Questionnaire and all attachments as Item 6 of the application.

7. Holding Company Form "B" Registration Statement

If the applicant is a member of a holding company system, the application must include either the most recent Annual Form B Registration Statement or a statement substantially similar to the NAIC model. The filing should include all attachments, exhibits and appendices referenced in the Form B. **Submit the most recent Corporate Governance Annual Disclosure, include any updates if the disclosure has not been restated. Submit the Registration Statement and Annual Disclosure as Item 7 of the application.** include all attachments and any amendments up to the date you file the application and include copies of all advisory, management and service agreements.

8. Statutory Memberships

In some states, applicants are required to join one or more rating, guarantee or other organizations before transacting insurance. Generally, the applicant's authorized lines of insurance govern statutorily mandated memberships. Please be sure to check with the state in which you are seeking licensure to inquire about any statutory memberships that the state may require before transacting insurance. Submit documentation supporting membership application(s) as indicated, in states where required, as Item 8 of the application.

9. SEC Filings or Consolidated GAAP Financial Statement

If the applicant, its parent or its ultimate holding company has made a filing or registration with the Securities and Exchange Commission (SEC) in connection with a public offering within the last three years, or filed an 8K, 10K or 10Q within the last 12 months, the application must note that 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's most recent Consolidated GAAP financial statement. Submit the notice of SEC filings or copy of a Consolidated GAAP statement as Item 9 of your application.



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RE: Exposure Draft Notice: National Treatment and Coordination (E) Working Group Ending 9/25/20



Reichel, Randi F <randi_reichel@uhg.com>

To: Barr, Jane
Cc: Vanroeyen, Eileen

Reply Reply All Forward

Fri 8/28/2020 8:26 AM

Follow up. Start by Friday, August 28, 2020. Due by Friday, August 28, 2020.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jane hi and good afternoon!

Before we think about formal comments, can I ask you a question? I'm looking at the second document, and I realize it's intended to be used for redemestications (in which case, asking for the CGAD of a company that's been up and running and is basically just changing its domestic regulator makes sense to me) but is there a place on this form that indicates the CGAD filing requirement is *only* for redemestications and not all primary applications? Because a new company filing as a "true" primary applicant won't have one. Should this maybe be a requirement under the "Redemestications only" section?

Am I reading that wrong??

Randi Reichel/Vice President/National Regulatory Affairs/UnitedHealth Group
331 Tuscany Road/Baltimore/MD/21210
Office: 952.406.3816/Cell: 202.412.0676
randi_reichel@uhg.com

From: Lopez, Amy <alopez@naic.org>
Sent: Wednesday, August 26, 2020 5:06 PM
To: Barr, Jane <JBarr@naic.org>
Subject: Exposure Draft Notice: National Treatment and Coordination (E) Working Group Ending 9/25/20

Distributed to National Treatment and Coordination (E) Working Group Members, Interested Regulators and Interested Parties

The National Treatment and Coordination (E) Working Group, is exposing the following proposals for a 30-day comment period ending Sept. 25th. Please submit comments via email to [Jane Barr](mailto:Jane.Barr).

**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:

Form A: _____ **UCAA Type:** _____ **Other:** _____

↓
↑ **====** **Detail Eliminated To Conserve Space** **====** ↓
↑

Dated and signed this _____ day of _____, 20____ at _____. I hereby certify under penalty of perjury that I am acting on my own behalf and that the foregoing statements are true and correct to the best of my knowledge and belief.

____ I hereby acknowledge that I may be contacted to provide additional information regarding international searches.

(Signature of Affiant)

State of: _____ County of: _____

The foregoing instrument was acknowledged before me **by means of** **physical presence** or **online notarization**, this _____ day of _____, 20____ by _____, and: **who is personally known to me**, or **who produced the following identification:** _____.

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

Applicant Company Name: _____
NAIC No.: _____ FEIN: _____

**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: _____

↓
↑ **====** **Detail Eliminated To Conserve Space** **====** ↓
↑

Dated and signed this ____ day of _____, 20____ at _____. I hereby certify under penalty of perjury that I am acting on my own behalf and that the foregoing statements are true and correct to the best of my knowledge and belief.

___ I hereby acknowledge that I may be contacted to provide additional information regarding international searches.

(Signature of Affiant)

State of: _____ County of: _____

The foregoing instrument was acknowledged before me **by means of physical presence or online notarization**, this ____ day of _____, 20____ by _____, and: **who is personally known to me, or who produced the following identification:** _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS
(All states except California, Minnesota and Oklahoma)

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____ [company name] (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may obtain copies of any Background Reports about you from the consumer reporting agency (“CRA”) that produces them. You may also request more information about the nature and scope of such reports by submitting a written request to Company. To obtain contact information regarding CRA or to submit a written request for more information, contact _____ [company’s designated person, position, or department, address and phone].

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.”

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) six (6) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature) _____
(Date)

State of: _____ County of: _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ day of _____, 20____ by _____, and: who is personally known to me, or who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

Applicant Company Name: _____
NAIC No.: _____ FEIN: _____

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS
(Minnesota and Oklahoma)

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____ [company name] (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency (“CRA”) by submitting a written request to Company. You should submit any such written request for more information, to _____ [company’s designated person, position, or department, address and phone].

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.” You will be provided with a copy of any Background Report procured by Company if you check the box below.

By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) six (6) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature) (Date)

State of: _____ County of: _____

The foregoing instrument was acknowledged before me **by means of physical presence or online notarization**, this _____ day of _____, 20____ by _____, and: who is personally known to me, or

who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS
(California)

This Disclosure and Authorization is provided to you in connection with a pending application of _____ [company name] (“Company”) for licensure or a permit to organize (“Application”) with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) (“Background Reports”) regarding your background for review by any department of insurance in such states where Company is currently pursuing an Application, because you are either functioning as, or are seeking to function as, an officer, member of the board of directors or other management representative (“Affiant”) of Company or of any business entities affiliated with Company (“Term of Affiliation”) for which a Background Report is required by a department of insurance reviewing any Application. Background Reports will be obtained through _____ [name of CRA, address] (“CRA”). Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency (“CRA”) by submitting a written request to Company. You should submit any such written request for more information, to _____ [company’s designated person, position, or department, address and phone].

Attached for your information is a “Summary of Your Rights Under the Fair Credit Reporting Act.” You will be provided with a copy of any Background Report procured by Company if you check the box below.

- By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

Under section 1786.22 of the California Civil Code, you may view the file maintained on you by the CRA listed above. You may also obtain a copy of this file, upon submitting proper identification and paying the costs of duplication services, by appearing at the CRA in person or by mail; you may also receive a summary of the file by telephone. The CRA is required to have personnel available to explain your file to you and the CRA must explain to you any coded information appearing in your file. If you appear in person, you may be accompanied by one other person of your choosing, provided that person furnishes proper identification.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. In no event, however, will this authorization remain in effect beyond six (6) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature) _____
(Date)

State of: _____ County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ___ day of _____, 20 by _____, and: who is personally known to me, or who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

Applicant Name: _____

NAIC No. _____

FEIN: _____

Uniform Certificate of Authority Application (UCAA)
AFFIDAVIT OF LOST CERTIFICATE OF AUTHORITY

STATE OF _____)

COUNTY OF _____)

BEFORE ME, the undersigned authority, on this day personally appeared _____,

who after being by me duly sworn upon oath deposes and states:

That he/she is the _____ of
(Position with Company)

(Name of Company)

_____, _____,
(City of Domicile) (State of Domicile)

and that he/she has custody and control of the minutes and other records of said corporation and that diligent search has been made for the current Certificate of Authority issued to said corporation by the _____.
(State Department of Insurance)

This said Certificate of Authority, issued in _____, cannot be located and is considered lost, misplaced or destroyed, and
(Year)

it is therefore impossible to surrender said Certificate to the _____.
(State Department of Insurance)

In the event that the original Certificate of Authority is located, the Company will immediately return the Certificate of Authority to the _____.
(State Department of Insurance)

DATED this _____ day of _____, 20____

(Signature)

STATE OF _____)

COUNTY OF _____)

~~Personally appeared~~ This instrument was acknowledged before me by means of physical presence or online notarization. the above named _____, personally known to me, who, being duly sworn, deposes and says that he/she executed the above instrument and that the statements and answers contained therein, are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 20____

(Notary Public)

(SEAL) My commission expires:

Date: 11/5/20

Risk-Focused Surveillance (E) Working Group
and Own Risk and Solvency Assessment (ORSA) Implementation (E) Subgroup
Virtual Meeting
October 27, 2020

The Risk-Focused Surveillance (E) Working Group met in joint session with the ORSA Implementation (E) Subgroup of the Financial Condition (E) Committee Oct. 27, 2020. The following Working Group members participated: Justin Schrader, Chair (NE); Amy Malm, Vice Chair (WI); Richard Ford (AL); Laura Clements (CA); William Arfanis and Kathy Belfi (CT); Carolyn Morgan and Virginia Christy (FL); Daniel Mathis (IA); Cindy Andersen (IL); Roy Eft (IN); Stewart Guerin (LA); Dmitriy Valekha (MD); Vanessa Sullivan (ME); Judy Weaver (MI); Debbie Doggett and Shannon Schmoeger (MO); Jackie Obusek (NC); Patricia Gosselin (NH); John Sirovetz (NJ); Mark McLeod (NY); Dwight Radel and Tracy Snow (OH); Kimberly Rankin (PA); Jack Broccoli (RI); Johanna Nickelson (SD); Amy Garcia (TX); Jake Garn (UT); David Smith (VA); Dan Petterson (VT); and John Jacobson and Steve Drutz (WA). The following Subgroup members participated: Kathy Belfi, Co-Chair (CT); Mike Yanacheak, Co-Chair (IA); Laura Clements and Michelle Lo (CA); Robert Ridenour (FL); Cindy Andersen and Erin Moser (IL); Debbie Doggett (MO); Rhonda Ahrens and Justin Schrader (NE); Patricia Gosselin (NH); Victor Agbu (NY); David Cook and Jeff Lehr (OH); Kimberly Rankin (PA); Mike Arendall (TX); and Amy Malm (WI).

1. Discussed Comments Received on ORSA Review Guidance

Mr. Schrader said the primary agenda item for the joint call is to discuss comments received during the exposure of proposed revisions to NAIC handbooks to update the ORSA review guidance for analysts and examiners. NAIC staff developed the proposed revisions based on input and direction from key state insurance regulators who have gained experience in conducting ORSA reviews over the last three years.

Mr. Schrader said the Working Group coordinated with the Subgroup in 2019 to oversee the first ever “ORSA Peer Review Session,” whereby six states reviewed each other’s efforts in incorporating ORSA filings into their ongoing solvency monitoring work. The results of this session highlighted several opportunities to improve the current ORSA review process, which were used to develop an updated review template and supporting guidance for inclusion in the NAIC’s *Financial Analysis Handbook* (Analysis Handbook) and *Financial Condition Examiners Handbook* (Exam Handbook). During a Sept. 1 joint meeting of the Working Group and the Subgroup, the proposed revisions to the handbooks were introduced and exposed for a 30-day public comment period. During the comment period, letters were received from the American Council of Life Insurers (ACLI), the American Property Casualty Insurance Association (APCIA) and America’s Health Insurance Plans (AHIP), Ceres, and the National Association of Mutual Insurance Companies (NAMIC).

Mr. Schrader said NAIC staff and leadership from the Working Group and Subgroup reviewed the comments in detail and incorporated many of the comments into updated drafts of the guidance, which were distributed in advance of the meeting. Mr. Schrader stated that the comments highlighted a number of important topics for clarification in the guidance, including coordination between analysis and examination staff in reviewing and utilizing the ORSA filing, the importance of avoiding prescriptive requirements for ORSA filers, and clarifying expectations around a review of group capital presented in the ORSA filing.

David Leifer (ACLI) thanked the groups for incorporating many of the ACLI’s comments and stressed the importance of preserving flexibility and the “own” in ORSA processes and reporting. Tom Finnell (AHIP) thanked group leadership for holding additional meetings with interested parties to understand their comments and take additional input. Mr. Finnell stated that there is concern that examiners could treat the possible procedures as a checklist of items to be conducted at every company and that many of their comments were made to ensure that this is not the approach taken. Mr. Finnell stated that most of the input provided in the combined APCIA/AHIP letter appeared to be incorporated in the updated draft but questioned why a section highlighting overarching concepts in reviewing ORSA filings was not incorporated into the updated Exam Handbook guidance.

Mr. Schrader said that the intent in adopting revisions was to encourage exam teams to coordinate with the financial analyst and only conduct exam procedures if they are relevant and would add value. However, state insurance regulators are not comfortable adding language that would restrict the exam team’s ability to investigate risks and issues as they see fit. Bruce Jenson (NAIC) said that the majority of the interested party language and concepts were incorporated, but that NAIC staff were hesitant to highlight only certain concepts as key or overarching without more extensive regulator review and input. In addition,

Mr. Jenson stated that highlighting certain concepts as overarching in the Exam Handbook without incorporating similar guidance in the Analysis Handbook could lead to inconsistencies in application. Ms. Belfi stated her support for the approach taken by NAIC staff to incorporate the language in the background guidance, but to avoid highlighting any individual concepts or considerations as key or overarching.

Mr. Finnell stated that the details suggested by interested parties appear to be incorporated into the updated draft, but there is still the opportunity for key concepts to be missed given the vast amount of guidance in that section of the Exam Handbook. Steve Broadie (APCIA) and Bob Ridgeway (AHIP) both thanked the Working Group for incorporating comments and agreed that key concepts appear to be covered.

Jonathan Rodgers (NAMIC) stated that many of the changes recommended in the NAMIC comment letter were incorporated into the updated draft, including improvements to the suggested procedures around assessing the fungibility of group capital. Mr. Rodgers asked whether the joint groups plan on adopting the updated handbook language or referring the proposed revisions to other NAIC groups for adoption. Mr. Schrader stated that members, interested state insurance regulators and interested parties of both the Financial Analysis Solvency Tools (E) Working Group and the Financial Examiners Handbook (E) Technical Group were notified of the public exposure period and encouraged to participate. As such, the updated handbook guidance can be considered for adoption without an additional public exposure period. Mr. Jenson stated that finalized versions of the handbook guidance should be referred to the Financial Analysis Solvency Tools (E) Working Group and the Financial Examiners Handbook (E) Technical Group for consideration of adoption, as those groups are responsible for the contents of the handbooks.

Ms. Belfi made a motion, seconded by Ms. Gosselin, to finalize and refer the updated handbook revisions to the Financial Analysis Solvency Tools (E) Working Group and the Financial Examiners Handbook (E) Technical Group for consideration of adoption. The motion passed unanimously.

2. Adopted Updated Billing Rates for Financial Examiners

Mr. Schrader said that the second item on the agenda is to consider adoption of updated daily compensation rates for examiners that are contained in Exam Handbook. This task has been assigned to the Working Group under a new charge for 2020, which is to: “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.”

Mr. Schrader said that in 2019, the Working Group finalized newly recommended salary range guidelines for departments of insurance (DOIs) to use when determining appropriate compensation for examiners and analysts. These guidelines were subsequently adopted by the Financial Examiners Handbook (E) Technical Group and the Financial Analysis Solvency Tools (E) Working Group and incorporated into their respective handbooks. The Working Group plans to review the recommended salary ranges every two years, with the next detailed review expected during 2021.

Mr. Schrader stated that in addition to the new salary range guidance in the handbooks, there is some legacy examiner compensation guidance contained in Section 1 – II (D) of the Exam Handbook that the Working Group has been asked to maintain as it continues to be used and referenced in certain states. This per diem or daily rate guidance has been updated in the past based on a review of changes in the Consumer Price Index (CPI), and NAIC staff were asked to perform research in this area for Working Group consideration in updating the guidance for 2021.

Bailey Henning (NAIC) presented the results of NAIC staff research in this area, which indicated a 1% increase in the CPI over the period from July 2019 to July 2020. As such, NAIC staff recommended a 1% increase in the daily rate guidance for publication in the 2021 version of the Exam Handbook.

Ms. Malm made a motion, seconded by Mr. Mathis, to adopt a 1% increase in the daily rate guidance contained in Section 1 – II (D) of the Exam Handbook. The motion passed unanimously.

3. Discussed Other Matters

Ms. Belfi said that the Subgroup met Oct. 5 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals), paragraph 4 (internal or administrative matters of the NAIC or any NAIC member) and paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings. During this meeting, the Subgroup discussed whether guidance should be developed on how to incorporate COVID-19 risk

exposures into ORSA filings but determined that such guidance would not be beneficial or necessary at this point. However, Ms. Belfi said the Subgroup intends to discuss information received on COVID-19 exposures in 2020 ORSA filings and may consider additional discussions on this topic in 2021.

Having no further business, the Risk-Focused Surveillance (E) Working Group and ORSA Implementation (E) Subgroup adjourned.

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Date: 9/9/20

Risk-Focused Surveillance (E) Working Group and ORSA Implementation (E) Subgroup
Conference Call
September 1, 2020

The Risk-Focused Surveillance (E) Working Group and the ORSA Implementation (E) Subgroup of the Financial Condition (E) Committee met via conference call Sept. 1, 2020. The following Working Group members participated: Justin Schrader, Chair (NE); Amy Malm, Vice Chair (WI); Blase Abreo (AL); Susan Bernard (CA); William Arfanis and Kathy Belfi (CT); Carolyn Morgan (FL); Daniel Mathis (IA); Cindy Andersen (IL); Roy Eft (IN); Stewart Guerin (LA); Dmitriy Valekha (MD); Vanessa Sullivan (ME); Judy Weaver (MI); Debbie Doggett and Shannon Schmoeger (MO); Monique Smith (NC); Doug Bartlett (NH); John Sirovetz (NJ); Victor Agbu (NY); Dwight Radel and Tracy Snow (OH); Eli Snowbarger (OK); Kimberly Rankin (PA); Jack Broccoli (RI); Johanna Nickelson (SD); Amy Garcia (TX); Jake Garn (UT); David Smith (VA); Dan Petterson (VT); and Steve Drutz (WA). The following Subgroup members participated: Kathy Belfi, Co-Chair (CT); Mike Yanacheak, Co-Chair (IA); Susan Bernard (CA); Carolyn Morgan (FL); Cindy Andersen (IL); Debbie Doggett (MO); Rhonda Ahrens and Justin Schrader (NE); Doug Bartlett (NH); Victor Agbu (NY); Jeff Lehr (OH); Kimberly Rankin (PA); Amy Garcia (TX); and Amy Malm (WI).

1. Discussed Proposed Revisions to Update ORSA Review Guidance

Mr. Schrader said the primary agenda item for the joint call is to discuss proposed revisions to NAIC handbooks for the purpose of updating the Own Risk and Solvency Assessment (ORSA) review guidance for analysts and examiners. The proposed revisions were developed by NAIC staff based on input and direction from key state insurance regulators that have gained experience in conducting ORSA reviews over the last three years.

Mr. Schrader said the Working Group oversees a peer review program that provides state insurance regulators with an opportunity to review each other's work to identify best practices and opportunities for improvement. In 2019, the Working Group oversaw the first ever ORSA peer review session, where six states reviewed each other's efforts in incorporating ORSA filings into their ongoing solvency monitoring work. Mr. Schrader said the scope of the project included the lead state's documentation of its review of the ORSA filing, as well as an assessment of how information from the ORSA review was incorporated into the ongoing financial analysis and examination processes. He said the session was a success in terms of the best practices identified and lessons learned, but it also highlighted opportunities to improve the current ORSA review process. As such, participants worked with NAIC staff and Working Group leadership on proposed changes to handbook guidance to address many of the issues identified.

Bruce Jenson (NAIC) provided an overview of the findings and proposed guidance revisions that emerged from the peer review process, including the development of a new ORSA review template, as well as new supporting guidance for inclusion in the NAIC's *Financial Analysis Handbook* (Analysis Handbook) and *Financial Condition Examiners Handbook* (Exam Handbook). Mr. Schrader stated that the intent behind many of the proposed revisions is to streamline the review documentation for sharing across the states, which peer reviewers identified as a priority. Ms. Belfi said the peer reviewers noted some inconsistency in ORSA reviews, which she hopes is addressed in the proposed revisions. She also stated that the peer reviewers noted limited value in the risk maturity ratings contained in the reviews, which is why they are being proposed for removal from the updated template. Ms. Malm said another finding of the peer review was too much summarization of information provided by the company in its ORSA filing, as opposed to state insurance regulator analysis. She stated that the intent of the new template was to streamline the documentation with more focus on state insurance regulator assessment and conclusions. In addition, she said the proposed revisions should help improve coordination between analysis and exams in validating enterprise risk management (ERM) processes and incorporating the company's key risks into ongoing monitoring processes.

Mr. Schrader asked NAIC staff to present on the details of some of the proposed revisions. Sherry Flippo (NAIC) discussed the updated review template, which removes scoring elements associated with the Risk and Insurance Management Society (RIMS) Risk Maturity Model (RMM). She said the proposed template includes a new section to evaluate background information associated with the ORSA filing, as well as appendices for use in documenting feedback from the review for communication back to the insurer and the financial examination function. Mr. Jenson discussed the supporting guidance and instructions for completing the template that were developed for inclusion in the Analysis Handbook. He said key considerations for use in assessing the various sections of the ORSA filing were incorporated from supplemental guidance to replace the RIMS RMM scoring guidance. Bailey Henning (NAIC) discussed proposed changes to the Exam Handbook, noting the addition of test procedures to validate information and processes related to the key considerations incorporated into the

Analysis Handbook. She also said the review template itself was proposed for removal from the Exam Handbook so that the results of exam testing and validation work can be communicated back to the financial analyst through the updated Summary Review Memorandum. Mr. Schrader asked if there are any questions or comments on the proposed revisions, and none were received.

Mr. Shrader said as the handbooks being discussed are the responsibility of the Financial Analysis Solvency Tools (E) Working Group and the Financial Examiners Handbook (E) Technical Group, the proposed revisions will ultimately need to be referred to those groups for adoption. However, to ensure consistency between the revisions adopted for analysis and exams, the Working Group and the Subgroup would like to receive and discuss comments on the revisions together, before referring final versions of the proposed revisions to those groups for adoption. In addition, Mr. Schrader said state insurance regulators hope to move quickly in reviewing and adopting these revisions so that the updated guidance can be used by the states in conducting ORSA reviews later this year. He said after the proposed revisions are adopted, the NAIC plans to provide additional training to state insurance regulators to assist in effective implementation.

Elisabetta Russo (NAIC) stated that the NAIC plans to develop a comprehensive training webinar by creating example review documentation to present to analysts and examiners. The target date for the training would be November so that state insurance regulators can utilize the new guidance in reviewing ORSA filings, many of which are received in the fourth quarter and are required to be reviewed within 120–180 days of receipt.

Ms. Belfi made a motion, seconded by Mr. Radel, to expose the proposed handbook revisions for a 30-day public comment period ending Sept. 30. The motion passed unanimously.

2. Discussed Other Matters

Mr. Schrader said the NAIC has had to cancel or postpone many of its live training sessions and events for state insurance regulators this year, including the previously scheduled peer review sessions that the Working Group oversees. However, he stated that the intent is to work towards scheduling live sessions again in 2021, including another ORSA peer review session. In the meantime, he stated that the Working Group will continue to work with NAIC staff to develop and present additional online training opportunities for state insurance regulators.

Ms. Belfi stated that the Subgroup has ongoing projects related to the impact of COVID-19 on future ORSA reporting, as well as ongoing work on the development of guidance and training for use by regulatory actuaries in reviewing Section 3 of ORSA filings. She stated that the Subgroup will be scheduling calls as needed to address work in these areas.

Having no further business, the Risk-Focused Surveillance (E) Working Group and ORSA Implementation (E) Subgroup adjourned.

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Adopted by the Executive (EX) Committee and Plenary, _____, 2020

Adopted by the Financial Condition (E) Committee, Dec. 8, 2020

Adopted by the Receivership and Insolvency (E) Task Force, Nov. 19, 2020

Adopted by the Receivership Large Deductible Workers' Compensation (E) Working Group, Nov. 5, 2020

GUIDELINE FOR ADMINISTRATION OF LARGE DEDUCTIBLE POLICIES IN RECEIVERSHIP

Drafting Note: Having the necessary statutory authority specific to large deductible workers' compensation products in receiverships is key to the successful resolution of these insurers. There are currently two statutory authority options available, and there are differences across states as to which authority has been adopted: 1) Section 712 of the NAIC *Insurer Receivership Model Act* (#555—IRMA), Administration of Loss Reimbursement Policies; and 2) the National Conference of Insurance Guaranty Funds (NCIGF) Model Large Deductible Legislation, Administration of Large Deductible Policies and Insured Large Deductible Collateral. Both provide statutory guidance that articulates the respective rights and responsibilities of the various parties, which greatly enhance a state's ability to manage complex large deductible programs in liquidation. Generally, both approaches provide for the collection of reimbursements, resolve disputes over who gets the reimbursements and ensure that the claimants are paid. The provisions in each of the two options generally complement each other, except for conflicting provisions regarding the issue of the ultimate ownership of, and entitlement to, the deductible recoveries and large deductible collateral as between the estate and the guaranty association. The issue is whether the guaranty associations, on behalf of the claimants, are entitled to any deductible reimbursements or whether they are a general estate asset that is shared pro rata by the guaranty associations and the uncovered claimants.

As of the drafting of this Guideline, the NCIGF model approach has been adopted by several states using varying language. However, the NCIGF model has evolved over time based on additional experiences from insolvencies and the NCIGF continues to modify its model as warranted. The NAIC has developed the following Guideline based largely on the principles and structure of the NCIGF model with certain modifications made by the NAIC Large Deductible Workers' Compensation (E) Working Group of the Receivership and Insolvency (E) Task Force. The following statutory language is not an amendment to the NAIC receivership models but is intended as a Guideline for use by states as an alternative to IRMA Section 712, Administration of Loss Reimbursement Policies.

Administration of Large Deductible Policies in Receivership

This Guideline shall apply to workers' compensation large deductible policies issued by an insurer subject to delinquency proceedings under [insert cite to state's receivership statute]. Large deductible policies shall be administered in accordance with their terms, except to the extent such terms conflict with this Guideline. This Guideline does not apply to policies where the insurer has no liability for the portion of a claim that is within the deductible or self-insured retention.

A. Definitions.

For purposes of this Guideline:

- (1) "Large deductible policy" means any combination of one or more workers' compensation policies and endorsements and contracts or security agreements entered into between an insured and the insurer in which the insured has agreed with the insurer to:
 - (a) Pay directly the initial portion of any claim covered under the policy up to a specified dollar amount which the insurer would otherwise be obligated to pay, or the expenses related to any claim; or
 - (b) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

The term "large deductible policy" includes policies which contain an aggregate limit on the insured's liability for all deductible claims, a per-claim deductible limit or both. The primary purpose and distinguishing characteristic of a large deductible policy is the shifting of a portion of the ultimate financial responsibility under the large deductible policy to pay claims from the insurer to the insured, even though the obligation to initially pay claims may remain with the insurer, and the insurer remains liable to claimants in the event the insured fails to fulfill its payment or reimbursement obligations.

Drafting Note: States may wish to establish a minimum dollar deductible threshold for application of this statute based on local conditions. Because the payment of the entire amount of the claim remains the unconditional obligation of the insurer, the insured's loss reimbursement obligation should not be treated as a "deductible" for the purpose of any applicable exclusion from guaranty association coverage, even though these policies are commonly referred to as "large deductible policies."

Large deductible policies do not include policies, endorsements or agreements which provide that the initial portion of any covered claim shall be self-insured and further that the insurer shall have no payment obligation within the self-insured retention. Large deductible policies also do not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements,

except to the extent such reinsurance arrangements or agreements are put in place as security for the policyholder's large deductible obligations.

- (2) "Deductible claim" means any allowed claim, including a claim for loss and defense and cost containment expense (unless such expenses are excluded), under a large deductible policy to the extent it is within the deductible.
- (3) "Large deductible collateral" means any cash, letters of credit, surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under the large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Large deductible collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.
- (4) "Commercially reasonable" means to act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.
- (5) "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations the performance of which is secured by large deductible collateral that also secures an insured's obligations under a large deductible policy.

B. Handling of Large Deductible Claims.

Unless otherwise agreed by the responsible guaranty association, all large deductible claims that are also "covered claims" as defined by the applicable guaranty association law, including those that may have been funded by an insured before liquidation, shall be turned over to the guaranty association for handling.

- (1) If a deductible claim is not covered by any guaranty association, the receiver shall draw on available large deductible collateral to pay the claim; or make other arrangements with the insured to ensure the timely payment of the claim. The receiver shall pay the claim promptly from the large deductible collateral unless the insured pays the claim directly or there is no available large deductible collateral.
- (2) Deductible claims paid by the insured or by the receiver in accordance with this Guideline shall not be treated as distributions of estate assets under [insert cite to state's liquidation priority distribution statute]. To the extent the insured, or a third-party administrator on behalf of the insured, pays the deductible claim, pursuant to an agreement by the guaranty association or otherwise, the insured's payment of a deductible claim in whole or in part will extinguish the obligations, if any, of the receiver and/or any guaranty association to pay that claim or that portion of the claim. No credit or charge for an imputed or constructive distribution of any kind shall be made against the receiver or a guaranty association on the basis of an insured's payment of a deductible claim.

Drafting Note: This provision addresses so called "orphan claims," which are situations where, because of variations in state law or for other reasons, claims generally covered by the guaranty fund system are not provided such protection. States should take steps, through statutory revision or otherwise, to avoid orphan claims, especially for workers' compensation insurance. However, if such claims do exist, this provision permits the receiver to utilize available large deductible collateral, or other funds provided by the employer, to ensure that they continue to be paid. Alternative language that states may consider is as follows: "In cases where a deductible claim is not a guaranty association covered claim and the claimant has no other remedy either from the employer or other resources available in a state, the receiver may pay the claim to the extent of the deductible with available Large deductible collateral as described in subsection E(2) below."

C. Deductible Claims Paid by a Guaranty Association.

To the extent a guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, a guaranty association shall be entitled to the amount of the reimbursement, and available large deductible collateral as provided for under subsection E to the extent necessary to reimburse the guaranty association. Such amounts shall be paid to the guaranty association net of any of the receiver's collection costs as described in subsection F. Reimbursements paid to the guaranty association pursuant to this subsection shall not be treated as distributions under [insert cite to state's liquidation priority distribution statute] or as early access payments under [insert cite to state's early access statute].

To the extent that a guaranty association pays a deductible claim that is not reimbursed either from large deductible collateral or by an insured's payments, or incurs expenses in connection with large deductible policies that are not reimbursed under this subsection, the guaranty association shall be entitled to assert a claim for those amounts in the delinquency proceeding, except as provided in subsection D(5).

Nothing in this subsection limits any rights of the receiver or a guaranty association that may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses, such as those provided for pursuant to [insert cite to state's guaranty association net worth provision], or existing under similar laws of other states.

D. Collections

- (1) The receiver shall take all commercially reasonable action to ensure that the large deductible collateral remains adequate to secure the insured's obligations, and to collect reimbursements owed for deductible claims as provided for herein:
 - (a) Paid by the insurer prior to the commencement of delinquency proceedings;
 - (b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments;
 - (c) Paid or allowed by the receiver; or
 - (d) Approved by the receiver for payment.
- (2) If the insured does not make payment within the time specified in the large deductible policy, or within sixty (60) days after the date of billing if no time is specified, the receiver shall take all commercially reasonable actions to collect any reimbursements owed.
- (3) Neither the insolvency of the insurer, nor the receiver's or insurer's inability to perform any of its obligations under the large deductible policy, shall be a defense to the insured's reimbursement obligation under the large deductible policy.
- (4) An allegation of improper handling or payment of a deductible claim by the insurer, the receiver and/or any guaranty association shall not be a defense to the insured's reimbursement obligations under the large deductible policy.
- (5) If the receiver declines to seek or is unsuccessful in obtaining reimbursement from the insured for a large deductible obligation and there is no available large deductible collateral, a guaranty association may, after notice to the receiver, seek to collect the reimbursement due from the insured on the same basis as the receiver, and with the same rights and remedies including without limitation the right to recover reasonable costs of collection from the insured. The guaranty association shall report any amounts so collected from each insured to the receiver. The receiver shall provide the guaranty association with available information needed to collect a reimbursement due from the insured. The receiver shall notify all other guaranty associations that have paid large deductible claims on behalf of the same insured. Amounts collected by a guaranty association pursuant to this paragraph shall be treated in accordance with subsection C. The expenses incurred by a guaranty association in pursuing reimbursement shall not be permitted as a claim in the delinquency proceeding at any priority, except as agreed by the receiver at or before the time the expenses are incurred; however, a guaranty association may net the expenses incurred in collecting any reimbursement against that reimbursement.

E. Large Deductible Collateral

- (1) Subject to the provisions of this subsection, the receiver shall utilize large deductible collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. A guaranty association shall be entitled to large deductible collateral as provided for in this subsection to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any payments made to a guaranty association pursuant to this subsection

shall not be treated as distributions of estate assets under [Insert cite to state's liquidation priority distribution statute] or as early access payments under [Insert cite to state's early access statute]. Such payments shall extinguish the receiver's obligations to the guaranty association with respect to any claim or portion of a claim that has been reimbursed from large deductible collateral.

- (2) All claims against the large deductible collateral shall be paid first to reimburse claim payments made by the insurer, the receiver, or the guaranty associations to reimburse their deductible claim payments on large deductible policies. After these obligations are satisfied, remaining claims shall be paid in the order received and no claim of the receiver, except in accordance with this subsection, shall supersede any other claim against the large deductible collateral.
- (3) Notwithstanding any agreement between the insured and the insurer, the receiver shall draw down large deductible collateral to the extent necessary in the event that the insured fails to:
 - (a) Perform its funding or payment obligations under any large deductible policy;
 - (b) Pay deductible claim reimbursements within the time specified in the large deductible policy or within sixty (60) days after the date of the billing if no time is specified;
 - (c) Pay amounts due the estate for pre-liquidation obligations;
 - (d) Timely fund any other secured obligation; or
 - (e) Timely pay expenses.
- (4) Excess large deductible collateral may be returned to the insured when deemed appropriate by the receiver after a periodic review of claims paid, outstanding case reserves, and allowance for adverse development and claims incurred but not reported as determined by the receiver.”

F. Administrative Fees

- (1) The receiver is entitled to recover through billings to the insured or from large deductible collateral all reasonable expenses that the receiver incurred in fulfilling its collection obligations under this Guideline. All such deductions or charges shall be in addition to the insured's obligation to reimburse claims and related expenses and shall not diminish the rights of claimants or guaranty associations.
- (2) To the extent the receiver cannot collect such expenses pursuant to paragraph (1), the receiver is entitled to deduct from the large deductible collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the large deductible collateral and deductible reimbursements.
- (3) To the extent such amounts are not available from reimbursements or large deductible collateral, the receiver, or guaranty associations if provided under an agreement with the receiver under subsection D(5), shall have a claim against the estate as provided pursuant to [insert cite to state's liquidation priority distribution statute].

Drafting Note: State policymakers should decide whether this provision, when enacted, should apply to existing liquidations.

PROJECT HISTORY

GUIDELINE FOR ADMINISTRATION OF LARGE DEDUCTIBLE POLICIES IN RECEIVERSHIP

1. Description of the Project, Issues Addressed, etc.

In 2018, the Receivership Large Deductible Workers' Compensation (E) Working Group of the Receivership and Insolvency (E) Task Force was given charges in response to issues arising out of the *2016 Workers' Compensation Large Deductible Study* by the NAIC/International Association of Industrial Accident Boards and Commissioners (IAIABC) Joint (C) Working Group to recommend possible enhancements to the U.S. receivership regime.

In 2018, the Working Group heard presentations from the National Conference of Insurance Guaranty Funds (NCIGF) and nine states/insurers with experience with a receivership involving large deductible workers' compensation. The Working Group also conducted a survey of states' laws, practices and recommendations, to which 27 states responded. It was clear through this work that having statutory authority specific to large deductible workers' compensation products in receiverships was key to the successful resolution of these insurers. As a result of its work, on Nov. 16, 2018, the Working Group presented the Task Force with its recommendation regarding statutory authority.

The Working Group recommended state adoption of clear statutory authority that articulates the respective rights and responsibilities of the various parties in large deductible workers' compensation business receiverships. Having clear statutory authority in place can avoid much of the confusion, and sometimes expensive and prolonged litigation, for both the receiver and the guaranty funds. Clear statutory authority can also avoid collections delays that dilute recoveries.

Based on the study, the Working Group recommended that states adopt statutory authority regarding large deductible workers' compensation products in receiverships. Prior to the development of the new guideline, there were two options available:

- 1) *Insurer Receivership Model Act* (#555—IRMA) Section 712—Administration of Loss Reimbursement Policies; or
- 2) NCIGF Model Large Deductible Legislation.

Twelve states have adopted the NCIGF model using varying language (California, Florida, Indiana, Illinois, Louisiana, Michigan, Missouri, New Jersey, Pennsylvania, Texas, Utah and West Virginia). Most of these states follow the NCIGF approach and have amended their insurance liquidation acts to clarify the following when to secure competing claims such as deductible amounts owed the insurer and retroactive premium balances: 1) the ownership of the deductible reimbursements or collateral drawdowns; 2) claims-handling matters; 3) collection responsibility; and 4) allocation of collateral.

After recommending to the Task Force that states adopt clear statutory, the Working Group discussed differences between Model #555 and the NCIGF model during 2019 and 2020. While Section 712 is part of Model #555, it was the opinion of the Working Group that the alternative language to Section 712 should be drafted as a guideline because it does not meet the two-pronged test to be a model law. Therefore, the Working Group agreed to draft a new model guideline for the Administration of Large Deductible Policies in Receivership as an alternative to Model #555, Section 712—Administration of Loss Reimbursement Policies. The new model guideline is based largely on the principles and structure of the NCIGF model with certain modifications.

2. Name of Group Responsible for Drafting the Model and States Participating

The Receivership and Insolvency (E) Task Force is responsible for Model #555. The 2020 members of the Task Force are: Texas (Chair), District of Columbia (Vice Chair), Alaska, American Samoa, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee and Utah.

The Receivership Large Deductible Workers' Compensation (E) Working Group evaluated the issues and drafted the draft model guideline relating to Section 712 of Model #555 based on the NCIGF principles from the NAIC model (available on the NCIGF website).

The 2020 members of the Working Group are: Pennsylvania (Co-Chair); Oklahoma (Co-Chair), Alaska, Arkansas, Florida, Georgia, Illinois, Maine, Missouri, Nebraska, New Jersey, New Mexico and Texas.

An informal drafting group was formed in 2020 consisting of Donna Wilson (OK), Toma Wilkerson (FL), Robert Wake (ME), James Kennedy (TX), Barbara Cox (NCIGF) and Rowe Snider (Locke Lord LLP).

3. Project Authorized by What Charge and Date First Given to the Group

The Receivership Large Deductible Workers' Compensation (E) Working Group of the Receivership and Insolvency (E) Task Force was given the follow charge beginning in 2018:

“Study states’ receivership laws and practices regarding receivership of insurers with significant books of large deductible workers’ compensation business, and evaluate the need for a model act/rule, or amendments to existing models, that governs the rights and duties of the various parties regarding large deductible business in insolvencies, including, but not limited to, consideration of a provision that expressly permits the collection of large deductibles from insureds during an insolvency proceeding. Provide any other recommendations for possible enhancements to the U.S. receivership regime based on this study.”

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc.). Include any parties outside the members that participated.

The Receivership Large Deductible Workers' Compensation (E) Working Group, chaired by Donna Wilson (OK) and Laura Lyon Slaymaker (PA), drafted the model guideline. Open conference calls were held where interested parties participated. The information drafting group included four state insurance regulators and two industry volunteers.

5. A General Description of the Due Process (e.g., exposure periods, public hearings or any other means by which widespread input from industry, consumers and legislators was solicited).

- a. The Working Group held five open conference calls between August 2018 and November 2018 where it: 1) heard presentations from the NCIGF; 2) heard presentations from nine states and insurers with experience with a receivership involving large deductible workers' compensation; and 3) reviewed survey results from 27 states regarding their laws, practices and recommendations.
- b. The Working Group began by amending the NCIGF model as an alternative approach to Section 712 of Model #555. The Working Group held five open meetings between February 2019 and December 2019. During its Dec. 2, 2019, meeting, the Working Group exposed a new draft model guideline for a 60-day public comment period ending Jan. 31, 2020. The guideline is an alternative approach to Model #555, Section 712 based on the NCIGF model and amended to reflect administrative fees, a state-specific citation for the definition of “large deductible” and the guaranty association entitlement to the net amount of the reimbursement. In conjunction with the model guideline, NAIC legal staff drafted a memorandum explaining the difference between a guideline and a model law.
- c. The Working Group received two comment letters during the exposure period from Maine and the NCIGF.
- d. The Working Group met via open meeting March 2, 2020 and formed a drafting group to further amend the draft guideline to address comments received. The drafting group met four times between March 2020 and September 2020.
- e. On Sept. 30, 2020, via open meeting, the Working Group exposed a revised draft Guideline for Administration of Large Deductible Policies in Receivership for a 30-day period ending Oct. 30, 2020. The revised guideline was re-drafted based largely on the principles and structure of the NCIGF model with certain modifications. It is based on the principles rather than the NCIGF model because the NCIGF model approach has been adopted by several states using varying language. The NCIGF model has evolved over time based on additional experiences from insolvencies and continues to be modified as warranted by the NCIGF.
- f. All exposure drafts were distributed to more than 120 interested parties and posted to the Working Group's public web page. Barbara Cox (NCIGF) and Rowe Snider (Locke Lord LLP) actively participated in the drafting group.

- g. The Working Group adopt the guideline on Nov. 5, 2020.
- h. The Receivership and Insolvency (E) Task Force adopted the guideline on Nov. 19, 2020.
- i. The Financial Condition (E) Committee adopted the guideline at the Fall National Meeting on Dec. 8, 2020.
- j. The Executive (EX) Committee and Plenary adopted the guideline on _____.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response).

Deductible Reimbursements and Collateral

The primary distinction between the NCIGF and Model #555, Section 712—Administration of Loss Reimbursement Policies, is the issue of deductible reimbursements and collateral. Twelve states have adopted large deductible policy laws based on the NCIGF model principles using varying language. It should be noted that no state has enacted the reinsurance approach described below in Model #555. Therefore, it was the decision of the Working Group to include the NCIGF approach to collateral within the Guideline.

- The NCIGF model “secured claim” approach: Claims within the deductible are primarily the obligation of the policyholder. Under this approach, deductible reimbursements are earmarked to pay those claims, and any collateral posted by or on behalf of the policyholder is held to ensure that those claims are paid. Accordingly, when the guaranty association takes pays a claim within the deductible, it earns the benefit of the reimbursement due from the policyholder and the right to draw on the collateral, if necessary, or to initiate a draw by the receiver, for the benefit of the guaranty fund.
- Model #555 Section 712 “reinsurance” approach: The insurer’s obligation to pay all covered claims and the policyholder’s obligation to reimburse the insurer are unconditional and each is independent of the other. Under this approach, deductible reimbursements are a general asset of the estate and the guaranty fund only benefits from the deductible reimbursements in proportion to its share as a creditor of the estate. The receiver has the right to collect all deductible reimbursements, drawing on collateral as necessary. Any reimbursements paid to the guaranty association are treated as early access distributions and offset from future recoveries from the estate.

7. Any Other Important Information (e.g., amending an accreditation standard).

None



**NAIC GROUP CAPITAL CALCULATION
INSTRUCTIONS
(ADOPTED NOVEMBER 17, 2020)**

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I. Background

1. In 2015, the ComFrame Development and Analysis (G) Working Group held discussions regarding developing a group capital calculation (GCC) tool. The discussions revealed that developing a GCC was a natural extension of work state insurance regulators had already begun, in part driven by lessons learned from the 2008 financial crisis which include better understanding the risks to insurance groups and their policyholders. While insurance regulators currently have authorities to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist regulators in identifying risks that may emanate from a holding company system.
2. More specifically, the GCC and related reporting provides more transparency to insurance regulators regarding the insurance group and make risks more identifiable and more easily quantified. In this regard, the tool assists 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 supporting the operations of non-insurance entities, potentially adversely impacting the insurance company's financial condition or policyholders. This calculation provides an additional analytical view to regulators so they can begin working with a group to resolve any concerns in a manner that will ensure that policyholders of the insurers in the group will be protected. The GCC is an additional reporting requirement but with important confidentiality protections built into the legal authority. State insurance regulators already have broad authority to take action when an insurer is financially distressed, and the GCC is designed to provide Lead State Regulators with further insights to allow them to reach informed conclusions on the financial condition of the group and the need for further information or discussion.
3. 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, they do not have the benefit of a consolidated statutory accounting system and financial statements to assist them in these efforts. It was noted prior to development that a consistent method of calculating group capital for typical group risks would provide a useful tool for state financial regulators to utilize in their group assessment work. It was also noted that a GCC could serve as a baseline quantitative measure to be used by regulators in to compliment the view of group-specific risks and stresses provided by the Own Risk and Solvency Assessment (ORSA) Summary Report filings and in Form F filings that may not be captured in legal entity filings.
4. During the course of several open meetings and exposure periods, the ComFrame Development and Analysis (G) Working Group considered a discussion draft which included three high-level methodologies for the GCC: a risk-based capital (RBC) aggregation approach; a statutory accounting principles (SAP) consolidated approach; and a generally accepted accounting principles (GAAP) consolidated approach. On Sept. 11, 2015, Working Group members unanimously approved a motion to move forward with developing a recommendation for a GCC and directed an appropriate high-level methodology for the recommendation.

5. At a ComFrame Development and Analysis (G) Working Group meeting held Sept. 24, 2015, pros and cons for each methodology were discussed, and a consensus quickly developed in support of using an RBC aggregation approach if a GCC were to be developed. The Executive (EX) Committee and Plenary ultimately adopted the following charge for the Financial Condition (E) Committee:

“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.”

6. The RBC aggregation approach is intended build on existing legal entity capital requirements where they exist rather than developing replacement/additional standards. In selecting this approach, it was recognized as satisfying regulatory needs while at the same time having the advantages of being less burdensome and costly to regulators and industry and respecting other jurisdictions’ existing capital regimes. In order to capture the risks associated with the entire group, including the insurance holding company, RBC calculations would need to be developed in those instances where no RBC calculations currently exist.
7. In early 2016, the Financial Condition (E) Committee appointed the Group Capital Calculation (E) Working Group, which began to address its charge and various details of the items suggested by the ComFrame Development and Analysis (G) Working Group . The instructions included herein represent the data, factors, and approaches that the Working Group believed were appropriate for achieving such an objective. The GCC instructions and template are intended to be modified, improved, and maintained by the NAIC in the future as are the *Accounting Practices and Procedures Manual*, the *Annual Statement Instructions* and the *Risk-Based Capital Formula and Instructions*. This includes, but is not limited to, future disclosure of additional items developed or referred by other NAIC committees, task forces and/or working groups.

II. Definitions

8. **Broader Group:** The entire set of legal entities that are controlled by the Ultimate Controlling Person of insurers within a corporate group. When consider the use of this term, all entities included in the Broader Group should be included in Schedule 1 and the Inventory, but only those that are denoted as “included” in the Schedule 1 will be considered in the actual GCC.
9. **Financial Entity:** A non-insurance entity that engages in or facilitates financial intermediary operations (e.g., accepting deposits, granting of credits, or making loans, managing, or holding investments, etc.). Such entities may or may not be subject to specified regulatory capital requirements of other sectoral supervisory authorities. For purposes of the GCC, entities that are not regulated by an insurance or banking authority [e.g., the U.S. Securities and Exchange Commission (SEC) or the Financial Industry Regulatory Authority (FINRA)] will be considered as not subject to a specified regulatory capital requirement.

The primary examples of financial entities are commercial banks, intermediation banks, investment banks, saving banks, credit unions, savings and loan institutions, swap dealers, and the portion of special purpose and collective investment entities (e.g., investment companies, private funds, commodity pools, and mutual funds) that represents the Broader Group’s aggregate ownership in such entities, whether or not any member of the Broader Group is involved in that entity’s management responsibilities (e.g., via investment advisory or broker-dealer duties) for those entities.

For purposes of this definition, a subsidiary of an insurance company whose predominant purpose is to manage or hold investments or act as a broker-dealer for those investments on behalf of the insurance company and its affiliated insurance (greater than 90% of all such investment subsidiaries' assets under management or held are owned by or for the benefit of these insurance affiliates) should NOT be considered a Financial Entity. In the case where an insurer sets up multiple subsidiaries for this purpose, the 90% may be measured in the aggregate for all such entities. Similarly, in the case of collective investment pools (e.g., private funds, commodity pools, and mutual funds) the 90% may be measured individually, or in the aggregate for each subtype (e.g., private funds, commodity pools, and mutual funds).

In addition, other financial entities without a regulatory capital requirement include those which are predominantly engaged in activities that depending on the nature of the transaction and the specific circumstances, could create financial risks through the offering of products or transactions outside the group such as a mortgage, other credit offering or a derivative.

10. **Insurance Group**: For purposes of the GCC, a group that is comprised of two or more entities of which at least one is an insurer, and which includes all insurers in the Broader Group. Another (non-insurance) entity may exercise significant influence on the insurer(s); i.e., a holding company or a mutual holding company; in other cases, such as mutual insurance companies, the mutual insurer itself may be the Ultimate Controlling Person. The exercise of significant influence is determined based on criteria such as (direct or indirect) participation, influence and/or other contractual obligations; interconnectedness; risk exposure; risk concentration; risk transfer; and/or intragroup agreements, transactions and exposures.

An Insurance Group may include entities that facilitate, finance or service the group's insurance operation, such as holding companies, branches, non-regulated entities, and other regulated financial institutions. An Insurance Group is thus comprised of the head of the Insurance Group 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 could be headed by:

- An insurance legal entity;
- A holding company; or
- A mutual holding company.

An Insurance Group may be:

- A subset/part of bank-led or securities-led financial conglomerate; or
- A subset of a wider group.

An Insurance Group is thus comprised of the head of the Insurance Group and all entities under its direct or indirect control.

11. **Insurance Subgroup/U.S. Operations**: Refers to all U.S. insurers within a Broader Group where the groupwide supervisor is in a non-U.S. jurisdiction. It includes all the directly and indirectly held subsidiaries of those U.S. insurers. For purposes of subgroup reporting, capital instruments, loans, reinsurance, guarantees would only include those that exist within the U.S. insurers. Amounts included for the U.S. insurers shall include all amounts contained within the financial statements of those entities included in the subgroup reporting, whether those amounts are directly attributable or allocated to a company in the subgroup from an affiliate outside of the U.S. insurers and its direct or indirect subsidiaries.

12. **Lead State Regulator**: As defined in the *Financial Analysis Handbook*; i.e., generally considered to be the one state that “takes the lead” with respect to conducting groupwide supervision within the U.S. solvency system.
13. **Reciprocal Jurisdiction**: As defined in the *Credit for Reinsurance Model Law* (#785).
14. **Entity Not Subject to A Regulatory Capital Requirement**: This is a financial entity other than an entity that is subject to a specified regulatory capital requirement.
15. **Scope of Application**: Refers to the entities that meet the criteria listed herein for inclusion in the GCC ratio. The application of material risk criteria may result in the Scope of Application being the same as, or a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s).

NOTE: U.S. branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S. insurance regulator, otherwise in as much as they are already included in a reporting legal entity, they are already in the scope of application and there is no need for any additional reporting.

16. **Limited Group Capital Filing**: Refers to a GCC filing that includes sufficient data or information to complete the “Input 4 Analytics” tab and the “Summary 3 – Analytics” tab of the GCC template. This includes Schedule 1 of the template and may include limited data from other input tabs as deemed necessary for purposes of the analytics.
17. **Material Risk**: Risk emanating from a non-insurance/non-financial entity not owned by an insurer that is of a magnitude that could adversely impact the financial stability of the group as a whole such that the ability of insurers within a group to pay policyholder claims or make other policy related payments (e.g., policy loan requests or annuity distributions) may be impacted.

To determine whether an entity within the Broader Group poses material risks to the Insurance Group, the totality of the facts and circumstances must be considered. The determination of whether risk posed by an entity is material requires analysis of various aspects pertaining to the subject entity. A determination that a non-insurance/non-financial entity does not pose material risk allows the filer to request exclusion of that entity from the calculation of the GCC ratio in the “Inventory” tab. A number of items as listed below should be considered in making such a determination, to the extent they apply.

Caution is necessary, however. The fact that one or more of these items may apply does not necessarily indicate risk to the Insurance Group is, or is not, material. The group should be able to support its determination of material risk if requested by the Lead State Regulator. This should not be used as a checklist or as a scorecard. Rather, the list is intended to illuminate relevant facts and circumstances about a subject entity, the risk it poses, how the Insurance Group might be exposed to that risk and means to mitigate that risk.

Primary Considerations:

- Past experience (i.e., the extent to which risk from the entity has impacted the Insurance Group over prior years/cycles).
- The degree to which capital management across the Broader Group has historically relied on funding by the Insurance Group to cover losses of the subject entity.
- The existence of intragroup cross-support mechanisms (as defined below) between the entity and the Insurance Group.

- The means by which risk can be transmitted; i.e., the existence of sufficient capital within the entity itself to absorb losses under stress and/or if adequate capital is designated elsewhere in the Broader Group for that purpose.
- The degree of risk correlation or diversification between the subject entity and the Insurance Group (e.g., where risks of one or more entities outside the Insurance Group are potentially offset (or exacerbated) by risks of other entities) and whether the corporate structure or agreements allow for the benefits of such diversification to protect the Insurance Group.
- The existence and relative strength or effectiveness of structural safeguards that could minimize the transmission of risk to the Insurance Group (e.g., whether the corporate shell can be broken).

Other Considerations (*if primary considerations suggest exclusion may be reasonable, these can be used to further support exclusions*):

- The location of the entity in relation to the Insurance Group within the Broader Group's corporate structure and how direct or indirect the linkage, if any, to the Insurance Group may be.
- The activities of the entity and the degree of losses that the entity could pose to the group under the current economic environment or economic outlook

The guidance above recognizes that there are diverse structures and business models of insurers that make it impracticable to apply a one-size-fits-all checklist that would work for materiality determinations across all groups. Strict or formulaic quantitative measures based on size of the entity or its operations of a non-insurance affiliate are an insufficient proxy for materiality of risk to the insurance operations. The GCC Instructions thus consider the unique circumstances of the relevant entity and group and uses an interactive process whereby the group brings forward its suggestions as to entities that should be excluded from the scope of application for a discussion with the lead state, ultimately culminating in an agreement on the scope of application. The guidance in this section helps to facilitate that process and discussion with criteria for cross-support mechanisms that can potentially transmit material risk, as defined, to the Insurance Group as well as safeguards that can mitigate such risk or its transfer.

18. **Cross-Support Mechanism**: For purposes of evaluating material risk, depending on the nature of the transaction and the specific circumstances, these may include corporate guarantees, capital maintenance agreements (regulatory or ratings based), letters of credit, intercompany indebtedness, bond repurchase agreements, securities lending or other agreements or transactions that create a financial interdependence or link between entities in the group.
19. **Ultimate Controlling Person**: As used in the *Insurance Holding Company System Regulatory Act* (#440). This the entity that exercises control directly or indirectly over all entities within the Broader Group.
20. **Control**: As used in the Model #440, the term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This

presumption may be rebutted by a showing made in the manner provided by Section 4K of Model #440 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

21. **Affiliate:** As used in Model #440, an “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. For purposes of the GCC, affiliates will NOT include those affiliates reported on Schedule A or Schedule BA, EXCEPT in cases where there are financial entities reported as or owned indirectly through Schedule A or Schedule BA affiliates. In general Schedule A and Schedule BA affiliates will otherwise remain as investments of a Parent insurer will be reported as Parent of the value and capital calculation of the Parent insurer. Any entities that would otherwise qualify as Schedule BA affiliates as described above but are owned by other entities (e.g., foreign insurers or other type of Parent entity) should be treated in the same way.
22. **Person:** As used in Model #440, a “person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

III. Exemptions and Scope

A. Groups Exempted from the GCC

23. These instructions do not address groups that are exempt from completing the GCC; those matters are addressed instead within proposed changes to Model #440.

B. Scope of the Broader Group and Scope of Application

24. When considering the scope of application, preparers of the GCC must first understand the information to be included in Schedule 1 of the template. When developing an initial inventory of all potential entities, the preparers of the GCC shall complete Schedule 1, which, except in the case of an Insurance Subgroup (as defined in Section II), requests data for all of the entities directly or indirectly owned by the Ultimate Controlling Person (including the Ultimate controlling Person) that are listed in the insurer’s most recent Schedule Y or in relevant Holding Company Filings. This will require the preparers of the GCC to complete basic information about each such entity in Schedule 1, including its total assets, and total revenue and net income for this specific year identified, and the initial filing will require the same information for the prior year. The primary purpose of the Schedule 1 is to: 1) assist the lead state in making an assessment on the entities within the group that should be included in the Scope of Application; and 2) provide the lead state with valuation information to better understand the group. This valuable information produces various ratios and other financial metrics that will be used in the analysis of the GCC and the group by the lead state for their holding company analysis.
25. To assist the Lead State Regulator in assessing the Scope of Application, the Schedule 1 and the “Inventory” tab of the template will be completed by each preparer to provide information and certain financial data on all the entities in the group. Each preparer will also use the include/exclude column in Schedule 1 to request its own set of entities to be excluded from the

calculation after applying criteria for material risk (as defined in Section II) which will be described in the template and evaluated by the Lead State Regulator. A second column will be used by the regulator to reflect entities that the regulator agrees should be excluded.

26. Although all entities must be listed in Schedule 1 and in the “Inventory” tab, the preparer is allowed to group data for certain financial entities not subject to a regulatory capital requirement and certain non-insurance and non-financial entities. Thus, while the Schedule 1 would include the full combined financial results/key financial information (for all entities directly or indirectly owned by the Ultimate Controlling Person, such data may be reported based on major groupings of entities to maximize its usefulness and allow the Lead State Regulator to better understand the group, its structure, and trends at the sub-group as well as group level. Prior to completing the GCC annually, the Insurance Group should determine if the proposed grouping is satisfactory to the lead state or if there are certain non-insurance and non-financial entities (such entities are required to be broken out and reported separately) that should be broken out and reported separately.

C. General Process for Determining the Scope of Application

27. The starting point for “Scope of Application” (i.e., for purposes of the GCC specifically) is the entire group except in the case of an Insurance Subgroup (as defined in Section II). However, in the case of groups with material diverse non-insurance/non-financial activities isolated from the financial/Insurance Group and without cross-support mechanisms as defined in Section II, the preparer may request a narrower scope starting at the entity that controls all insurance and financial entities within the group [i.e., comprise a subset of, the entities controlled by the Ultimate Controlling Person of the insurer(s) (Broader Group)]. However, the adjustments as to the Scope of Application suggested by the preparer in consultation and in agreement with the Lead State Regulator should include consideration of guidance in paragraph 29 (“Identify and Include all Financial Entities”) the totality of the facts and circumstances, as described in paragraph 17 (“Definition of Material Risk”). The rationale and criteria applied in allowing the reduced scope should be documented and made available to non-lead states if requested.

The fundamental reason for state insurance regulation is to protect American insurance consumers. Therefore, the objective of the GCC is to assess quantitatively the collective risks to, and capital of, the entities within the Scope of Application. This assessment should consider risks that originate within the Insurance Group along with risks that emanate from outside the Insurance Group but within the Broader Group. The overall purpose of this assessment is to better understand the risks that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims consistent with the primary focus of insurance regulators.

D. Guiding Principles and Steps to Determine the Scope of Application

28. For most groups, the Scope of Application is initially determined by the preparer in a series of steps, listed here and then further explained as necessary in the text that follows:
 - Develop a full inventory of potential entities using the Inventory of the Group template (Schedule 1).
 - Denote in Schedule 1 for each non-financial entity whether it is to be “included in or excluded from” the Scope of Application” using the criteria in the “Identify Risks from the Broader Group” subsection below.

- All entities, whether to be included in or excluded from the Scope of Application are to be reported in the “Inventory” tab of the template. Information for excluded entities will be limited to Schedule 1B and the corresponding columns in the Inventory tab.
- Non-financial entities may qualify for grouping on this Inventory tab as described elsewhere in these instructions.

E. Steps for Determining the Scope of Application

29. Identify and list all entities in the Insurance Group or Insurance Subgroup (where required).

Include all entities that meet the definition of an affiliate in Section II, above and that fit the criteria identified in the definition of the Insurance Group or Insurance Subgroup (if applicable), in Section II, above except as modified in paragraph 31 (Identify Risks from the Broader Group), below. All insurance entities and entities owned directly or indirectly by the insurance entities in the group shall be included in the Scope of Application and reported in the Schedule 1 and Inventory of the Group template. Other non-insurance/nonfinancial entities within the Insurance Group may be designated as “exclude” as described in paragraph 31.

30. Identify and include all Financial Entities.

Financial Entities (as defined in Section II) within the Inventory of the Group template shall be included in (i.e., may not be designated as “excluded from”) the Scope of Application, regardless of where they reside within the Broader Group.

As learned from the 2008 financial crisis, U.S. insurers were not materially impacted by their larger group issues; however, materiality of either equity or revenue of an entity might not be an adequate determinant of potential for risk transmission within the group. Furthermore, risks embedded in financial entities are not often mitigated by the activities of the insurers in the group and may amplify their (the insurers’) risks.

Any discretion in evaluating the ultimate risk generated by a defined financial entity that is not subject to a regulatory capital requirement should be applied via review of the material risk definitions/principles included in paragraph 17 to set the level of risk as low, medium or high and **not** to exclude such entities from the calculation. The rationale should be documented, and all data required in Schedule 1 must be provided for the entity for purposes of analysis and trending.

31. Identify Risks from the Broader Group

An Insurance Group or Insurance Subgroup may be a subset of a Broader Group, such as a larger diversified conglomerate with insurance legal entities, financial entities, and non-financial entities. In considering the risks to which the Insurance Group or Insurance subgroup is exposed, it is important to take account of those material risks (as defined in Section II) to the Insurance Group from the Broader Group within which the Insurance Group operates. All non-insurance/non-financial entities included within the Insurance Group or Insurance Subgroup that pose material risk to the insurers in the group should be included within (i.e., may not be designated as “excluded from”) the Scope of the Application. Non-financial entities within the Broader Group but outside the Insurance Group that pose material risks to the Insurance Group should be included within (i.e., may not be designated as “excluded from”) the Scope of Application; non-material non-insurance/non-financial entities within the Broader Group or within the Insurance Group (as both terms are defined in Section II) other than those entities owned by entities subject to a specified regulatory capital requirement should be reported as

“excluded.” However, no entities outside an Insurance Subgroup (as defined in Section II) should be included in the GCC. When determining which non-financial entities from the Broader Group to include in the Scope of Application, the preparer must include any entity that could adversely impact the ability of the entities within the Scope of Application to pay policyholder claims or provide services to policyholders consistent with the primary focus of insurance regulators.

32. Review of Submission

The Lead State Regulator should review the Inventory of the Group template to determine if there are entities excluded by the preparer using the criteria above that the Lead State Regulator agrees do not pose material risk to its insurance operations. Additional information may be requested by the Lead State Regulator to facilitate this analysis. For entities where the Lead State Regulator agrees with the request to exclude, the GCC may exclude the data for such entities. Ultimately, the decision to include or exclude entities from the GCC will occur based on the Lead State Regulator’s knowledge of the group and related information or filings available to the Lead State and whether they believe an applicable entity would not adversely impact the entities within the Scope of Application to pay policyholder claims.

A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested, but not approved for exclusion by the lead state.

33. The preparer, together with the Lead State Regulator, would use the above steps, which includes considering the Lead State Regulator’s understanding of the group, including inputs such as Form F, ORSA and other information from other involved regulators, to determine the reasonableness of the suggested Scope of Application.

34. Updating the Scope of Application

The Scope of Application could be re-assessed by the preparer and the Lead State Regulator each successive annual filing of the GCC provided there has been substantial changes in corporate structure or other material changes from the previous year’s filing. Any updates should be driven by the assessment of material risk and changes in group structure as they impact the exclusion or inclusion of entities within the Scope of Application based on material risk considerations.

IV. General Instructions

35. The GCC template consists of a number of tabs (sections) within one workbook. The following provides general instructions on each of these tabs.
36. **Attestation:** This tab is intended to work similar to the annual financial statement and RBC attestations, which are both intended to give the regulator greater comfort that the company has completed in accordance with its (these) instructions. It will also indicate whether the group consists of predominantly life, P/C, or health insurers and whether the submission is a full or limited group capital filing.
37. **Input 1 – Schedule 1:** This tab is intended to provide a full inventory of the group, including the designation by the filer of any non-financial entities to be included in, or excluded from, the Scope of Application and include sufficient data or information on each affiliated entity (see Schedule A and Schedule BA exception) within the group so as to allow for analyzing multiple options for scope, grouping and sensitivity criteria, as well as, allowing the Lead State Regulator to make a determination as to whether the entities to be included in the scope of

application or excluded from the scope of application meet the aforementioned criteria. This tab is also used to maximize the value of the calculation by including various information on the entities in the group that allow the lead state to better understand the group as a whole, the risks of the group, capital allocation, and overall strengths and weaknesses of the group.

38. Except as noted in on the “Inventory” tab, equity method investments that are accounted for based on *Statement of Statutory Accounting Principles (SSAP) No. 48—Joint Ventures, Partnerships and Limited Liability Companies* are not required to be de-stacked (separately listed) in Schedule 1; i.e., their value would be included in amounts reported by the Parent insurer within the calculation. The basis for this approach is predicated on the purpose of the entire GCC, which is to produce an expected level of capital and a corresponding level of available capital that are derived by aggregating the amounts reported of capital of the individual entities under the GCC methodology. The available capital for such joint ventures, partnerships and limited liability companies is already considered in Schedule 1 but its inclusion in its Parent’s financial statements amounts and can thus be excluded from an inventory (not separately listed) because the Parent already receives a corresponding capital charge within its RBC.

NOTE: Data for this tab is required for a Limited Group Capital filing.

39. **Input 2 – Inventory:** This tab is intended to be used by the consolidated group to provide information on the value and capital calculation for all the entities in the group before any de-stacking of the entities. While some of this information is designed to “pull” information from Schedule 1, other cells (blue cells) require input from the group. This tab will include the adjustments for investment in subsidiary other than were an exception is described in these instructions and adjust for intragroup arrangements. This tab is set up to subtract those adjustments from capital and therefore should be entered as: 1) a positive figure if the adjustment currently has a positive impact on the available capital or the capital calculation; or 2) a negative figure if the adjustment currently has a negative impact on the available capital or the capital calculation. It will also be used to add relevant entities included as equity investments in Schedule A and Schedule BA and to aggregate the resulting adjusted values for use in the actual GCC.

NOTE: For a Limited Group Capital filing, data will be presented in a summarized format in a limited version of the “Inventory” tab in lieu of completing the full “Inventory” tab (see below).

Limited Group Capital Filing Only: Input 2 – Inventory: Manually enter data in Inventory B, Column 8 and Inventory C, Column 8 to report a single aggregated value for each entity category in the group. This will require that eliminations and adjustments normally found in a “full” Inventory B, Column 2 through Column 7 and Inventory C, Column 2 through Column 7 to be addressed offline.

40. **Input 3 – Capital Instruments:** This tab is intended to be used to gather necessary information to that will be used to calculate an allowance for additional available capital based on the concept of structural subordination applied to senior or other subordinated debt issued by a holding company. It will also provide information on all debt issued within the group.

NOTE: Data for this tab is NOT required for a Limited Group Capital filing.

41. **Input 4 – Analytics:** In recognizing a primary purpose of the GCC is to enhance groupwide financial analysis, this tab includes or draws from entity-category-level inputs reported in the tab or elsewhere in the GCC template to be used in GCC analytics. Separate guidance for Lead State

Regulators to reference in analysing the data provided in the GCC template (reference applicable location of the guidance; e.g., *Financial Analysis Handbook*).

NOTE: Data for this tab is required for a Limited Group Capital filing.

42. **Input 5 – Sensitivity Analysis and Inputs:** This tab includes inputs and/or describes informational sensitivity analysis for other than XXX/AXXX captives, permitted and prescribed practices, debt designated as “Other,” unscaled foreign insurer values and other designated sensitivity analysis. The inputs are intended to simply be a disclosure, similar to the disclosure required under Note 1 of the statutory financial statements. The analysis will be applied in the “Summary 2” tab.

NOTE: Data for this tab is NOT required for a Limited Group Capital filing.

43. **Input 6 – Questions and Other Information:** This tab will provide space for participants to describe or explain certain entries in other tabs. Examples include the materiality method applied to exclude entities in Schedule 1 and narrative on adjustments for intragroup debt and adjustments to available capital or capital calculations that are included in the “other adjustment” column in the “Inventory” tab.

NOTE: Data for this tab is NOT required for a Limited Group Capital filing.

44. **Calc 1 – Scaling (Ins):** This tab list countries predetermined by NAIC and provides the necessary factors for scaling available and required capital from non-US insurers to a comparable basis relative to the U.S. RBC figures. It also allows for set scaling options (which vary by insurance segment such as life, P/C, and health).

NOTE: This tab is NOT required for a Limited Group Capital filing.

45. **Calc 2 – Scaling (Non-Insurance):** This tab is used to determine calculated capital for non-insurance entities.

NOTE: This tab is NOT required for a Limited Group Capital filing.

46. **Summary 1 – Entity Category Level:** This tab provides a summary of available capital and calculated capital for each entity category before the application of capital instruments.

NOTE: This tab is NOT required for a Limited Group Capital filing.

47. **Summary 2 – Top Level:** This tab calculates various informational GCC ratios resulting from applying “on top” and entity level adjustments to adjusted carrying value and adjusted calculated capital and are described in the “Sensitivity Inputs and Analysis” tab. These “what if” scenario analysis will not be part of the GCC ratio.

NOTE: This tab is NOT required for a Limited Group Capital filing.

48. **Summary 3 – Analytics:** Provides a summary of various GCC analytics.

NOTE: This tab is required for a Limited Group Capital filing.

49. **Summary 4 – Grouping Alternatives:** This tab currently calculates and displays a grouping option that was submitted by an interested party.

NOTE: This tab is NOT required for a Limited Group Capital filing.

50. All cells in the template are color-coded based on the chart below. Inputs should only be made in blue cells. Do not add/delete rows, columns or cells or change the structure of the template in any way. If there appears to be an error in the formulas in the template, contact the NAIC.

The following set of colors is used to identify cells:	<i>Colors used</i>
Parameters	
Input cells	
Data from other worksheets	
Local calculations	
Results propagated	

V. Detailed Instructions-Template Included at the following Link:

<https://content.naic.org/sites/default/files/inline-files/2020%20GCC%20Template%20Nov%2030%202020%20Version%20%28Blank%29.xlsx>

Input 1 – Schedule 1

51. Schedule 1A is a small table at the top for identification of the filer. Enter the “Name of Group,” name of the person the template is “Completed by” and the “Date Completed.” Indicate the version number of the template if there are updates or multiple persons completing the template. All figures (in all tabs) should be converted to \$’000s. For example, a book value of \$123,450 should be entered as “123.45” in the template.
52. More detailed information on each legal entity should be reported in Schedule 1B through Schedule 1D. The order of the entries in Schedule 1 should match that in the “Inventory” tab. The first entity listed should be the ultimate controlling party.
53. U.S. branches of foreign insurers should be listed as separate entities when they are subject to capital requirements imposed by a U.S. insurance regulator. They should be reported under the appropriate entity category in **[Sch 1B Col 6]**.
54. Entries are required for every entity within the scope of the group. However, while recognizing that Lead State Regulator retain the discretion to ask for greater detail, the following simplifications **may** be applied as long as information for every entity is listed in Schedule 1B:

- A single numerical entry for like Financial Entities would be allowed at the intermediate holding company level, assuming that the like entities are owned by a common Parent that does not own other entity types, all use the same accounting rules (e.g., all GAAP), and are at least consistent with the way the group manages their business. The entity at which the total data is provided must be assigned an “Entity Category” in Schedule 1 that corresponds to the instructed carrying value and capital calculation for which the entry is made (e.g., an entity that would otherwise be categorized as a non-operating holding company but holds asset managers would be categorized as an asset manager). Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as “included.”
- In addition, a single numerical entry would be allowed for all included non-insurance/non-financial entities at the intermediate holding company level assuming that the intermediate holding company owns only non-insurance/non-financial entities assuming that the entities are owned by a common Parent that does not own other entity types, all use the same accounting rules (e.g., all GAAP), and are at least consistent with the way the group manages their business. This would include any positive residual value of the holding company itself. Entries for the remaining individual entities in the grouping will be reported in Schedule 1B only as “included.”
- Values for, non-insurance/non-financial subsidiaries of U.S. RBC filers may remain with their Parent insurers and will not be de-stacked. Entries for these individual entities in the grouping will be reported in Schedule 1B only as “included.”
- Mutual Insurance Groups may use the amount of required capital from the top-level Insurer’s RBC Report at 200% x ACL RBC and further adjusted to de-stack foreign insurers and other financial entities owned directly or indirectly (on a look-through basis) via RBC filing subsidiaries. Such foreign insurance subsidiaries or other financial subsidiaries shall be reported at the carrying values and capital calculations as described later herein.
- Data for U.S. Branches of Foreign insurers may be omitted from Schedule 1 if they are otherwise included in the entries, values, and capital requirements of a foreign insurer.

NOTE: These simplifications will be treated in a similar manner in Input 2 – Inventory.

55. Any financial entity owned by a Parent insurer and listed in Schedule A or Schedule BA, any insurance or financial entity that is owned indirectly through a Schedule BA affiliate should be listed in Schedule 1 and in the Inventory and assigned the appropriated identifying information. (See also the instructions for Part B of the Inventory). These entities will be de-stacked from the values for the Parent insurer. The same treatment for these entities will be afforded when they owned by a foreign insurer or other non-insurance entities.
56. Schedule 1B contains descriptions of each entity. Make selections from drop-down menu where available.
 - **[Sch 1B Col 1] Include/Exclude (Company)** – This column is to select entities where a request is made for exclusion. The filer will indicate which non-insurance/non-financial entities not owned directly or indirectly by an insurer that should be excluded from the GCC as not posing material risk to the group. The filer’s definition of material risk will be reported in the “Other Information” tab.

- **[Sch 1B Col 2] Include/Exclude (Supervisor)** – Column to be filled in by supervisor. These are entities where the Supervisor agrees with the filer’s assessment of material risk and these entities will be excluded from the GCC and may be included in a sensitivity analysis later in the template.

NOTE: This column may also be completed by the filer after advance consultation with the Lead State Regulator.

- **[Sch 1B Col 3] Include/Exclude (Selected)** – Formula to determine treatment of tab for later sensitivity analysis. If supervisor has made a determination of include/exclude in the prior column, that will be used. If not, company’s selection will be used.
- **[Sch 1B Col 4] Entity Grouping** – Column denotes whether this is an insurance or non-insurance/non-financial entity and is also automatically populated based on the entry in Column 8.
- **[Sch 1B Col 5] Entity Identifier** – Provide a unique string for each entity. This will be used as a cross-reference to other parts of the template. If possible, use a standardized entity code such as NAIC Company Code (CoCode) or Insurance Services Office (ISO) Legal Entity Identifier. CoCodes should be entered as text and not number (e.g., if CoCode is 01234, then the entry should be “01234” and not “1234”). If there is a different code that is more appropriate (such as a code used for internal purposes), please use that instead. If no code is available, then input a unique string or number in each row in whatever manner is convenient (e.g., A, B, C, D, ... or 1, 2, 3, 4...). Do not leave blank.
- **[Sch 1B Col 6] Entity Identifier Type** – Enter the type of code that was entered in the “Entity Identifier” column. Choices include “NAIC Company Code,” “ISO Legal Entity Identifier,” “Volunteer Defined” and “Other.”
- **[Sch 1B Col 7] Entity Name** – Provide the name of the legal entity.
- **[Sch 1B Col 8] Entity Category** – Select the entity category that applies to the entity from the following choices (all U.S. life captives shall select the option for “RBC Filing Captive,” complete the calculation using the life RBC formula in accordance with instructions below regarding “Additional clarification on capital requirements where a U.S. formula (RBC) is not required,” regardless of whether the company is required by their captive state to complete the RBC formula. Insurers or financial entities that are de-stacked from an insurer’s Schedule A or Schedule BA should be assigned the corresponding insurer or financial entity category:

RBC Filing U.S. Insurer (Life)	UK Solvency II – Life	Colombia
RBC Filing U.S. Insurer (P/C)	UK Solvency II – Composite	Indonesia
RBC Filing U.S. Insurer (Health)	Australia – All	Thailand
RBC Filing U.S. Insurer (Other)	Switzerland – Life	Barbados
U.S. Mortgage Guaranty Insurers	Switzerland – Non-Life	Regime A (Participant Defined)
U.S. Title Insurers	Hong Kong – Life	Regime B (Participant Defined)
Other Non-RBC Filing U.S. Insurers	Hong Kong – Non-Life	Regime C (Participant Defined)
RBC filing (U.S. Captive)	Singapore – All	Regime D (Participant Defined)
Canada – Life	Chinese Taipei – All	Regime E (Participant Defined)
Canadian – P/C	South Africa – Life	Bank (Basel III)
Bermuda – Other	South Africa – Composite	Bank (Other)
Bermuda – Commercial Insurers	South Africa – Non-Life	Financial Entity with a Regulatory Capital Requirement
Japan – Life	Mexico	Asset Manager/Registered Investment Advisor – High Risk
Japan – Non-Life	China	Asset Manager/Registered Investment Advisor – Medium Risk
Japan – Health*	South Korea	Other Financial Entity without a Regulatory Capital Requirement – High Risk
Solvency II – Life	Malaysia	Other Financial Entity without a Regulatory Capital Requirement – Medium Risk
Solvency II – Composite	Chile	Other Financial Entity without a Regulatory Capital Requirement – Low Risk
Solvency II – Non-Life	India	Other Non-Ins/Non-Fin with Material Risk
Solvency II – Non-Life	Brazil	Other Non-Ins/Non-Fin without Material Risk
UK Solvency II – Non-Life	Argentina	Non-Operating Holding Co.

* If the GCC group’s Japanese insurer health business (referred to as “Third Sector”) is greater than 60% of total life business (referred to as “First Sector”) and health business combined, as reflected by annualized premium for the year reported, then that group may elect to use the Japan health scalar set rather than the life scalar set.

NOTE: All U.S. captives are required to complete the applicable RBC formula template. In addition, any insurer, other than U.S. captive, that submits an RBC filing to either the state of domicile or the NAIC will be considered an RBC filer.

- **[Sch 1B Col 9] Alternative Grouping** – This is an optional input field. This field should be used if you wish to show similar entities aggregated into a single line on the “Grouping Alternative Exhibit.” For example, if you have a dozen small dental HMO businesses, you may wish to show them as a single line called “Dental HMOs,” as opposed to listing each entity separately. This is a level of granularity below “Entity Category” but above individual entities. No entity should be put in the same “Alternative Grouping” as its Parent. It is acceptable to put only one entity in a grouping. If any entries are left blank then, in Column 17, the “Entity Name” will be selected as the grouping. This will not impact the order of the entities for which data is entered in Schedule 1 or the “Inventory” tab.
- **[Sch 1B Col 10] Parent Identifier** – Provide the Entity Identifier of the immediate Parent legal entity for each entity, as applicable. If there are multiple Parents, select the Parent entity with the largest ownership percentage. Only include one entry. For the top holding company, enter “N/A.”
- **[Sch 1B Col 11] Parent Name** – This will be populated by a formula, so input is not required.
- **[Sch 1B Col 12] % Owned by Parent** – Enter the percentage of the entity that is owned by the Parent identified earlier in the worksheet. Percentages of ownership should be based on the percentage of voting class securities (unless ownership is maintained other than by control of voting securities) consistent with what is reported pursuant to state holding company regulation filings (Form B or equivalent).
- **[Sch 1B Col 13] % Owned within Group Structure** – Enter the percentage of the entity that is owned by all entities within the Group.
- **[Sch 1B Col 14] State/Country of Domicile** – Enter state of domicile for U.S. insurance entities and country of domicile for all other entities. (Use references that are consistent with those use on Schedule Y, where available.)
- **[Sch 1B Col 15] Zero Valued and Not Admitted Entities – Report for U.S. Insurers Only.** Select the treatment of the entity from following options: “Zero Valued for RBC” or “Nonadmitted for Accounting and RBC (Direct or Indirect).”

Zero Valued for RBC are affiliated insurance and financial entities that are otherwise reported in the RBC filer’s annual financial statement at their accounting value (i.e., per SAP) but are reported at zero value and zero capital requirements for RBC purposes. Examples include non-Canadian foreign insurers directly owned by U.S. life RBC filers. The carrying value and capital calculation specified in these instructions for the specific insurance or financial entity type should be reported in Inventory B, Column 2 and Inventory C, Column 2, respectively.

NOTE: Do not report zero values in Column 2 of Inventory B and Inventory C for these affiliates. Only RBC filing entities with this type of affiliate will report in this column.

Nonadmitted for Accounting and RBC (Direct or Indirect) are insurance or other financial affiliates that owned directly indirectly by an RBC filer via a downstream non-financial entity or holding companies that are reported at zero value per SAP and are also reported at zero value and zero capital requirements for RBC purposes. Examples include

U.S. insurers indirectly owned by a U.S. RBC filer through a nonadmitted holding company that has not been subject to an independent audit. The carrying values and capital calculations specified herein associated with the specific insurance or financial indirectly owned entity type should be reported Inventory B, Column 2 and Inventory C, Column 2, respectively.

NOTE: Do not report zero values in Column 2 of Inventory B and Inventory C for these affiliates. Only RBC filing entities with this type of affiliate will report in this column. The excess value in the nonadmitted Parent entity may be reported at zero value.

No entry is required in this column for any nonadmitted directly or indirectly owned non-insurance/non-financial subsidiary. Report zero for these affiliates in Column 2 of Inventory B and Inventory C.

- **[Sch 1B Col 16] Is Affiliates on Schedule A or Schedule BA** – Column is meant to identify an entity with a financial entity identifier in Column 8 that is otherwise reported on Schedule A or Schedule BA but is being moved to this Schedule. Provide a “Y” response where that is applicable. Otherwise leave blank.
- **[Sch 1B Col 17] Selected Alternative Grouping** – This will be populated by a formula, so input is not required. If there are any blank entries in Column 9 (Alternative Grouping), this column will set them equal to the name of the entity.

57. Schedule 1C contains financials for each entity:

- **[Sch 1C Col 1] Basis of Accounting** – Enter basis of accounting used for the entity’s financial reporting.
- **[Sch 1C Col 2 and Col 3] Gross and Net Written Premium** – Report for all U.S. and non-U.S. insurers. Use applicable entity annual financial statement data source for U.S. insurers (life, P/C, and health). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Sch 1C Col 4] Reinsurance Assumed from Affiliates** – Report for all U.S. and non-U.S. insurers. Use applicable entity annual financial statement data source for U.S. insurers (assumed premiums from P/C Schedule F, Part 1 and life and health Schedule S, Part 1, Section 1, and Section 2). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Sch 1C Col 5] Reinsurance Ceded to Affiliates** – Report for all U.S. and non-U.S. insurers. Use applicable entity annual financial statement data source for U.S. insurers (assumed premiums from P/C Schedule F, Part 3 and life and health Schedule S, Part 3, Section 1, and Section 2). Use equivalent local source for non-U.S. insurers or company records when available.
- **[Sch 1C Col 6] Book Assets** – This should be valued based on the applicable basis of accounting reported under the entity’s local regime and represents the total assets as reported in the basic financial statements before eliminations (because that is presumed to be less burdensome on the insurance holding company). Other financial data should similarly be prepared using financial data before eliminations. However, insurance holding

companies are allowed to present such figures after eliminations if they do so for all figures and consistently for all years.

- **[Sch 1C Col 7] Book Liabilities** – This should be valued based on the applicable basis of accounting reported under the entity’s local regime and represents the total liabilities as reported in the basic financial statements.
 - **[Sch 1C Col 8] Gross Paid-in and contributed Capital and Surplus** – For U.S. insurers, report the current year end amounts from annual financial statement Page 3 as follows:
 - a. Life Insurers: lines 29, 30 and 33.
 - b. P/C Insurers: lines 30, 31 and 34.
 - c. Health Insurers: lines 26, 27 and 28.
58. Generally, Schedule 1D will include entries from regulatory filings or entity specific GAAP financial statements as of the reporting date. The amounts reported should be the entity value on a stand-alone (fully de-stacked) or grouped basis (where applicable). This may require use of company records in certain cases. The amounts should be reported at 100% for the entity listed. Any required adjustments for percentage of ownership will be applied later, if necessary, to calculate a capital charge.
- **[Sch 1D Col 1] Prior Year Entity Identifier** – Report the Legal Entity Identifier, NAIC company code or other identifier used for the entity in the prior year GCC filing for the prior calendar year.
 - **[Sch 1D Col 2] Prior Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone balance sheet. This will generally be the same as what is reported in the current year column in the prior year GCC filing. Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance/non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance/non-financial entity is included in the capital charges for the Parent entity.
 - **[Sch 1D Col 3] Net Income** – The final reported income figure from the income statement, and therefore is the figure reported after interest, taxes, extraordinary items, etc. For entities with accounting and reporting requirements that specify that dividends paid or received will be part of “net income,” report the dividends received in this column. Report dividends to policyholders here as a reduction to net income if required by local accounting or reporting requirements.
 - **[Sch 1D Col 4] Dividends Paid and Received (Net)** – All entity types report the net amount of dividends paid and received in reporting year to/from and affiliate, a Parent shareholder, public shareholders, or policyholders (if not required to be a reduction/increase in net income by local accounting or reporting requirements). All entity types that are subject to accounting and reporting requirements that specify that dividends paid or received will be reported as a surplus adjustment, will report dividends received in reporting year from affiliates in this column.

- **[Sch 1D Col 5] Capital and Surplus Contributions Received from Affiliates** – All entity types. Report sum of capital contribution (other than via surplus notes) during the reporting year received from any affiliated entity.
- **[Sch 1D Col 6] All Other Changes in Capital and Surplus** – Include total for all adjustments not listed above. This would include any investment income not already reported in Column 3 or Column 5. Also, report all stock repurchases or redemptions in this column.

NOTE: Greater detail may be made available upon request.

- **[Sch 1D Col 7] Current Year Equity or Capital and Surplus** – Report the value based on net equity reported in the entity stand-alone Balance Sheet for the current year. This will generally be the same as what is reported for the entity in the Inventory B, Column 2. Where grouping is permitted, the balance reported may be on a grouped basis. Do not report values for non-insurance/non-financial entities owned directly or indirectly by RBC filers or owned by other financial entities with regulatory capital requirements for which the non-insurance/non-financial entity is included in the capital charges for the Parent entity.
- **[Sch 1D Col 8] Capital and Surplus Contributions Paid to Affiliates** – All entity types report the total of capital contributions (other than via surplus notes) during the reporting year paid to any affiliated entity.
- **[Sch 1D Col 9] Dividends Declared and Unpaid** – For all applicable entities report the amount of dividends declared or approved but not yet distributed.
- **[Sch 1D Col 10] Dividends Received and Not Retained** – All holding companies, insurers and financial entities with regulatory capital requirements indicate by “Y” or “N” if part or all of dividends received reported in Column 5 have been paid (passed through) to a Parent company, to public shareholders, or used to repurchase or redeem shares of stock.

Input 2 – Inventory

59. Columns in Inventory A are being pulled from Schedule 1:

- [Column 1] Insurance/Non-Insurance
- [Column 2] Entity Identifier
- [Column 3] Entity Identifier Type
- [Column 4] Entity Name
- [Column 5] Entity Category
- [Column 6] Parent Identifier
- [Column 7] Parent Name
- [Column 8] Basis of Accounting

Columns Requiring Input

60. Enter information on adjustments to carrying value. Considerations specific to different types of entities are located at the end of this subsection.

- **[Inv B Col 1] Carrying Value (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, carrying values utilized should represent: 1) the subsidiary valuation required by the insurance or other sectoral regulator if the Parent is a regulated entity; or 2) in the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then a subsidiary valuation based U.S. GAAP or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements.

The value in this column will include a zero value for entities not admitted per SAP or other jurisdictional regulatory rules. A single entry for all entities that qualify under the grouping exceptions described herein may be made in lieu of individual entries on the line for the affiliate that holds the qualifying entities. This column will include double-counting.

The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group.

- **[Inv B Col 2] Carrying Value (Local Regime)** – Record the carrying value recognized by the legal entity’s jurisdictional insurance or other sectoral supervisor. This will include the value of capital instruments (e.g., U.S. insurer issued surplus notes) that are specifically recognized by statute, regulation or accounting rule and included in the carrying value of the entity. In the case where the entity is not subject to insurance or other sectoral regulatory

valuation, then U.S. GAAP equity (including OCI) or other International GAAP as used in the ordinary course of business by the ultimate controlling party in their financial statements. If an agreed-upon change in local carrying value should become effective by 2019, Volunteer Groups are expected to report on that basis. If the group is comprised entirely of U.S.-based entities under a U.S.-based Parent company, the entries in this column will be the same as in Column 1 except in cases where the Parent owns not admitted (or otherwise zero valued financial affiliates that would be reported as not admitted in the Parent Regime column but fully admitted (per SAP valuation) in the Local Regime column). (See instructions for [Sch 1B Col 15].) However, if such an entity has been listed in the [Sch 1B Col 2] **Include/Exclude (Supervisor)** column, indicating that the Lead State Regulator agrees that the entity does not pose material risk, then a value will be reported here, but the ultimate calculation will show the results without the excluded entity's value. The carrying value for affiliates that are U.S. RBC filers, the value will be the amount reported TAC on entity's RBC report. This column will include double-counting. The values recorded for all subsidiaries should be the full value of the subsidiary regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the full value of the subsidiary adjusted to reflect total percentage of ownership within the group. The entry here should generally be the same as the value reported in Inventory B, Column 1, except where TAC for RBC filers differs from BACV. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries.

A sensitivity analysis is included to calculate to reflect the impact of excluded entities requested but not approved for exclusion by the lead state.

Parent Entity	INVENTORY B – Accounting Valuation to be Used			Parent Entity Line Inv C, Column 3
	Entity	Inv B, Column 1	Inv B, Column 2	
U.S. RBC filer	U.S. RBC filer	BACV Per Statutory Accounting	RBC TAC	BACV Per Statutory Accounting
U.S. RBC filer	Other U.S. Insurer	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	BACV Per Statutory Accounting	Per Local Regulatory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Financial w/o Capital Reqmt	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
U.S. RBC filer	Non-Financial	BACV Per Statutory Accounting	No entry Required	No entry Required - Do not de-stack
Other U.S. Insurer	U.S. RBC filer	BACV Per Statutory Accounting	RBC TAC	BACV Per Statutory Accounting
Other U.S. Insurer	Any Other Entity Type	BACV Per Statutory Accounting	BACV Per Statutory Accounting	BACV Per Statutory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Regulatory Accounting	RBC TAC	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Regulatory Accounting	BACV Per Statutory Accounting	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Regulatory Accounting	Jurisdictional or Sectoral PCR Level Per Local Capital	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Regulatory Accounting	Per risk level factor x 3-year avg revenue	Per Local Regulatory Accounting
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Regulatory Accounting	No entry Required	No entry Required – Do not de-stack
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Per Local Public Accounting	RBC TAC	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Per Local Public Accounting	BACV Per Statutory Accounting	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Public Accounting	Per Local Regulatory Accounting	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Per Local Public Accounting*	Per Local Regulatory Accounting*	Per Local Public Accounting
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Per Local Public Accounting*	Per Local Public Accounting*	Per Local Public Accounting

*Subject to Grouping

In cases where a U.S. life RBC filer owns a foreign insurer and the BACV value reported for the foreign insurer in the Parent U.S. insurers financial statement is adjusted to zero for RBC purposes, then report zero in Inventory B, Column 1 and Column 3 for that foreign insurance entity.

- **[Inv B Col 3] Investment in Subsidiary** – Enter an adjustment to remove the investment carrying value of any directly owned subsidiary(ies) from Parent’s carrying value. This is intended to prevent double-counting of available capital when regulated entities are stacked. The carrying value to be removed should be the investment value carried by the Parent from which the entity is being de-stacked (i.e., the value in Column 1 in Inventory B adjusted for ownership percentage). Thus, there will be no adjustment to the Parent’s value in this column for entities that are reported at zero value by the Parent. Where entities are owned partially by entities outside of the group, then the Parent’s percentage of ownership will be calculated based on the value owned within the group.

Generally, for all non-financial affiliates, Schedule A and Schedule BA assets will remain in the value of the Parent insurer and not entered in this column unless they meet the exceptions described herein. For indirectly owned Schedule A or Schedule BA financial entities, only the value of that entity will be included in this column and the remaining value of the downstream Schedule BA Parent will remain with the Parent insurer.

Similarly, the carrying value of U.S. branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the value of the foreign insurer so that the Parent entity may eliminate double-counting of that available capital which will now be reported by the stand-alone Branch listed in the inventory.

NOTE: The “Sum of Subsidiaries” column may provide a useful check against this entry, but it will not necessarily be equal.

When utilizing public accounting (e.g., GAAP) equity values that differ from regulatory values (e.g., SAP), it is **the GAAP equity** of the insurers must be eliminated from the GAAP Parent in this column, not the SAP (regulated capital). This is necessary in order to allow the calculation to appropriately represent SAP capital of regulated entities and GAAP equity of non-regulated entities. Data on the accounting differences between Parent and Local carrying values will be collected in Column 9 and further detail provided in the “Questions and Other Information” tab.

NOTE: Values for Schedule A and Schedule BA affiliates that are required to be reported in the “Inventory” tab will be adjusted out of the value reported by the U.S. insurer in this column.

[Inv B Col 4] Intragroup Capital Instruments – This column is automatically calculated from inputs to the “Capital Instruments” tab. It reflects an adjustment to remove carrying value for intragroup financial instruments that are treated as capital by the issuer and consequently create additional capital within the group upon issuance (most notably U.S. surplus notes). Example for surplus notes: In both intragroup and unaffiliated transactions, 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 in this column. 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 in the corresponding adjustment column for the capital calculation. No adjustments are made for any intragroup capital instrument that is treated as a liability by the issuer.

- **[Inv B Col 5] Reported Intragroup Guarantees, LOCs and Other** – Enter an adjustment to reflect the notional value weighted for expected utilization for reported intragroup guarantees (including solvency insurance and capital maintenance agreements). Enter the notional value for letters of credit, or other intragroup financial support mechanisms. Explain each intragroup arrangement in the “Questions and Other Information” tab.
- **[Inv B Col 6] Other Intragroup Assets** – Enter the amounts to adjust for and to remove double-counting of carrying value for other intragroup assets, which could include intercompany balances, such as (provide an explanation of each entry in the “Questions and Other Information” tab):
 - a. Loans, receivables and arrangements to centralize the management of assets or cash;
 - b. Derivative transactions;
 - c. Purchase, sale or lease of assets; and
 - d. Other (describe).
- **[Inv B Col 7] All Other Adjustments** – Include a brief explanation in the “Description of ‘Other Adjustments’” in the “Other Information” tab.

- **[Inv B Col 8] Adjusted Carrying Value** – Stand-alone value of each entity per the calculation to eliminate double-counting. This value includes permitted and prescribed practices.
- **[Inv B Col 9] Accounting Adjustments (e.g., GAAP to SAP)** – Report the total difference between the carrying value reported in Column 1 (and Column 3) and the value reported in Column 2. This column will apply to regulated entities where the stand-alone carrying value is based on regulatory accounting (e.g., SAP) while the value reported for that entity by the Parent is carried at a financial accounting (e.g., GAAP) value. Further detail is reported in the “Questions and Other Information” tab.
- **[Inv B Col 10] Gross Revenue 2nd Prior Year (Financial Entities without Regulatory Capital Requirements and Non-financial Entities)** – Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Col 11] Gross Revenue Prior Year (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** – Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Col 12] Gross Revenue Current Year (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** – Report gross revenue (excluding dividends from subsidiaries and affiliates).
- **[Inv B Col 13] Average Revenue over 3-years (Financial Entities without Regulatory Capital Requirements and Non-Financial Entities)** – This column is populated from data in Column 10, Column 11 and Column 12.

This column will support the capital calculation for asset managers, broker-dealers and other Financial Entities without Regulatory Capital Requirements.

61. “Adjusted Capital Calculation” is reported in a similar manner to the “Adjusted Carrying Value” above. The columns are in the same order, although it is likely that fewer entries will be needed for Column 4 through Column 7. Further guidance is below.

- **[Inv C Col 1] Entity Required Capital (Immediate Parent Regime)** – This column is included to accommodate participants with either a U.S. or a non-U.S. based Parent company. In general, entity required capital should represent the capital requirements of the Parent’s insurance or other sectoral regulator:
 - a. For subsidiaries of foreign insurers or other non-U.S. financial entities, the unscaled capital required by the Parent’s regulator of the regulated entity based on the equivalent of a Prescribed Capital Requirement (PCR) level.
 - b. For subsidiaries, including applicable Schedule A and Schedule BA subsidiaries, of U.S. insurance entities that are subject to RBC, except where the subsidiary is also an RBC filer, the entry should be equivalent of what would be required in the Parent’s RBC, adjusted for covariance where applicable (calculated by the preparer) reported at company action level (or two times authorized control level RBC) for that entity. Where the subsidiary is also an RBC filer, then the amount reported will be at company action level RBC (or two times authorized control level RBC) after covariance.

- c. For subsidiaries of U.S. insurers that do not file RBC, report the actual amount of capital required in the Parent's capital requirement (if any) for the subsidiary entity.
 - d. In the case where the Parent is not subject to insurance or other sectoral regulatory valuation, then use zero where applicable. This column will include double-counting. The values recorded for all subsidiaries should be the 100% of the specified capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group. A single entry for all entities that qualify under the grouping exceptions described herein may be made on the line for the affiliate that holds the qualifying entities in lieu of individual entries.
- **[Inv C Col 2] Entity Required Capital (Local Regime)** – Enter required capital for each de-stacked entity, as applicable entity description below. For U.S. RBC filing subsidiaries under a U.S. RBC filing Parent the amounts will be the same in both the Parent and Local Regime columns, except where the RBC filing subsidiary is subject to an operational risk charge. In such cases the amount reported in this column for the subsidiary will include the operational risk charge while the amount reported in Column 1 will exclude the subsidiary's operational risk charge. However, for some entity types this will result in entries for the entities under a U.S.-based insurance Parent to be different from what U.S. RBC would dictate. In addition, where a U.S. insurer directly or indirectly owns not admitted (or otherwise zero valued) financial affiliates, those affiliates would be reported with zero value in the Parent Regime column but at the specified regulatory value described below for that financial entity type in this column. However, if such an entity has been listed in **[Sch1B Col 2] Include/Exclude (Supervisor)** column, indicating that the Lead State Regulator agrees that the entity does not pose material risk, then report the capital calculation in accordance with entity instructions, but the ultimate calculation will show the results without the excluded entity's capital calculation. Directly or indirectly owned non-financial entities that were not admitted or otherwise carried at a zero value in the Parent Regime, may be carried at zero value in this column. A single entry for all entities that qualify under the grouping exceptions described herein may be made in the line for the affiliate that holds the qualifying entities in lieu of individual entries. This column will include double-counting. The values recorded for all subsidiaries should be the 100% of the capital requirements regardless of percentage of ownership by entities within the group. Where entities are owned partially by entities outside of the group, then report the capital requirements of the subsidiary adjusted to reflect total percentage of ownership within the group.
62. For financial entities without a regulatory capital requirement and for non-insurance/non-financial entity types where additional options are noted below, the options are shown here for informational purposes only and the calculations are described in the tabs where the relevant data and calculations reside.
 63. Additional clarification on capital requirements where a formula is required:
 - **U.S. RBC filing Insurers:** Report RBC at Company Action Level (200% x ACL)
 - **Foreign Insurance Entities:** The local capital requirement as specified below for each jurisdiction should be reported, by legal entity, at a Prescribed Capital Requirement (PCR) level. This treatment is different than what U.S. RBC would require and recognizes other regulators view of adequate capital for insurers within another jurisdiction. It is more

reflective of risk within the group context. A sensitivity analysis will be included in the “Sensitivity Analysis” tab using the jurisdictional PCR scaled per the Excess Relative Ratio method (see Appendix 1) for insurers in foreign jurisdictions that are subject to scaling.

- **European Union subsidiaries:** Use the Solvency II Solo Solvency Capital Requirement (SCR) as the PCR.
 - **U.S. subsidiaries:** The RBC Company Action Level of each insurer should be reported.
 - **Australia subsidiaries:** The PCR is the target capital as set by the insurer/group in accordance with APRA requirements. Effectively, this would be “Target capital under ICAAP.” PCR is not a set multiple of MCR.
 - **Bermuda subsidiaries:** The Legal Entity PCR in Bermuda for medium and large commercial insurers is called the “Enhanced Capital Requirement” (ECR) and is calibrated to Tail VaR at 99% confidence level over a one-year time horizon.
 - **Hong Kong subsidiaries:** Under the current rule-based capital regime, if applied similar to the concept of PCR, the regime’s PCR would be 150% of MCR for life insurers and 200% of MCR for non-life insurers.
 - **Japan subsidiaries:** The PCR is the solvency margin ratio of 200%.
 - **Korea subsidiaries:** The PCR is 100% of risk-based solvency margin ratio.
 - **Singapore subsidiaries:** The PCR is 120% of total risk requirement (i.e., capital requirement).
 - **China Taipei subsidiaries:** The PCR is 200% of RBC ratio.
 - **Canada life entities:** The baseline PCR should be stated to be “100% of the LICAT Base Solvency Buffer.” The carrying value should include surplus allowances and eligible deposits.
 - **Canada P/C entities:** The PCR should be the MCT capital requirement at the target level.
 - **South Africa subsidiaries:** The PCR is 100% of the SAM SCR.
 - For any entities that cannot be mapped to the above categories, scaling will be at 100%
64. Additional clarification on capital requirements where a U.S. formula (RBC) is not required:
- For those U.S. insurers that do not have an RBC formula, the minimum capital per state law should be used as the basis for what is used for that insurer in the GCC. This may differ from what U.S. RBC would require. It is more reflective of the regulatory view of risk in the group context. The following requirements should be used in other specified situations where an RBC does not exist:
 - **Mortgage Guaranty Insurers:** The minimum capital requirement shall be based on the NAIC’s requirements set forth in the *Mortgage Guaranty Insurance Model Act* (#630).

- **Financial Guaranty Insurers:** The minimum capital requirement shall be based on the NAIC's requirements set forth in the *Financial Guaranty Insurance Guideline* (#1626), specifically considering Section 2B (minimum capital requirements) and Section 3 (Contingency, Loss and Unearned Premium Reserves) and the other requirements of that guideline that impact capital (e.g., specific limits).
- **Title Companies:** The minimum capital requirement shall represent 200% of the required level of reserves carried by the insurance company.
- **Other Companies:** A selected basis for minimum capital requirements derived from a review of state laws. Where there is a one-off treatment of a certain type of insurer that otherwise would file RBC (e.g., HMOs domiciled in California), the minimum capital required by their respective regulator could be considered in lieu of requiring the entity to complete an RBC blank.
- **Captives:** U.S. insurers that have captives should complete the applicable RBC formula regardless of whether the captive is required to complete it in their captive state. The amounts input into RBC by the captive shall be based on the actual assets and liabilities utilized in the regulatory reporting used by the captive. Captives used exclusively for self-insurance (either by U.S. life insurers or any other type of insurer) or insurance provided exclusively to its own employees and/or its affiliates, should not complete an RBC calculation and the entire entity should be treated as non-insurers and receive the same charge as a non-regulated entity.

65. Non-insurance financial entities subject to a specified regulatory capital requirement:

- All banks and other depository institutions – The unscaled minimum required by their regulator. For U.S. banks, that is the Office of the Comptroller of the Currency (OCC) Tier 1 or other applicable capital requirement. This is understood to be consistent with how the Federal Reserve Board would apply its Building Block Approach.
- Any other financial entity that is determined to be subject to a specified regulatory capital requirement will bring that requirement in the GCC at the first level of regulator intervention (if applicable).
- This differs from what U.S. RBC would require. It recognizes the sectoral regulator's view of risk for a particular financial entity type. It is more reflective of risk in the group context.

66. Non-insurance financial entities NOT subject to a specified regulatory capital requirement:

- All asset managers and registered investment advisors and all other financial entities as defined in Section II: Use the capital calculation specified below based the level of risk assigned to the entity by applying the material risk principles defined in Section II. However, asset managers and investment affiliates (not qualifying to be treated as non-financial entities per paragraph 9) will be reported at either medium or high risk. In certain cases, these entities may be subject to a layer of regulation (e.g., SEC or FINRA) but are not generally subject to a specified capital requirement.

High Risk: 10% x 3-year average revenue

NOTE: A Basel Charge of 15% will be used for the IAIS ICS.

Medium Risk: 5.0% x 3-year average revenue.

Low Risk: 2.5% x 3-year average revenue

NOTE: Medium risk could be used as a starting point while the stratified methodology is further developed.

67. Other non-insurance, non-financial entities with material risk:

- Non-insurance, non-financial entities may not be as risky as financial entities. For entities not owned by RBC filers or other entities where there is a regulatory capital charge for the entity in the capital formula, use an equity charge of 10.5% (post tax) for predominantly life Insurance Groups 9.5% for predominantly P/C Insurance Groups and 3.5% for predominantly health Insurance Groups x BACV. If the entity is not subject to a capital charge or is included in the capital charge of another financial entity, then enter zero in Column 1 and the charge specified in this paragraph in Column 2. These factors are based on average after covariance RBC charges for the respective insurer types and are calibrated at 200% x ACL RBC. This is meant to be consistent with how the entity would be treated if owned by an RBC filer while recognizing that the entity may be excluded from the GCC if it does not pose material risk to the insurers in the group.

Non-insurance/non-financial entities owned by RBC filing insurers (or owned by other entities where a regulatory capital charge applied to the non-insurance/non-financial affiliate) is will remain in the Parent's capital charge and reported at that value in Column 1 but will be reported as zero in Column 2. These non-financial entities may not be excluded from the GCC.

One additional informational capital calculation for all non-financial entities will be applied using current year gross revenue from Inventory B, Column 12 with the calculation occurring and results available in the "Calc 2" tab as follows: 5% of reporting year gross revenue based on a medium level risk for a financial entity.

68. Non-operating holding companies:

- Non-operating holding companies will be treated the same as other non-insurance/non-financial entities with material risk. Unless reported on a grouped basis (see paragraph 54), for purposes of applying the capital calculation, the carrying value of stand-alone positive valued and negative valued non-operating holding companies will be netted. If the net value is zero or less (floored at zero for purposes of applying a charge), the charge applied will be zero. If the filer chooses to designate the non-operating holding company as a non-insurance/non-financial entity without material risk and requests exclusion, then no allowance for debt issued by that holding company may be included in the calculation.

Parent Entity	INVENTORY C – Capital Calculation to be Applied			Parent Entity Line Inv C, Column 3
	Entity	Inv B, Column 1	Inv B, Column 2	
U.S. RBC filer	U.S. RBC filer	RBC ACL (excl. op Risk) x 2	RBC ACL x 2	RBC ACL (excl. op Risk) x 2
U.S. RBC filer	Other U.S. Insurer	Per RBC	Per GCC Entity Instructions	Per RBC
U.S. RBC filer	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per RBC	Jurisdictional or Sectoral PCR Level Capital Reqmt	Per RBC
U.S. RBC filer	Financial w/o Capital Reqmt	Per RBC	Per risk level factor x 3-year avg revenue	Per RBC
U.S. RBC filer	Non-Financial	Per RBC	No entry Required	No entry Required - Do not de-stack
Other U.S. Insurer	U.S. RBC filer	Zero	RBC ACL x 2	Zero
Other U.S. Insurer	Any Other Entity Type	Zero	Per GCC Entity Instructions	Zero
Foreign Insurer or Other Regulated w/ Capital Reqmt	U.S. RBC filer	Per Local Capital Reqmt	RBC ACL x 2	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Other U.S. Insurer	Per Local Capital Reqmt	Per GCC Instructions	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Foreign Insurer or Other Regulated w/ Capital Reqmt	Per Local Capital Reqmt	Jurisdictional or Sectoral PCR Level Per Local Capital	Foreign Insurer or Other Regulated w/ Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Financial w/o Capital Reqmt	Per Local Capital Reqmt	Per risk level factor x 3-year avg revenue	Per Local Capital Reqmt
Foreign Insurer or Other Regulated w/ Capital Reqmt	Non-Financial	Per Local Capital Reqmt	No entry Required	No entry Required - Do not de-stack
Financial w/o Capital Reqmt or Non-Financial	U.S. RBC filer	Zero	RBC ACL x 2	Zero
Financial w/o Capital Reqmt or Non-Financial	Other U.S. Insurer	Zero	Per GCC Entity Instructions	Zero
Financial w/o Capital Reqmt or Non-Financial	Foreign Insurer or Other Regulated w/ Capital Reqmt	Zero	Jurisdictional or Sectoral PCR Level Capital Reqmt	Zero
Financial w/o Capital Reqmt or Non-Financial	Financial w/o Capital Reqmt	Zero	Per risk level factor x 3-year avg revenue*	Zero
Financial w/o Capital Reqmt or Non-Financial	Non-Financial	Zero	Per GCC Instructions*	Zero

Capital Calculation Adjustments

- [Inv C Col 3] Investment in Subsidiary** – Enter an adjustment to remove the required capital of the directly owned subsidiary(ies) from Parent’s required capital. The capital requirement to be removed should be the capital requirement carried by the Parent from which the entity is being de-stacked (i.e., the value reported in Column 1 in Inventory C adjusted for ownership percentage). Thus, there will be no adjustment to the Parent’s value in this column for entities that are reported at zero value by the parent This is intended to prevent double counting required capital when regulated entities are stacked. [Example: When de-stacking an RBC filer from another RBC filer, the amount entered on the Parent line would be the RBC of the subsidiary. When de-stacking financial entities that are subject to diversification in a capital formula (e.g. RBC) the amount entered on the Parent line is the post-diversified capital requirement as calculated by the preparer(which is also the amount to be reported for the de-stacked entity on the entity’s line.

Generally the capital requirements for Schedule A and BA affiliates and other non-financial affiliates will remain in the capital requirements of the Parent insurer and not entered in this column, except that the capital requirements for any financial entity reported in a Parent’s Schedule A and BA, any financial entity indirectly owned through another Schedule A or BA affiliate listed in Schedule 1 and in this section should be entered in this column in the row of the entity that directly or indirectly owns that Schedule A and BA affiliate so that the parent entity may eliminate double counting of that capital requirement capital which will now be reported by the stand-alone Schedule A or BA affiliate listed in in the inventory.

For indirectly owned Schedule A and BA financial entities, only the capital requirements for that entity will be included in this column and the remaining capital requirement of the downstream BA Parent will remain with the Parent insurer. Similarly the capital requirement for any U.S. Branch of a foreign insurer that is listed in Schedule 1 and in this section should be entered in this column in the row of the foreign insurer if it is already included in the capital requirement of the foreign insurer so that the parent entity may eliminate double counting of that capital requirement which will now be reported by the stand-alone Branch listed in the inventory. The amounts entered in this column for a Parent must correspond to the capital required by the parent entity which is being de-stacked from that Parent.

Capital calculations for Schedule A and Schedule BA indirectly owned **financial entities** that are owned by Schedule A or Schedule BA assets are reported in the Inventory Tab and will be adjusted out of the value reported by the U.S. insurer in this column (since the non-financial direct parent Schedule A or BA affiliate is not listed in the Inventory Tab.

In the “Questions and Other Information” tab, a capital requirement should be reported for the indirectly owned entity based on the insurers Schedule A or Schedule BA charge rather than a charge (which would be zero) attributable to the Schedule A or Schedule BA entity that directly owns the financial entity.

- **[Inv C Col 4] Intragroup Capital Instruments** – This column would generally be used if there is potential double-counting of capital requirements (e.g., RBC charges on surplus notes purchased by an affiliated U.S. insurer from a U.S. insurer issuer).
- **[Inv C Col 5] Reported Intragroup Guarantees, LOCs and Other** – This column would generally be used if there is potential double-counting of capital requirements (e.g., RBC charges on guarantees or LOCs).
- **[Inv C Col 6] Other Intragroup Assets** – This column is not intended to be used for required capital but is included in case an entity believes it is necessary from reporting an inaccurate required capital figure.
 - a. Loans, receivables and arrangements to centralize the management of assets or cash.
 - b. Derivative transactions.
 - c. Purchase, sale or lease of assets.
 - d. Other (describe in “Questions and Other Information” tab).
- **[Inv C Col 7] All Other Adjustments** – Include a brief explanation in the “Description of ‘Other Adjustments’” in the “Questions and Other Information” tab. Use this column is for adjustments related to required capital that correspond to adjustments in Inventory B, Column 7 and in cases where an entity believes it is necessary to adjust an inaccurate regulatory required capital figure (e.g., the RBC calculation applied as a permitted practice).

NOTE: Consider whether this column should be used rather than Column 2 for zero value entities.

- **[Inv C Col 8] Adjusted Capital Calculation** – Stand-alone capital calculation for each entity per the calculation to eliminate double-counting. This value includes the impact of permitted and prescribed practices

- Inventory D is for “Reference Calculations Checks.” These are calculations that can serve as checks on the reasonability/consistency of entries.
 - a. **[Inv D Col 1 – 3] Sum of Subsidiaries (Carrying Value)** – This automatically generated column calculates the value of the carrying value of the underlying subsidiaries. It is provided for reference when filling out the “Investment in Subsidiary” column. This sum will often, but not always, be equal to the “Investment in Subsidiary” column.
 - b. **[Inv D Col 4 – 6] Sum of Subsidiaries (Calculated Capital)** – Similar to above but for calculated capital.
 - c. **[Inv D Col 7 – 8] Carrying Value/Adj Calc Cap** – This is a capital ratio on the adjusted and unadjusted figures. Double-check entities with abnormally large/small/negative figures to make sure that adjustments were done correctly.

Input 3 – Capital Instruments

69. Provide all relevant information pertaining to paid-up (i.e., any receivables for non-paid-in amounts would not be included for purposes of calculating the allowance) financial instruments issued by the Group (including senior debt issued by a holding company), except for common or ordinary shares and preferred shares. This worksheet aims to capture all financial instruments such as surplus notes, senior debt, hybrid instruments and other subordinated debt. Where a Volunteer Group has issued multiple instruments, the Volunteer Group should not use a single row to report that information; one instrument per row should be reported (multiple instruments issued under the same terms may be combined on a single line). All qualifying debt should be reported as follows.
70. Debt issued by U.S.-led groups:
- Surplus Notes – Report the outstanding value of all surplus notes in Column 8 whether issued to purchasers within or outside the group. The outstanding value of surplus notes issued to entities outside the group and that is already recognized by state insurance regulators and reported 100% as capital in the carrying value of U.S. insurer issuers in “Inventory B” and will not be included in the additional capital allowance. Surplus notes issued within the group generally result in double-counting and will not be included in the additional capital allowance. (See instructions below.)
 - Subordinated Senior Debt and Hybrid Debt Issued (e.g., debt issuances that receive an amount of equity credit from rating agencies) – The outstanding value will be reported in Column 8. Recognition for structurally subordinated debt will be allowed to increase available capital. For purposes of qualifying for recognition as additional capital, both of the following criteria must be met:
 - a. The instrument has a fixed term (a minimum of five years at the date of issue or refinance, including any call options other than make whole provisions¹). However, if the instrument is callable within the first five years from the date of issue it may be considered qualifying debt if any such call is at the option of the issuer only (the instrument is not retractable by the holder) AND it is the intent of management to replace the called instrument in full before or at redemption by a new issuance of the same or higher quality instrument.
 - b. Supervisory review or approval is required for any ordinary* or extraordinary dividend respectively or distribution from any insurance subsidiary to fund the repurchase or redemption of the instrument. Supervisory approval of ordinary dividends is met if the supervisor has in place direct or indirect supervisory controls over distributions, including the ability for the supervisor to limit, defer and/or disallow the payment of any distributions should it find that the insurer is presently, or may potentially become,

¹ NAIC staff have been informed that make whole provisions are a form of a call feature that can be exercised by the issuer at any time; that they nonetheless are most frequently utilized near the end of the term of the instrument, generally in connection with refinancing; and that the cost to the issuer to exercise the make whole provision and associated financial reporting impacts, combined with the very low interest rate environment, make it much less likely that such provisions will be triggered, particularly within five years of issuance. Staff will continue their research, and assuming these observations are confirmed, the referenced criteria will continue to scope out make whole provisions.

financially distressed. There shall be no expectation, either implied or through the terms of the instrument, that such approval will be granted without supervisory review.

*The concept of approval for ordinary dividends is for GCC purposes and is met as described in subparagraph b, above. It is not intended to require explicit regulatory approval or in any way alter current provisions of Model #440 or the *Insurance Holding Company System Model Regulation* (#450).

- “Other” Debt – The outstanding value will be reported in Column 8 and will be further described in the “Other Information” tab and will be reported in a manner that is consistent with Senior Subordinated Debt, as described above. Such debt will not initially be included in the additional capital allowance for the GCC. An additional allowance of this debt as additional capital will be calculated in this tab and reported as a sensitivity analysis in the “Summary” 2 tab, subject to future determination on whether it will become part of the GCC calculation.
- Foreign Debt – Report the outstanding value of Non-U.S. senior debt issued to entities outside the group in Column 8. Debt specifically recognized by statute, regulation or accounting rule as additional capital resources by the lead jurisdiction based on contractual subordination or where a regulatory regime proactively enforces structural subordination through appropriate regulatory/supervisory controls over distributions from insurers in the group will not be included in the calculation of an additional capital allowance if it is already reported as capital in the carrying value of the issuer in “Inventory B”. It will be included in the calculation of an additional capital allowance if recognized by the local jurisdiction and NOT already included in the value of the issuer in “Inventory B”. Cases where the value of debt instruments issued to purchasers outside the group has not been recognized by the legal entity’s insurance or other sectoral supervisor will not be included in the additional capital allowance.

71. Please fill in columns in Section 3A as follows for all capital instruments:

- **[Sec 3A Col 1] Name of Issuer** – Name of the company that issued the capital financial instrument.² Will populate automatically from the “Entity Identifier” column in this subsection.
- **[Sec 3A Col 2] Entity Identifier** – Provide the reference number that was input in Schedule 1.
- **[Sec 3A Col 3] Type of Financial Instrument** – Select type from the drop-down menu. Selections include Senior Debt, Surplus Notes (or similar), Hybrid Instruments and “Other” Subordinated Debt.
- **[Sec 3A Col 4] Instrument Identifier** – Provide a unique security identifier (such as CUSIP). ALL debt instruments must include an internal identifier if not external identifier is available.
- **[Sec 3A Col 5] Entity Category** – Links automatically to selection made on the “Inventory” tab worksheet.

- **[Sec 3A Col 6] Year of Issue** – Provide the year in which the financial instrument was issued or refinanced.
- **[Sec 3A Col 7] Year of Maturity** – Enter the year in which the financial instrument will mature.
- **[Sec 3A Col 8] Balance as of Reporting Date** – Enter the principal balance outstanding as reported in the general-purpose financial statements of the issuer.
- **[Sec 3A Col 9] Intragroup Issuance** – Select whether the instrument was issued on an intragroup basis (that is, issued to a related entity within the group). This column will be used to remove “double-counting.” This column is a drop-down menu box with options “Y” and “N.”
- **[Sec 3A Col 10] Treatment in Inventory B** – Select option that applies:
 - a. **Capital** – This instrument is recognized or credited as capital in local regulatory regime and reported as part of the adjusted carrying value of the issuer and was not purchased by an affiliate. This includes the value of qualifying senior and hybrid debt instruments (if recognized as capital) and U.S. surplus notes (or similar local regime instruments) that are issued to entities outside the group recognized in the “Inventory B” tab. The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital.
 - b. **Liability** – This instrument is reflected by the issuer as a liability in the adjusted carrying value in the “Inventory B” tab and was not purchased by an affiliate. This would apply to all qualifying senior and hybrid debt issued to purchasers outside the group that is not recognized as capital by the local regulator that are issued to entities outside the group recognized in the “Inventory B” tab. The value will be included in the calculation of a proxy allowance for additional capital.
 - c. **Liability designation** would also apply to all non-qualifying senior and hybrid instruments and all debt categorized as “Other” issued to purchasers outside the group that is not recognized as capital by the local regulator. The value of these instruments will NOT be included the calculation for the in the calculation of a proxy allowance for additional capital.
 - d. **Intragroup** – This would apply to all qualifying instruments purchased by an affiliate within the group. The outstanding value of those debt instruments will not be included in the calculation of a proxy allowance for additional capital. If the financial instrument is recognized or credited as part of the issuer’s available capital in Inventory B, then an adjustment for intragroup capital instruments is made in Inventory B, Column 4 and Inventory C adjustments(if necessary to eliminate an associated capital requirement). If the financial instrument is treated as a liability by the issuer, then no intragroup capital instrument adjustment is required in Inventory B or Inventory C.
 - e. The outstanding value of all non-qualifying senior and hybrid instruments and financial instruments categorized as “Other Debt” whether issued to purchasers inside or outside the group will not be included in the calculation of a proxy allowance for additional capital and no other adjustments are required in the template. However, in the unlikely event that the instrument is treated as available capital to the issuer in Inventory B, an

adjustment in Inventory B, Column 4 to remove the available capital would be required.

NOTE: Additional information on instruments categorized as “Other Debt” in the Type of Financial Instrument Column will require additional information to be provided in the “Questions and Other Information” tab.

For intragroup surplus notes, the adjustment will impact the carrying value and associated capital calculation of the purchasing affiliated entity.

- **[Sec 3A Col 11] Intragroup Purchaser Identifier** – Enter the entity identify for the affiliate entity that purchased the instrument.
- **[Sec 3A Col 12] Description of Other Debt Instruments** – Provide a description of instruments designated as “Other.”
- **[Sec 3A Col 13] Call Provisions Criteria** – Respond “Y” or “N” as to whether the instrument is subject to a call provision in the first five years AND it is management’s intent to replace the called instrument in full before or at redemption by a new issuance of the same or higher quality instrument.
- **[Sec 3A Col 14] Potentially Recognized Instrument** – This is an automatic calculation to determine if this is instrument that has potential to be recognized as additional capital in the GCC and/or in sensitivity analysis. The column will show “Y” if each of the following is true: 1) it is Senior Debt, Hybrid or Other instrument; 2) the instrument is not intragroup; and 3) the instrument is treated as liability on Inventory B. These are calculated using Column 3, Column 9, and Column 10, respectively.
- **[Sec 3A Col 15] Other Criteria Met**– This is an automatic calculation to determine if instrument qualifies due to criteria beyond those in Column 14. The column will show “Y” if: 1) the instrument has initial maturity of greater than five years; and 2) it meets the “Call provisions criteria” in Column 13.
- **[Sec 3A Col 16] Qualified Debt** – This column is calculated automatically using data from the entries in Column 14 and Column 15. To qualify, an instrument needs a “Y” in both columns. It represents the amount of qualifying debt that will be used in the calculation of an allowance for addition capital under the alternate subordination method and the proxy allowance method. This amount will be carried into Section 3C, Column 1, Line 3.

72. Section 3C will be auto-filled, with the exception of Column 1, Line 2.

- **[Sec 3C Col 1, Line 1] Total Paid-In and Contributed Capital and Surplus** – This is the amount reported on Page 3 of the annual financial statement submitted to regulators by a U.S. insurer.
- **[Sec 3C Col 1, Line 2] Alternate Subordination Calculation** – This manual entry is the excess of qualifying debt issued over liquid assets held by the issuing consolidated holding company as reported in the consolidated financial statements. No entry is expected for a mutual group.
- **[Sec 3C Col 1, Line 4] Downstream Estimate** -The total reported under the alternate subordination approach will be compared to the total amount of gross paid-in or contributed

capital and surplus reported by the insurance entities within the group as reported in Schedule 1. The greater value will be carried into the calculation for an additional capital allowance.

NOTE: No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

- **[Sec 3C Col 1, Line 5] Proxy Calculation for Additional Capital Allowance** – A calculation will be made in this tab in Section 3B that will apply 30% of available capital plus the value of all qualifying debt to become part of the proxy allowance for additional capital for qualifying senior subordinated. An additional amount of 15% of available capital plus the value of all qualifying debt will be calculated to become part of a proxy allowance for additional capital be for hybrid debt.

NOTE: No more than 100% of the total outstanding value of qualified senior and hybrid debt will be allowed into the calculation.

- **[Sec 3C Col 1, Line 6 through Line 8]** – The greater of the proxy calculation or the larger of paid in capital or alternate subordination calculation will be allowed as additional capital in **[Sec 3C Col 6]**. However, an overall limit of no more than 75% of the total adjusted carrying value in Inventory B will be applied in **[Sec 3C Col 7]**. Adjustments to increase available capital will be calculated from data on this page. The summary results of the components of the calculation (paid in capital and surplus, alternate subordination, proxy calculation and limitations) are populated as titled in the calculation columns in this section. The final amount recognized as additional capital is shown in **[Sec 3C Col 8]**.
- The additional capital allowance recognized for capital instruments will be shown as an “on-top” adjustment in the “Summary 1 – Entity Level” tab.

73. **Informational calculation to include “Other Subordinated Debt”** – A sensitivity analysis will be applied in **[Sec 3C Col 2, Line 1 through Line 8]** and carried into the “Summary 2” tab to adjust the amount of additional capital in the proxy calculation by the amount of “Other Debt” reported in **[Sec 3C Col 8]** issued to purchasers outside the group. This informational sensitivity analysis will include an additional allowance for such debt up to 15% of available capital plus the value of all qualifying debt including qualifying “Other” debt subject to the same limitations noted for the proxy allowance in general.

Input 4 – Analytics

74. The entity type information supporting analytics summarized in Summary 3 – Analytics are pulled into this tab from data or information reported in other tabs in the GCC template. That data is exported into summaries in the “Summary 3 – Analytics” tab. Only 2020 data is currently to be populated. However, it is contemplated that going forward, data for prior years will also be populated such that it will provide the Lead State Regulator with metrics to identify trends over time.

Input 5 – Sensitivity Analysis and Inputs

75. The sensitivity analysis is calculated in the “Summary 2” tab. Most inputs for the analysis are populated from other tabs as described below and carried into the analysis which are reported in the “Summary 2” tab. However certain analysis requires inputs from this tab. Inputs are required in this tab for Analysis 3, Analysis 4, Analysis 8, and Analysis 9. Sensitivity Analysis are intended to provide the Lead State Regulator additional information that helps them better understand the financial condition of the group. Similar to the sensitivity analysis included in the legal entity RBC, it provides the regulator with additional information and allows them to consider “what-if” scenarios to better understand the impact of such items. The results of these analysis will not impact the GCC ratio.

- **[Analysis 1]: GCC overall sensitivity analysis** – No additional data is needed in the tab. The overall GCC ratio will be presented at 300% x ACL level. This calculation will increase the calculated capital for most entity types by a factor of 1.5. However, entities with existing regulatory capital requirements (e.g., foreign insurers and banks) will be reported at the same level specified in these instructions for both the GCC and the sensitivity analysis (i.e., at 100% of the jurisdictional or sectoral PCR requirements).
- **[Analysis 2]: Excluded non-insurance/non-financial entities without material risk** – No additional data is needed in the tab. The data for entities where exclusion has been requested and the lead state does not agree will be populated based on entries in **[Sch 1B Col 3]** and data in Inventory B, Column 2 and Inventory C, Column 2. This analysis will be applied and reported in the “Summary 2” tab. It will provide the regulator with the impact of excluding non-agreed-upon entities on the GCC ratio.
- **[Analysis 3 and Analysis 4]: Permitted practices** – This information shows the amount of U.S. permitted practices as described in the Preamble of the *Accounting Practices and Procedures Manual* and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position and their impact on the GCC ratio.
 - **Prescribed Practices** – This information to be entered on this tab shows the amount of U.S. prescribed and prescribed practices as described in the Preamble of the *Accounting Practices and Procedures Manual* and the sensitivity analysis allows the state to understand the size of the practices related to the overall group capital position

and their impact on the GCC ratio. This analysis will be applied and reported in the “Summary 2” tab.

- **Permitted and Prescribed Practices** – Report values from annual financial statement Note 1 (excluding those pertaining to XXX/AXXX captives):
 - a. Entity identifier
 - b. Value of permitted practice
 - c. Capital Requirement attributable to permitted practice (if any)
 - d. Description of permitted practice
 - e. Value of prescribed practice
 - f. Capital requirement attributable to permitted practice (if any)
 - g. Description of prescribed practice
- **[Analysis 5]: Foreign Insurer Capital Requirements Scaled** – No additional data is needed in the tab. This information shows the amount of foreign insurer capital calculations scaled by applying scalars using the Excess Relative Ratio approach at a 200% x ACL RBC calibration level and at 300% x ACL for all non-U.S. jurisdictions where scalar data is available (see Appendix 1). The sensitivity analysis allows the state to understand the impact of scaling on the GCC ratio. This information is populated from the “Scalar” tab. This analysis will be applied and reported in the “Summary 2” tab.
- **[Analysis 6]: Debt Classified as “Other”** – No additional data is needed in the tab. The analysis data will be populated from the “Capital Instruments” tab and the analysis and will be applied and reported in the “Summary 2” tab.
- **[Analysis 7]: Alternative Capital Calculation for Non-Financial Entities** – No additional data is needed in the tab. The values reported will represent the alternative values for capital calculation that is being captured in the template. The data will be populated from Schedule 1 and Inventory B and the analysis will be applied and reported in the “Scaling Non-Insurance” tab (Calc 2).
- **[Analysis 8]** For captives other than XXX/AXXX, all other U.S. captives shall make an asset adjustment as described below;

Asset Impact

76. For the asset impact, it is ONLY required for the assets included in a captive or an entity not required to follow the statutory accounting guidance in the *Accounting Practices and Procedures Manual*. It is not required for assets for those groups that retain such business in a non-captive traditional insurance company(ies) already required to follow the *Accounting Practices and Procedures Manual*.

NOTE: Variations for state prescribed and permitted practices are captured in the separate sensitivity analysis.

77. The asset impact amount shall be determined based on a valuation that is equivalent to what is required by the *Accounting Practices and Procedures Manual* (SAP). For this purpose, “equivalent” means that, at a minimum the listed adjustments (as follows) be made with the intent of deriving a valuation materially equivalent to what is required by the *Accounting Practices and Procedures Manual*, however, without requiring adjustments that are overly burdensome (e.g., mark-to market bonds used by some captives under U.S. GAAP versus full SAP that considers NAIC designations). To be more specific, the asset impact shall be developed by accumulating the impact on surplus because of an accumulation of all the following in paragraph 78 and paragraph 79 combined.

NOTE: Letters of credit or other financial instruments that operate in a manner like a letter of credit, which are not designated as an asset under either SAP or U.S. GAAP and are required to be adjusted out of the available assets (i.e., the asset reduction is recorded as a negative figure in the template).

78. To achieve the above, accumulate the effect of making the following impact and record as a negative figure in the template, an asset adjustment for all the following explicit assets not allowed to be admitted under SAP:
- Assets *specifically* not allowed under the *Accounting Practices and Procedures Manual* in accordance with paragraph 9 of *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*.
 - *SSAP No. 6—Uncollected Premium Balances, Bills Receivable for Premiums, and Amounts Due from Agents and Brokers*.
 - *SSAP No. 16R—Electronic Data Processing Equipment and Software*.
 - *SSAP No. 19—Furniture, Fixtures, Equipment and Leasehold Improvements*.
 - *SSAP No. 20—Nonadmitted Assets*.
 - *SSAP No. 21—Other Admitted Assets* (e.g., collateral loans secured by assets that do not qualify as investments are nonadmitted under SAP).
 - *SSAP No. 29—Prepaid Expenses*.
 - *SSAP No. 105—Working Capital Finance Investments*.
 - Expense costs that are capitalized in accordance with GAAP but are expensed pursuant to statutory accounting as promulgated by the NAIC in the *Accounting Practices and Procedures Manual* (e.g., deferred policy acquisition costs, pre-operating, development and research costs, etc.).
 - Depreciation for certain assets in accordance with the following SSAPs:
 - *SSAP No. 16R—Electronic Data Processing Equipment and Software*.
 - *SSAP No. 19—Furniture, Fixtures, Equipment and Leasehold Improvements*.
 - *SSAP No. 68—Business Combinations and Goodwill*.
 - The amount of goodwill of the SCA more than 10% of the audited U.S. GAAP equity of the SCA’s last audited financial statements.
 - The amount of the net deferred tax assets (DTAs) of the SCA more than 10% of the audited U.S. GAAP equity of the SCA’s last audited financial statements.
 - Any surplus notes held by the SCA issued by the reporting entity.

79. In addition, record as a negative figure, an asset impact for any assets that are not recognized as an admitted asset under the principles of *SSAP No. 4—Assets and Nonadmitted Assets*, including:
- Letters of credit, or other similar instruments, that operate in a manner like a letter of credit and, therefore, do not meet the definition of “asset” as required under paragraph 2.
 - Assets having economic value other than those which can be used to fulfill policyholder obligations, or those assets that are unavailable due to encumbrances or other third-party interests, should not be recognized on the balance sheet and are, therefore, considered nonadmitted.
 - Assets of an insurance entity pledged or otherwise restricted by the action of a related party, the assets are not under the exclusive control of the insurance entity and are not available to satisfy policyholder obligations due to these encumbrances or other third-party interests. Thus, such assets shall not be recognized as an admitted asset on the balance sheet.
 - **[Analysis 9]: Other Regulator Discretion** – This analysis is designed to reflect other regulator adjustments including for transactions other than XXX/AXXX reinsurance where there are differences in regulatory regimes exist and there is a desire to fully reflect U.S. Statutory Accounting treatment or to reflect the lead state’s view of risk posed by financial entities without specified regulatory capital requirements or risk posed by non-insurance/non-financial entities that have been included in the GCC. This will be a post-submission item completed by the Lead State Regulator. Enter the following information here:
 - a. Entity identifier.
 - b. Amount of adjustment.
 - c. Description of regulatory issue.

NOTE: This column may also be completed by the filer after advance consultation with the Lead State Regulator.

Input 6 – Questions and Other Information

80. This tab provides space for participants to describe or provide greater detail for specified entries in other tabs (as noted in the instructions for the columns in those tabs) or additional relevant information not captured in the template. Examples include the materiality method applied to exclude entities in Schedule 1; adjustments for intragroup debt, description of permitted practices; scalars proposed/supporting information for jurisdiction without a prescribed scalar; and adjustments to available capital or capital calculations that are included in the “other adjustment” column in the “Inventory” tab. Specified items are included in the tab. Other information that the filer believes is relevant should be added freeform in this tab.

Information or Detail for Items Not Captured in the Template

- Intercompany Guarantees – Provide requested information:
 - a. Entity identifier issuing the guarantee.
 - b. Entity identifier of entity or entities that are covered by the guarantee.
 - c. Indicate the notional or fixed value of the guarantee.
 - d. Describe the nature of the guarantee.

- Capital Maintenance Agreements – Provide requested information:
 - a. Entity identifier obligated under the agreement.
 - b. Entity identifier for entity or entities that are covered by the guarantee.
 - c. Indicate the notional or fixed value of the agreement.
 - d. Describe the nature of the agreement.

Information or Detail for Items Captured in the Template

- Value of intangible assets included in non-insurance Holding Companies – Provide the requested information for all entities designated in the non-operating holding company entity category.
 - a. Entity identifier.
 - b. All goodwill.
 - c. All intangibles related to health care services acquisitions included in local carrying value column in Inventory B. Examples include, but are not limited to, customer relationships (policy retention, long-term health services contracts) and technology/patents/trade names and provider network contracts.
 - d. All other intangible assets included in local carrying value column in Inventory B.
 - e. Total of line b, line c and line d.*
 - f. A description of each intangible asset included in line d.

* Auto populated.

Further detail on amounts reported for specific intangibles other than goodwill may be requested by the Lead State Regulator during review of the GCC template.

- Currency Adjustments – Provide requested information only for entities where the amount reported for an entity in Inventory B, Column 2 is different than the amount in Inventory B, Column 1 due to currency conversion.
 - a. Entity identifier.
 - b. Currency type reported in Inventory B, Column 1 and Inventory C, Column 1 (foreign currency).
 - c. Conversion rate applied.
 - d. Source of conversion rate applied.
- Intragroup Assets – Description of Adjustments for intragroup assets reported in Inventory B, Column 6 and Inventory C, Column 6. Provide the following information:
 - a. Entity identifier.
 - b. Amount reported in Inventory B, Column 6.
 - c. Description of adjustment.
- Other Adjustments – Description of adjustments reported in Inventory B, Column 7 and Inventory C, Column 7. Provide the following information:
 - a. Entity identifier.
 - b. Amount reported in Inventory B, Column 7.
 - c. Description of adjustment.

- Accounting Adjustments – Provide requested information only for entities where the amount reported for an entity in Inventory B, Column 1 is different than the amount in Inventory B, Column 2 due to differences in accounting basis
 - a. Entity identifier.
 - b. Value reported in Inventory B, Column 1.*
 - c. Value reported in Inventory B, Column 2.*
 - d. Total amount of adjustments related to difference in accounting basis.*
 - e. Nature of adjustment (e.g., GAAP to SAP).

* Auto populated.

- The tab also includes a listing of all Schedule A and Schedule BA affiliates, along with the following information:
 - a. Parent identifier (if available) – This is the same information as is included in Schedule 1 [Sch 1B Col 3] as would be entered for non-Schedule A/Schedule BA affiliates.
 - b. Parent Name – Enter the Name of the Parent.
 - c. Is Parent a Schedule A or Schedule BA Asset? – This column is only required for financial entities that are Directly owned by a Schedule A or Schedule BA Affiliate. No other downstream affiliates owned by Schedule A or Schedule BA entities need to be listed. These entities are not normally independently reported in Schedule A and Schedule BA so are extra entries.
 - d. Financial? (Y/N) – If the entity meets the criteria as being a financial entity, indicate with a “Yes” response. A “No” response is not required for other entities listed. “Yes” entries should correspond to “Yes” entries in Schedule 1 [Sch 1B Col 16].
 - e. Carrying Value of Immediate Parent – Report the value listed in Schedule A and Schedule BA of the Parent insurer. For those cases where an indirect financial entity is reported use the value used by the direct Parent.
 - f. Capital Requirement for Immediate Parent – Report the value listed in the RBC report of the Parent insurer (pre-tax where applicable). For those cases where an indirect financial entity is listed, report the value of the capital requirement attributable to the Insurer rather than the direct non-financial Schedule BA Parent. The capital requirement reported in this column for the immediate Schedule BA Parent should be adjusted to deduct the amount moved to Schedule 1 and Inventory C.

Calc 1 – Scaling (Insurance Entities)

81. All entries in this tab are calculation cells populated using data from within the tab or using data from elsewhere in the template. Scaled values for calculated capital will become part of the GCC ratio. The calculated values will be summarized by entity type in the “Summary 1 – Entity Level” tab. The concept of a scalar was first introduced to address the issue of comparability of accounting systems and capital requirements between insurance regulatory jurisdictions. The idea is to scale capital requirements imposed on non-U.S. insurers so as to be comparable to an RBC-based requirement. Two approaches for scaling related to foreign insurers were presented, and others are being explored and will be reviewed. A decision on the scaling methodology to be adopted into the GCC template will be made at the end of the review. In the interim a scalar of 100% of the jurisdictional PCR will be applied to all jurisdictions where a risk-sensitive capital requirement is in place.
82. Information on the Excess Relative Ratio (ERR) scalar methodology will be collected and applied in the “Sensitivity Analysis” tab.

NOTE: See Appendix 1 for more information and examples on how the ERR scalars are calculated.
83. For jurisdictions without risk-sensitive capital requirements a 100% charge will be applied to adjusted carrying value.

Calc 2 – Capital Calculations for Non-insurance Entities

84. All entries in this tab are either calculation cells using data from within the tab or using data populated from elsewhere in the template. Calculated capital for all entities except insurers will be reported in this tab. The calculated values will be summarized by entity type in the “Summary 1 – Entity Level” tab.
85. In addition, one informational option for calculated capital for financial entities without an existing regulatory capital requirement and one informational option for calculated capital for non-financial entities will be reported in this tab. Those calculation will not be carried into the “Summary 1 – Entity Level” tab and will not be part of the GCC ratio.
86. Only amounts for entities that the filer and the Lead State Regulator agree should **not** be excluded [Sch 1B Col 2] will be brought into the calculation in this tab and the “Summary 1 – Entity Level” tab. Entities where the Lead State Regulator does not agree with the filer’s request to exclude an entity will be part of the GCC ratio.

Summary 1 – Entity Level GCC Summary

87. Summarized results by entity type for the GCC ratio will be reported in this tab. An on top adjustment for debt allowed as additional capital will be added at the bottom of the table. All informational sensitivity analysis will be reported in Summary 2 and will not impact the GCC ratio.

Summary 2 – Informational Sensitivity Tests

88. Summary results for each informational sensitivity analysis described in the “Sensitivity Analysis Inputs” tab will be shown here. Each sensitivity analysis will be shown on a stand-alone basis. It is expected that each informational sensitivity analysis will run automatically in the background and the results for each displayed in this tab. The results for the informational sensitivity analysis will not be included in the “Summary 1 – Entity Level” tab.

Summary 3 – Analytics

89. Summary results for metrics described in the Analytics Guidance [insert attachment or appendix reference] and utilizing data collected in the “Input 4 – Analytics” tab or other tabs in the GCC will be calculated and presented here.

Summary 4 – Alternative Grouping Option(s) (aka “Cigna Illustration”)

90. One sample alternative structure for grouping entities in the GCC is displayed based on a suggested method. It can be modified, or other suggestions can be accommodated based on combining data from **Schedule 1 and the Inventory** in defined ways.

This tab is intended to be an additional analytical tool. The tool summarizes the GCC based on how a reporting entity views its organization, and provides regulators that view, to align it with regulatory information, other than what is reported elsewhere in the GCC template, that the reporting entity has submitted such as current filings, communications, etc. In this summary view, entities are organized into like regimes and multiple entities may be grouped together, in order to create a view of capital that is easy to review and analyze within each grouping. The intent of this approach is to provide an additional analytical tool designed to enhance dialogue between the Lead State Regulator and the company contemplated by the GCC filing. This view is transparent (no scalars, no adjustments, no de-stacking) so that financial information may be cross-walked to other financial submissions such as RBC filings.

91. The results are dependent on how the reporting entity populated. Input 1 – Schedule 1, Column 9 Alternative Grouping. For example, if you have a dozen small dental HMO businesses, you may wish to collapse the results to a single line called “Dental HMOs,” by populating Input 1 – Schedule 1, Column 9 Alternative Grouping for each dental HMO as “Dental HMOs.” Then right-click and select “Refresh” to see the results with the “Dental HMOs” combined.
92. For reference, the data for the Summary 4 – Grouping Alternative is from Calc 1 – Scaling (Ins, Bank), which is fed by the inputs made in Input 1 – Schedule 1, Input 2 – Inventory, etc.

Appendix 1 – Explanation of Scalars

93. The concept of a scalar is to equate the local capital requirement to an adjusted required capital level that is comparable to U.S. levels. The purpose of a scalar is to address the issue of comparability of accounting systems and capital requirements between jurisdictions. The following provides details on how the scalars were calculated by the NAIC, or how they are to be used when the NAIC has not developed a scalar for a country due to lack of public data.

Excess Relative Ratio Approach

94. Included below are various steps to be taken in calculating the excess relative ratio approach to developing jurisdiction-specific scalars. In order to numerically demonstrate how this approach could work, hypothetical capital requirements and financial amounts have been developed for Country A. Based on preliminary research that has been performed by NAIC staff, it appears that the level of conservatism built into accounting and capital requirements within a jurisdiction may differ significantly for life insurers and non-life insurers. Therefore, ideally each jurisdiction would have two different scalars based on the type of business. The example below includes information related to life insurers in the U.S. and Country A.

Step 1: Understand the Jurisdiction’s Capital Requirements and Identify the First Intervention Level

- a. The first step in the process is to gain an understanding of the jurisdiction’s capital requirements. This can be done in a variety of ways including reviewing publicly available information on the regulator’s website, reviewing the jurisdiction’s Financial Sector Assessment Program (FSAP) reports and discussions with the regulator.

In Country A, assume that the capital requirements for life insurers are based on a capital ratio, which is calculated as follows:

$$\text{Capital ratio} = \frac{\text{Total available capital}}{\text{Base required capital (BRC)}}$$

In the U.S., capital requirements are related to the insurer’s RBC ratio. For purposes of the Relative Ratio Approach, an Anchor RBC ratio is used and calculated as follows:

$$\text{Anchor RBC ratio} = \frac{\text{Total adjusted capital}}{100\% \text{ Company Action Level RBC}^*}$$

* 100% Company Action Level RBC is equal to the Total RBC After Covariance, without adjustment or 200% Authorized Control Level RBC.

- b. Similar to legal entity RBC requirements in the U.S., Country A utilizes an early intervention approach by establishing target capital levels above the prescribed minimums that provide an early signal so that intervention will be timely and for there to be a reasonable expectation that actions can successfully address difficulties. Presume that this target capital level is similar to the U.S. Company Action Level (CAL) event, both of which can be considered the first intervention level in which some sort of action—either on the part of the insurer or the regulator—is mandated. A separate sensitivity calculation will be applied in the GCC template using trend test level RBC.

- c. For Country A, the target capital level is presumed to be a capital ratio of 150%. That is, the insurer's ratio of total available capital to its BRC should be above 150% to avoid the first level of regulatory intervention. Again, this is similar to the U.S. CAL event, which is usually represented as an RBC ratio of 200% of Authorized Control Level (ACL) RBC (ignoring the RBC trend test). In the Relative Ratio approach, the Anchor RBC ratio represents the Company Action Level event (or first level of regulatory intervention) as 100% CAL RBC (instead of 200% ACL RBC), because CAL RBC is the reference point that is used to calibrate against other regimes. The Anchor RBC Ratio (Total Adjusted Capital \div 100% CAL RBC) tells us how many "multiples of trigger level capital" that the company holds. Conceptualizing the CAL event as 100% CAL RBC allows the consistent definition of local capital ratios that are calibrated against a "multiples of the trigger level" approach, to ensure an "apples-to-apples" comparison.³

Step 2: Obtain Aggregate Industry Financial Data

95. The next step is to obtain aggregate industry financial data, and many jurisdictions include current aggregate industry data on their websites. Included below are the financial amounts for use in this exercise.

<p><i>U.S. Life Insurers – Aggregate Data</i> Total Adjusted Capital = \$495B Authorized Control Level RBC = \$51B Company Action Level RBC = \$102B</p> <p><i>Country A Life Insurers – Aggregate Data</i> Total Available Capital = \$83B BRC = \$36B</p>

Step 3: Calculate a Jurisdiction's Industry Average Capital Ratio

96. To calculate a jurisdiction's average capital ratio, the aggregate total available capital for the industry would be divided by the minimum or base capital requirement for the industry in computing the applicable capital ratio. In Country A, this would be the BRC. In the U.S., this base or minimum capital requirement is usually seen as the ACL RBC, but because the Relative Ratio Approach is using 100% CAL RBC as a reference point to calibrate other regimes to, the Relative Ratio formula uses 100% CAL RBC as the baseline and the first-intervention level to calculate the Average Capital Ratio and Excess Capital Ratio. As a result, the scaled ratio of a non-U.S. company should inform regulators how many multiples of first-intervention level capital the non-U.S. company holds. Included below is the formula to calculate a jurisdiction's industry average capital ratio:

While it is mathematically equivalent to use 200% ACL RBC as the denominator, the Approach is designed to use the representation of first-intervention level capital levels as the conceptual underpinning of the Relative Ratio Approach, where 100% CAL RBC is the reference point to calibrate against other regimes.

Calculation of U.S. Industry Average Capital Ratio – Life Insurers

$$\frac{\$495\text{B (Total Adjusted Capital)}}{\$102\text{B (CAL RBC)}} = 485\%$$

Calculation of Country A Industry Average Capital Ratio – Life Insurers

$$\frac{\$83\text{B (Total Available Capital)}}{\$36\text{B (BRC)}} = 231\%$$

Step 4: Calculate a Jurisdiction’s Excess Capital Ratio

97. The next step is to understand the level of capital the industry is holding above the first intervention level. Therefore, to calculate a jurisdiction’s excess capital ratio, one would first need to calculate the amount of the capital ratio carried in excess of the capital ratio required at the first intervention level. This amount would then need to be divided by the capital ratio required at the first intervention level.

General Excess Capital Ratio Formula

$$\frac{\text{Average Capital Ratio} - \text{Capital Ratio at the First Intervention Level}}{\text{Capital Ratio at the First Intervention Level}}$$

98. Based on the formula above and information provided in Step 2 and Step 3, included below are how to calculate each jurisdiction’s excess capital ratio.

NOTE: The first intervention level in the U.S. is defined in the Relative Ratio Approach as 100% CAL RBC, while the first intervention level in Country A is a capital ratio of 150%.⁴

Calculation of U.S. Excess Capital Ratio – Life Insurers

$$\frac{485\% \text{ (Average Capital Ratio)} - 100\% \text{ (Capital Ratio at the First Intervention Level)}}{100\% \text{ (Capital Ratio at the First Intervention Level)}} = 385\%$$

Calculation of Country A Excess Capital Ratio – Life Insurers

$$\frac{231\% \text{ (Average Capital Ratio)} - 150\% \text{ (Capital Ratio at the First Intervention Level)}}{150\% \text{ (Capital Ratio at the First Intervention Level)}} = 54\%$$

⁴ 100% CAL RBC translates to an ACL RBC level of 200%, but for conceptual purposes, the Relative Ratio Approach refers to the U.S. first intervention level as 100% CAL RBC, as 100% CAL RBC is the reference point to which the Relative Ratio Approach calibrates other regimes. In other words, 100% CAL RBC ensures that the scaled ratio of Country A results in a ratio that determines how many multiples of first-intervention level capital that the company in Country A is holding.

Step 5: Compare a Jurisdiction's Excess Capital Ratio to the U.S. Excess Capital Ratio to Develop the Scalar

99. Based on the information above, the U.S. excess capital is 385%. In other words, life insurers in the U.S. carry approximately 385% more capital than what is needed over the first intervention level. Country A's excess capital ratio is 54%. That is, life insurers in Country A carry approximately 54% more capital than what is needed over the first intervention level.
100. To calculate the scalar, one would divide a jurisdiction's excess capital ratio by the U.S. excess capital ratio. Therefore, the calculation of Country A's scalar for life insurers would be $54\% \div 385\% = 14\%$. Therefore, Country A's scalar for life insurers would be 14%.

Step 6: Apply to the Scalar to the Non-U.S. Insurer's Amounts in the GCC

101. In order to demonstrate how the calculation of the scalar works, it would be best to provide a numerical example. For purposes of this memo, assume that a life insurer in Country A reports required capital of \$341,866 and total available capital of \$1,367,463. (These are the amounts previously used in a hypothetical calculation example that was discussed by the Working Group during its July 20, 2016, conference call.) As noted previously, the above information and calculation suggests that U.S. life insurers carry capital far above the minimum levels, while life insurers in Country A carry capital far closer to the minimum. Therefore, in order to equate the company's \$341,866 of required capital, we must first calibrate the BRC to the first regulatory intervention level by multiplying it by 150%, or Country A's capital ratio at the first intervention level. The resulting amount of \$512,799 is then multiplied by the scalar of 14% to get a scaled minimum required capital of \$71,792.
102. Further, the above rationale suggests that the available capital might also be overstated (because it does not use the same level of conservatism in the reserves) by the difference between the calibrated required capital of \$512,799 and the required capital after scaling of \$71,792, or \$441,007. Therefore, we should now deduct the \$441,007 from the total available capital of \$1,367,463 for a new total available capital of \$926,456. These two recalculated figures of required capital of \$71,792 and total available capital of \$926,456 is what would be included in the group's capital calculation for this insurer. These figures are further demonstrated below.

Calculation of Scaled Amounts for GCC

Amounts as Reported by the Insurer in Country A

Total available capital = 1,367,463

Minimum required capital (BRC) = 341,866

Calibration of BRC to 1st Regulatory Intervention Level

341,866 (BRC) * 150% = 512,799

Scaling of Calibrated Minimum Required Capital

512,799 (Calibrated BRC) * 14% (Scalar) = 71,792 (Difference of 441,007)

Scaled Total Available Capital

1,367,463 (Total Available Capital) – 441,007 (Difference in scaled required capital) = 926,456

103. Given these scaled amounts, one can calculate the numerical effect on the company's relative capital ratio by using the unscaled and scaled amounts included below.

	<i>Unscaled Amounts from Table Above</i>	<i>Scaled Amounts from Table Above</i>
Total Available Capital (TAC)	1,367,463	926,456
<u>Base Required Capital (BRC)</u>	<u>341,866</u>	<u>71,792</u>
Capital Ratio (= TAC ÷ BRC)	400%	1290%

104. Considering the fact that life insurers in Country A hold much lower levels of capital over the first intervention level as compared to U.S. life insurers, the change in the capital ratio from 400% (unscaled) to 1290% (scaled) appears reasonable and consistent with the level of conservatism that we understand is built into the U.S. life RBC formula driven primarily from the conservative reserve valuation.