FINANCIAL CONDITION (E) COMMITTEE

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Draft: 4/11/22

Financial Condition (E) Committee
Kansas City, Missouri
April 5, 2022

The Financial Condition (E) Committee met in Kansas City, MO, April 5, 2022. The following Committee members participated: Scott A. White, Chair (VA); Elizabeth Kelleher Dwyer, Vice Chair, represented by Jack Broccoli (RI); Michael Conway (CO); David Altmair (FL); Doug Ommen represented by Carrie Mears (IA); Maine represented by Vanessa Sullivan and Robert Wake (ME); Grace Arnold represented by Kathleen Orth and Fred Andersen (MN); Chlora Lindley-Myers (MO); Mike Chaney represented by David Browning (MS); Marlene Caride (NJ); Adrienne A. Harris represented by My Chi To and Bob Kasinow (NY); Raymond G. Farmer (SC); Cassie Brown, Jamie Walker, and Mike Boerner (TX); Nathan Houdek and Amy Malm (WI); and Jeff Rude (WY). Also participating were: Phillip Barlow (DC); and Dale Bruggeman (OH).

1. ** Adopted its Jan. 12 and 2021 Fall National Meeting Minutes**

   The Committee met Jan. 12 to expose a request for comment suggesting a revised approach to risk-based capital (RBC) requirements for structured securities and other asset-backed securities (ABS) with comments due to the Risk-Based Capital Investment Risk and Evaluation (E) Working Group.

   Commissioner Caride made a motion, seconded by Ms. Malm, to adopt the Committee’s Jan. 12, 2022 (Attachment One) and Dec. 13, 2021 (see NAIC Proceedings – Fall 2021, Financial Condition (E) Committee) minutes. The motion passed unanimously.

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

   Commissioner White stated that the Committee usually takes one motion to adopt 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. He reminded Committee members that subsequent to the Committee’s adoption of its votes, all the technical items included within the reports adopted will be sent to the NAIC members for review shortly after the conclusion of the Spring National Meeting as part of the Financial Condition (E) Committee Technical Changes report. Pursuant to the Technical Changes report process previously adopted by the NAIC Plenary, the members will have 10 days to comment. Otherwise, the technical changes will be considered adopted by the NAIC and effective immediately. With respect to the task force and working group reports, Commissioner White asked the Committee: 1) whether there were any items that should be discussed further before being considered for adoption and sent to the members for consideration as part of the Financial Condition (E) Committee Technical Changes report; and 2) whether there were other issues not up for adoption that are currently being considered by task forces or working groups reporting to this Committee that require further discussion. The response to both questions was no.

In addition to presenting the reports for adoption, Commissioner White also noted that the Financial Analysis (E) Working Group met April 4, Feb. 23, and Jan. 26 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 and financial results. Additionally, the Valuation Analysis (E) Working Group met March 23, Feb. 8, and Jan. 25 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.
Commissioner Caride made a motion, seconded by Director Lindley-Myers, to adopt the following task force and working group reports: Accounting Practices and Procedures (E) Task Force; Capital Adequacy (E) Task Force; Financial Stability (E) Task Force; Reinsurance (E) Task Force; Valuation of Securities (E) Task Force; Group Capital Calculation (E) Working Group (Attachment Two); Restructuring Mechanisms (E) Working Group (Attachment Three); and National Treatment and Coordination (E) Working Group (Attachment Four). The motion passed.

3. **Adopted a Model Law Extension Request from the Mortgage Guaranty Insurance (E) Working Group**

Commissioner White described how the Committee and the Executive (EX) Committee approved a project in years prior to update the *Mortgage Guaranty Insurance Model Act* (#630). He described how the Working Group still had develop a new capital model, as well as finalized the changes to #630. He noted the Working Group was requesting an extension on the development of changes to (#630) as outlined in the request, but that based upon where things stood today and things being in the home stretch, he was not sure why the Committee would not approve the request.

Director Farmer made a motion, seconded by Commissioner Conway, to adopt the extension request (Attachment Five). The motion passed.

4. **Received an Update on Committee-Supported Initiatives**

Commissioner White stated the next item was to receive an update on what is described as Committee-supported initiatives. He said what he means by that are updates from several chairs on work that he would describe as a priority. He stated the organizing principle underlying the priorities of the Committee this year is tied to the low interest rates and the impact that has had on asset risk in the industry. He noted that the industry has been in this low interest rate environment more or less since the Great Recession of 2007. That environment has put pressure on the life insurance industry in particular, given its dependence on long-term investments. That has led some insurers to adopt a riskier asset strategy. Commissioner White provided an example where state insurance regulators have seen a shift away from more conservative senior debt holdings towards higher yielding investments such as structured securities and other ABS. He noted state insurance regulators have also seen the growing trend of many insurers selling their annuity business to private equity investors. All of this has led to increased complexity and heightened scrutiny on the part of the Committee to determine whether additional safeguards to the solvency framework are needed. He said as state insurance regulators, it is important to make sure that this trend toward higher yields is balanced with the security necessary to ensure that companies can meet their obligations.

a. **Investment RBC**

Commissioner White noted that there are some concerns that the RBC framework may be contributing to this behavior of companies searching for higher yield. He noted that for those who were at the 2021 Fall National Meeting, at that time he led a discussion about the fact that structured credit is treated the same as corporate bonds for the purposes of RBC. That is true even though structured credit has a more extreme risk profile. He indicated that in order to address this, the Committee supported creating a new working group to examine whether increased RBC charges for these types of investments should be considered. He introduced Mr. Barlow to provide an update on the work.

Mr. Barlow discussed how the Risk-Based Capital Investment Risk and Evaluation (E) Working Group met March 22 to discuss four comment letters received from the Financial Condition (E) Committee exposure. He noted that during the meeting, the Working Group also adopted its working agenda. Finally, the Working Group discussed the path forward to address the charges and working agenda. He noted that among the conclusions from that meeting were: 1) a series of meetings following this meeting will provide an opportunity to address the charges...
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and working agenda; 2) assets will be addressed sequentially, starting with those having the biggest impact, which is likely the collateralized loan obligations (CLOs); 3) the Working Group is not ready to engage a consultant, but it may need consulting assistance as details emerge. Mr. Barlow noted that the Working Group also has a long list of investment-related issues that had been referred to Capital Adequacy (E) Task Force, but the goal is to address the priority items identified by the Committee first. As this is done, the Working Group will look at the process holistically from the financial statement reporting and assignment of designations through the RBC charges.

Mr. Barlow discussed his desire to have a process that relies on the annual statement reporting and rating designations to determine the RBC charge rather than “company records” or information in the notes, interrogatories, or otherwise determined by the filer. This should help with transparency and consistency. He stated he would also like a process that establishes a methodology for identifying and dealing with new assets or asset classes that can adjust in response to the volume in insurers portfolios. He noted that the Working Group has good representation from other impacted task forces and working groups, including the Health Risk-Based Capital (E) Working Group, Life Risk-Based Capital (E) Working Group, Property and Casualty Risk-Based Capital (E) Working Group, Capital Adequacy (E) Task Force, Valuation of Securities (E) Task Force, and Statutory Accounting Principles (E) Working Group. At this point, Mr. Barlow said there seems to be a general consensus on the path forward. Since all of the members bring different expertise to this, he said the Risk-Based Capital Investment Risk and Evaluation (E) Working Group is engaging in some educational sessions to increase its collective knowledge, gathering data to help prioritize projects, and making sure all information is equally shared so there is a collective understanding of the issues involved. Mr. Barlow closed by noting that while there are a lot of items on the Working Group’s agenda, it will address them as expeditiously as possible.

b. Statutory Accounting

Commissioner White discussed how the Statutory Accounting Principles (E) Working Group is currently focused on improving accounting for certain structured securities and cited an example where there has been an increase in debt instruments that have underlying collateral assets that are more equity-based. He said state insurance regulators want to make sure that equity risk is not masked and that the asset receives the proper RBC charge.

Mr. Bruggeman, Statutory Accounting Principles (E) Working Group chair, noted that the Working Group has been working on a long-term project to update the investment-related Statements of Statutory Accounting Principles (SSAPs), which are currently focused on the legal form or structure of investments rather than their substance. He noted how opportunity existed, and still exists, to report any item as a bond by acquiring it through a special purpose vehicle (SPV) in the form of a debt instrument, regardless of whether the insurer investor was in a different economic position; i.e., holding the underlying assets directly. For example, under the existing guidance, an SPV could hold equity items, the SPV could issue an instrument in the form of debt (various tranches, but not the residual tranche, which is now a Sch BA investment) with pass-through performance of the equity items, and the reporting entity would be permitted to report that debt issuance from the SPV as a bond, when in actuality they have equity risk. Mr. Bruggeman described that the Statutory Accounting Principles (E) Working Group knew it needed more principle-based bond accounting. Doing so would allow an increasingly innovative asset-backed bond market to be accounted for based upon its substance as opposed to its form.

Mr. Bruggeman said that in fall 2020, a small group of state insurance regulators and industry with detail investment knowledge produced principles and a flowchart of when an investment can be reported as a bond. The group also had initial discussion to increase transparency in reporting with improved classifications on the distinct types of bonds and ABS that qualify for reporting as a bond. In May 2021, the Statutory Accounting Principles (E) Working Group exposed and heard comments on the principles-based bond definition, which included many examples of what would meet the definition. It also expanded the small group of state insurance regulators with industry to get more perspectives for staff direction. After much discussion and clarifying examples, the Statutory Accounting Principles (E) Working Group exposed a revised principles-based bond
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definition and an issue paper for a public comment period ending May 6, and it directed NAIC staff to begin amending language for state insurance regulators’ review. During the Spring National Meeting, the Statutory Accounting Principles (E) Working Group received comments and an update regarding potential reporting options to revise the bond schedule. After hearing comments, the state insurance regulators directed NAIC staff to develop a more robust illustration of the reporting proposal selected, with a choice for certain ABS bonds to be on a bond sub-schedule versus wedging in with sub-total lines, and with a goal to expose in May. The direction also noted that NAIC staff should continue to work with interested parties, especially category descriptions.

c. Reliance on Rating Agencies

Commissioner White noted that another area the Committee is looking at is the role of rating agencies. The key role that rating agencies play in the value of insurer investments again ties into this concern over how the industry is reacting to the low interest rate environment. He said the Committee has been asking if there is an overreliance on rating agencies, and if so, how can it address that.

Ms. Mears described how the Valuation of Securities (E) Task Force had initiated several steps to look at how the NAIC uses rating agency ratings in the assignment of NAIC designations. The first is a proposal from Securities Valuation Office (SVO) staff to add market-data analytical fields for bond investments to the annual statement instructions. She described how the proposed amendment, if adopted, would be a first step towards achieving a core recommendation from the former Rating Agency (E) Working Group to the Committee in 2010 to lessen the NAIC’s reliance on rating agency ratings by looking at other measures of risk. The proposed additional fields would include market yield, interest rate sensitivity measures like effective duration and convexity, and risk premium indications, among others. After this critical analytical information on bond risk is reported, the Task Force and the SVO will be able to review for inconsistencies that may appear between these risk measures and the reported rating and determine if additional changes are needed.

Ms. Mears noted that the Valuation of Securities (E) Task Force sent informational referrals on this proposal to the Life Actuarial (A) Task Force and the Capital Adequacy (E) Task Force as this information could be useful in the achievement of their objectives and charges. She said the Valuation of Securities (E) Task Force anticipates continued coordination with the Statutory Accounting Principles (E) Working Group and its updates to the bond reporting schedules.

Ms. Mears explained that another key effort is the establishment of an ad hoc discussion group that includes state insurance regulators, insurance company staff, and NAIC staff. The ad hoc group is talking through the issue of the NAIC’s reliance on rating agency ratings and the rating inconsistencies across rating organizations observed by the SVO and reported to the Task Force in their memorandum from November of 2021. Some key objectives of this ad hoc group include: 1) establishing a framework of qualitative and quantitative criteria for being a credit rating provider (CRP) to the NAIC; 2) eliminating or minimizing RBC arbitrage opportunities between CRP ratings and asset classes; 3) defining a repeatable quantitative process to evaluate rating performance for all rating agencies consistent with RBC factors; and 4) considering how the incorporation of market data noted earlier can be used to identify potential misalignments of risk. Finally, the SVO continues to make targeted recommendations to the Task Force to address specific issues with ratings. The most recent include proposed changes to the definition of principal protected securities to include synthetic variants of these securities not previously contemplated, and an updated definition of securities with non-payment risks other than traditional credit risk that will need to be reviewed by the SVO.

Ms. Mears explained that a key to many of these efforts is the SVO need for additional technology resources. This will become more of an issue as the group takes on some of these additional responsibilities that are more analytically intensive. Finally, the NAIC’s Structured Securities Group (SSG), which currently models residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS) for designation and
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capital purposes, is looking at the possibility of modeling additional asset classes to lessen the NAIC’s reliance on rating agency ratings for these complex investment structures.

d. Asset Adequacy Testing for Complex Assets

Commissioner White said that not all of the work in this area is being done in the Committee. He noted several ongoing projects in the Life Actuarial (A) Task Force, adding that the Committee and in particular Director Judith L. French (OH) are engaged with those. He asked Mr. Anderson to provide an update on a proposed actuarial guideline to address certain high risk or “high yield” assets in an insurer’s asset adequacy testing.

Mr. Andersen discussed the development of a new actuarial guideline related to asset holdings and their related risks. He noted that the work was part of the coordinated efforts of the NAIC, overseen by the Macroprudential (E) Working Group, to ensure appropriate regulation of the developments seen regarding an increase in private equity and complex assets in the life insurance industry. He explained that the Life Actuarial (A) Task Force is focused on aspects related to reserve adequacy and, as a result, working to help ensure life insurers involved in complex assets will be able to pay claims even if those assets do not perform as expected. Mr. Andersen noted during its most recent meeting, the Life Actuarial (A) Task Force met to discuss comments on a first draft of an actuarial guideline that would provide documentation and sensitivity testing requirements on life insurers engaged in such activity. Mr. Anderson noted that the guideline was expected to be adopted by the NAIC at the Summer National meeting in early August. He said, however, that partly due to the aggressive time frame, some of the more controversial aspects that were in the first draft, including application of guardrails that could directly affect the financials of some insurers, will be deferred to later discussions that are not part of the aggressive 2022 time frame. He said that the resulting documentation and sensitivity tests that will likely be included in the 2022 guideline adoption will provide information to state insurance regulators, including: analysis of the risks of the complex assets, details underlying the assumptions on how those assets will perform, expectations on the sophistication of the company models matching the complexity of the assets, identification of practices in determining fair values for assets that do not have deep markets, information on privately-originated assets and fees, and assurance that any counterparty risk related to reinsurance deals are considered and documented. He concluded by noting that over the next several weeks, there will be movement to turn the first draft into a final draft that is ready for adoption.

e. ESG

Commissioner White introduced Mr. Boerner, Life Actuarial (A) Task Force chair, who updated the Committee on a new economic scenario generator (ESG) that is intended to better capture the potential for lower interest rates for extended periods, which is lacking in the current ESG.

Mr. Boerner provided background on the work, noting that in 2017, the American Academy of Actuaries (Academy) notified the Life Actuarial (A) Task Force that it did not have the resources to maintain the prescribed ESGs, except in their current form until a suitable replacement could be found. In June 2019, the Financial Stability (E) Task Force noted a potential deficiency in the prescribed ESGs related to a limited reflection of extended periods of low and even negative interest rates and requested the Valuation Analysis (E) Working Group assess the macro prudential risk to insurance organizations in the U.S. with a focus on variable annuity writers. He noted that in July 2019, the Life Actuarial (A) Task Force and Life Risk-Based Capital (E) Working Group requested that NAIC staff consider issuing a request for proposal (RFP) for a vendor to build and maintain a new ESG to be used in the determination of statutory reserves and capital. After extensive work with state insurance regulators and ESG subject matter experts (SMEs) from the life insurance industry, the NAIC issued the RFP for a new ESG in March 2020.

Mr. Boerner stated that upon reviewing proposals from six companies, Conning was selected as the ESG vendor and approved by the Executive (EX) Committee in September 2020. After the contract was in place with Conning,
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an ESG Drafting Group comprised of state insurance regulators, Conning staff, and NAIC staff was formed to develop ESG recommendations to the Life Actuarial (A) Task Force and the Life Risk-Based Capital (E) Working Group. To incorporate more industry feedback into the process, industry SMEs were added to the ESG Drafting Group in June 2021, which met weekly until recently to focus more attention on planning a June field test. He noted that any ESG for field testing or a final ESG is composed of three sets of scenarios: 1) those from a Treasury model; 2) those from an Equity model; and 3) those from a Corporate Bond model. With such models in mind, a few collaborative efforts over the course of the ESG Drafting Group discussions, where state insurance regulators incorporated feedback from the industry SMEs, included 1) using statistics and input from the SMEs to develop the acceptance criteria for the Treasury model; 2) directing Conning to produce scenarios according to alternative calibration suggested by SMEs and including the alternative calibration as one of the proposed Treasury models to field test; and 3) directing Conning to alter the international equity indices to align the fund’s expected returns on a risk/reward basis relative to the U.S. large cap fund for the Equity model.

Mr. Boerner said that it was also planned for Conning to work on development of an SME-proposed “simplified corporate bond model” after the field test begins. Conning’s corporate bond model is able to reproduce the key dynamics of bond returns. However, some of the information in this model is proprietary. The SMEs’ simplified corporate bond model is intended to be fully transparent and nonproprietary. The development of such a simplified corporate bond model involves a significant effort, which would not make it in time for a June field test. However, such a simplified corporate bond model would focus on having similar scenarios as the Conning corporate bond model so that use of the Conning corporate bond model will be relevant for the June field test.

Mr. Boerner noted that achieving the June field test is especially important to help determine the ESG’s impact on industry reserves and capital and to help state insurance regulators understand the materiality of technical issues brought up by the industry SMEs. In place of the ESG Drafting Group meetings, the state insurance regulators have transitioned to conducting weekly meetings with state insurance regulators, industry SMEs, Conning staff, and NAIC staff to plan for the June field test. This is in addition to weekly planning meetings, which also include American Council of Life Insurers (ACLI) and Academy representation to plan for future efforts and meetings of the ESG initiative. Mr. Boerner noted next steps that would take place prior to the ESG June field test include: 1) refining the recommended ESG models for field testing; 2) building out field test specifications, instructions for participants, and a results template; 3) determining the final set of field test participants and field test product coverage; and 4) preparing the necessary scenario sets for delivery to field test participants.

Mr. Boerner said the steps that would occur after the June field test include: 1) analyzing results of the field test; 2) adjusting ESG models as appropriate where model office programs may help inform appropriate adjustments; 3) planning for a follow-up field test early next year to test adjusted models; and 4) discussing results of that field test. He also noted that if the ESG models were ready for implementation, then work on implementation for 2024 would begin if timing permits. He explained that the steps will involve: 1) joint open meetings of the Task Force and the Life Risk-Based Capital (E) Working Group; 2) continued planning meetings, including early next year field test planning calls; and 3) ESG Drafting Group meetings as needed.

Commissioner White stated his appreciation for all of the chairs who provided updates on these important initiatives, as well as all the state insurance regulators involved in developing the work. He stated it should be clear to the Committee that a lot of great work is occurring, with a great deal of coordination also occurring on these projects—all intended to address the low yield environment. He said that it is not the intent of the Committee to overrule the details of work of these groups and noted that each of these projects are important and are supported by the Committee given their objectives. Ms. To agreed with Commissioner White and noted her support for all of the projects given each is intended to address the asset and spread risk faced by the industry. She stressed that they were also important to level the playing field and described how she expects the industry to fully participate and collaborate in helping to develop these solutions to these issues.
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Having no further business, the Financial Condition (E) Committee adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Committee Meetings/FINANCIAL CONDITION (E) Committee/4-5-22 E min.docx
The Financial Condition (E) Committee met Jan. 12, 2022, in joint session with the RBC Investment Risk and Evaluation (E) Working Group of the Capital Adequacy (E) Task Force. The following Committee members participated: Scott A. White, Chair, represented by Doug Stolte (VA); Michael Conway, Vice Chair, represented by Rolf Kaumann (CO); Dana Popish Severinghaus represented by Vincent Tsang (IL); Amy L. Beard represented by Rolf Kaumann (CO); Eric A. Cioppa represented by Vincent Tsang (IL); Chlora Lindley-Myers represented by John Rehagen (MO); Mike Chaney represented by David Browning (MS); Marlene Caride (NJ); Russell Toal and Leatrice Geckler (NM); Adrienne A. Harris represented by Bob Kasinow (NY); Judith L. French represented by Tom Botsko and Dale Bruggeman (OH); Raymond G. Farmer (SC); Cassie Brown represented by Jamie Walker (TX); Nathan Houdek (WI); and Jeff Rude (WY). The following Working Group members participated: Philip Barlow, Chair (DC); Wanchin Chou (CT); Ray Spudeck (FL); Kevin Clark and Carrie Mears (IA); Vincent Tsang (IL); Fred Andersen (MN); William Leung and Debbie Doggett (MO); Lindsay Crawford (NE); Bob Kasinow and Bill Carmello (NY); Tom Botsko and Dale Bruggeman (OH); Mike Boerner and Rachel Hemphill (TX); Steve Drutz and Tim Hays (WA); and Amy Malm (WI).

1. Discussed Phase II of a Bond Factor Proposal for Structured and Asset-Backed Securities

Mr. Stolte discussed his objectives for the conference call: 1) officially handoff the two projects Commissioner White spoke about at the 2021 Fall National Meeting related to asset-backed securities RBC changes and residual interest securities to the new Working Group; and 2) give some direction to the Working Group on the first of those issues. He provided a recap of some of the items Commissioner White spoke about at the 2021 Fall National Meeting to address the first part of the first objective.

Mr. Stolte stated that in 2021, the Life Risk-Based Capital (E) Working Group received a proposal from Moody’s Investors Service (Moody’s) and the American Council of Life Insurers (ACLI) that ultimately included the new bond factors adopted for the life RBC formula for year-end 2021. Most importantly, within that proposal, it was suggested that in the future, the NAIC should consider a second phase to such work to look at other asset classes of fixed income securities. Mr. Stolte noted that the life insurance industry has been challenged with the continued low interest rate issues, but the Committee and its task forces and working groups have also spent a great deal of time talking about the industry’s search of yield and a shift away from corporate debt holdings towards structured securities and other asset-backed securities, particularly collateralized loan obligations (CLOs). He noted that these types of securities tend to carry more tail risk than a typical corporate debt offering, and state insurance regulators need to start thinking about that tail risk more explicitly in the RBC formula for such types of assets. He stated that there were basically two ways the NAIC could take on this work: 1) use the model used for variable annuities and mortgage guaranty insurance a few years ago where the NAIC issues a request for proposal (RFP) on a project and then hires a consultant that the NAIC controls, but it gets reimbursement commitments from members of the industry before doing so; and 2) use the approach the ACLI used during the bond factor proposal last year where the state insurance regulators control the scope of work before the ACLI puts out a bid, and the ACLI funds the project. He noted that either approach could work, but one of the reasons he wanted to have this call in early January was in case there was a strong sentiment to have the NAIC contract this work since that would require the commissioner to take such a proposal to the Executive (EX) Committee, perhaps during the Commissioners’ Conference in early February. He discussed how Mr. Barlow and Dan Daveline (NAIC) have experience with both and can help to facilitate either approach.
Mr. Stolte suggested that before moving into this idea of hiring a consultant, Commissioner White wanted to suggest the release of a 45-day public comment period after the call. The purpose of such a request would be to solicit if members of the industry, and perhaps consultants that follow the NAIC work, have views on possible methodologies that could achieve the objective of capturing the tail risk on CLOs and other structured securities and asset-backed securities. Mr. Stolte noted that Commissioner White’s suggestion was that ultimately, it will be up to the RBC Investment Risk and Evaluation (E) Working Group to determine which of the recommended methodologies are chosen, as well as other various details. He described how Commissioner White envisioned how the NAIC data on CLO stress tests could be used to back into a factor, or how other methods, such as that used for residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS), could be used. He added that for other asset classes, perhaps some form of ratings is used where the consultant can prove the effectiveness of some ratings, or perhaps some ratings with adjustments. He noted his hope that the Working Group and Securities Valuation Office (SVO) staff could possibly review the proposals in March and select a methodology(ies) before the Spring National Meeting to where a consultant could be hired after the Spring National Meeting and possibly come back to the Working Group with specific proposed factors by the Summer National Meeting; then, perhaps the Working Group could adopt something by the end of the year. He noted that Commissioner White knows that this is an aggressive timetable, but he believes an aggressive goal should be set.

Superintendent Toal stated that he believes Commissioner White’s proposal is logical, and he supports it and his proposed timeline. Mr. Barlow stated his appreciation for the background information and thinking, and he noted that he looks forward to chairing the Working Group. He stated his support for considering more granular investment factors on certain investments, at least for the life RBC formula, but there would need to be more discussion at the Working Group or the Capital Adequacy (E) Task Force on whether the same is needed for the property/casualty (P/C) formula and the health formula. He also stated that he strongly supports not having the NAIC contract a consultant but instead having the Working Group direct the engagement by the industry of such a consultant, noting that the latter worked well for the life RBC bond factors adopted in 2021. He stated that he has some concerns with the proposed timeline, and he stated that while a similar timeline worked for the 2021 bond factors, a lot of leg work was done by the American Academy of Actuaries (Academy) that does not exist for this proposal. He also discussed the need for the project to complete a proper risk analysis to determine the appropriate factors, noting the potential for a lack of data on newer types of securities. Mr. Stolte responded that he would be certain to communicate Mr. Barlow’s concerns to Commissioner White. Superintendent Toal indicated that he respectfully disagrees with Mr. Barlow’s comments about the reasonableness of the timeline, as well as how he believes it would be better if the NAIC controlled the consultant simply for objectivity. Mr. Stolte responded that he would be certain to communicate Superintendent’s Toal’s concerns to Commissioner White. Mr. Spudeck stated that he supports the comments made by Mr. Barlow related to the process to use, noting that under that process, the state insurance regulators would still be in control of the work. He also noted that he believes the proposed timeline is not just aggressive but aspirational. He noted that the work could begin, but depending upon the depth and granularity chosen, it could be very labor intensive. He also suggested avoiding applying it to health companies, at least initially. Mr. Botsko stated his support for Mr. Barlow’s comments, and he noted the importance of how this as well as future work is coordinated with the Task Force. Mr. Stolte responded that his comments would be noted.

2. **Discussed SSAP No. 43 Residual Interests**

Mr. Stolte noted that the next issues deal with residual interests where the underlying issue affects the Statutory Accounting Principles (E) Working Group, the Valuation of Securities (E) Task Force, and the various RBC formulas and RBC groups. He noted that Commissioner White was made aware that there had already been some informal coordination among the chairs of these groups. He asked if some of the key members of those groups—Mr. Barlow, Mr. Bruggeman, and Ms. Mears—could briefly discuss each of their views on plans to coordinate activities
on this work, as well as perhaps some of the informal discussions that may have already taken place on the issue. Mr. Barlow noted his support for this work, bearing in mind the incentives for this type of change, and he noted his goal to make RBC not be the issue for investments in these types of structures. He looks forward to working with the other groups, but like the first issue, consideration will need to be given to whether such changes are needed for the health and P/C formulas. Mr. Bruggeman stated his agreement with Mr. Barlow from the sense that development of a factor will be a challenge. He discussed how these will be reported within Schedule BA, but currently, there is no detailed reporting to capture these. However, he hopes that with a new blanks proposal, the NAIC can at least capture the impact on the asset valuation reserve (AVR). He stated that he also agrees with Mr. Barlow with respect to whether this need for health and P/C remains to be seen. Ms. Mears stated her agreement with Mr. Barlow and Mr. Bruggeman, and she noted that materiality is something else she wants to look at. She also questions if there could be some overlap between this issue and the issue discussed within the first agenda item. She suggested that the request for comments be revised to solicit information on the availability of data on residual interests, and she wonders about how the availability of collateral may need to be considered as well.

Having no further business, the Financial Condition (E) Committee and RBC Investment Risk and Evaluation (E) Working Group adjourned.

Attachment One-Joint Call January 12 E min.docx
The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee met Feb. 9, 2022. The following Working Group members participated: John Rehagen, Chair (MO); Kathy Belfi, Vice Chair (CT); Susan Bernard (CA); Philip Barlow (DC); Ray Spudeck (FL); Carrie Mears (IA); Susan Berry (IL); Roy Eft (IN); John Turchi (MA); Judy Weaver (MI); Kathleen Orth (MN); Justin Schrader (NE); David Wolf (NJ); Bob Kasinow (NY); Dale Bruggeman and Tim Biler (OH); 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 Fall National Meeting Minutes**

The Working Group met Nov. 22 and took the following action: 1) adopted its Nov. 8, 2021; Sept. 8, 2021; and Summer National Meeting minutes, which included the following action: a) exposed a staff memorandum that includes possible group capital calculation (GCC) modifications for a public comment period ending Dec. 23, 2021; b) exposed clarifying changes to the GCC instructions that were previously provided to the Working Group and the public as part of the GCC Trial Implementation for a public comment period ending Dec. 8, 2021; c) discussed comments on maintenance documents and proposed revisions; d) discussed comments on a draft referral to the Capital Adequacy (E) Task Force; and e) adopted recommended changes to the **Financial Analysis Handbook** that incorporate guidance on utilizing the GCC and subsequently distributed these changes to the Financial Analysis Solvency Tools (E) Working Group; and 2) discussed the results of the GCC Trial Implementation.

Ms. Belfi made a motion, seconded by Mr. Spudeck, to adopt the Working Group’s Nov. 22 minutes (*see NAIC Proceedings – Fall 2021, Financial Condition (E) Committee, Attachment Two*). The motion passed unanimously.

2. **Discussed Comments Received on Possible Changes to the 2022 GCC**

Mr. Rehagen announced his objectives for the conference call: 1) discuss each of the issues (Attachment Two-A) and the related comments (Attachment Two-B) from America’s Health Insurance Plans (AHIP) and the American Council of Life Insurers (ACLI); and 2) ask the Working Group to make decisions on each of those issues. He noted that for those issues that the Working Group chooses to make a change to the GCC, he will ask NAIC staff to develop a revised template and instructions with such changes incorporated. The revised template and instructions will be exposed for a public comment period and be discussed on the Working Group’s next conference call. Mr. Rehagen stated that ultimately, he wants the Working Group to adopt a revised template and instructions that will be used for year-end 2022 so all parties can begin to prepare for the year-end filing. He stated that year-end 2022 will be the NAIC’s first year for the GCC filing with its published template and instructions, and it will be available for any state that is requiring it for their groups for year-end 2022. He also stated that NAIC staff expect to develop training for companies for the summer of 2022, while training for the state insurance regulators will be closer to the expected filing date. He emphasized that while the Working Group will be making some changes for 2022, that is not meant to suggest that changes will not occur in the future. In fact, he noted that once the GCC is adopted for year-end 2022, he wants the Working Group to adopt its form and procedures documents that will be used in the future for any party suggesting a change to the GCC.
a. **Eliminate Stress Scenario**

Mr. Rehagen reminded call participants of the fact that in 2021, the GCC Trial Implementation template and instructions included a stress scenario; but at that time, the Working Group concluded that it would not include a stress scenario in the GCC’s first implemented version. He noted, however, that the Working Group had already discussed that it may decide in future years to add different stresses to the GCC as a supplemental disclosure. He reiterated this point in response to a written comment from AHIP, but he noted that if the Working Group desires to include stresses in the future, just like any other proposal, the state insurance regulators will expose such a proposal, and the details of that proposal will be debated just like any other new proposal. He asked if any Working Group members are opposed to removing the GCC Trial Implementation stress scenario out of the 2022 GCC. No members objected to removing this item.

b. **Debt Allowance**

Mr. Rehagen discussed his belief that NAIC staff were under the impression from comments made by interested parties in 2021 that there was a desire to increase the debt allowance to account for procyclicality. NAIC staff had proposed a way to deal with that in the exposed memorandum, which he suggested was not well received from AHIP and the ACLI based upon their written comments. He provided his opinion that he believes the Working Group was already in favor of the levels of debt that were included in the GCC Trial Implementation, and he suggested moving forward without any change to the GCC Trial Implementation because he believes the Working Group has already recognized that most senior debt is already being recognized in the GCC. He noted that if members of the Working Group have strong feelings, they can consider the comments from AHIP and the ACLI, but he reiterated that he is inclined to keep the debt levels the same as they were during the GCC Trial Implementation. It was noted how the current debt allowance is at 75% in total, and the subcategory limits are 30% for senior debt and 15% for hybrid debt, but both subcategory limits are a percentage of available capital plus senior and hybrid debt. Mr. Rehagen stated that he believes the ACLI is proposing some changes to that construct that would likely just push up those limits a little.

Tom Finnell (AHIP) noted that AHIP does not have strong feelings on the NAIC staff proposal to increase the debt allowance, and it certainly would not stand in the way, but it would not carry the flag for it either. He noted that AHIP’s concerns regarding the NAIC staff proposal are more directed at including triggers based upon an external factor, which seems similar to relying on rating agency ratings, which showed triggers can have issues as witnessed during the financial crisis. Mr. Rehagen asked AHIP if that means it is supportive of leaving the current debt limits as is, as opposed to making the changes recommended by NAIC staff. Mr. Finnell responded affirmatively.

Kristin Abbott (ACLI) noted the ACLI comment it would consider a technical correction to the exposed NAIC staff proposal, and she asked Martin Mair (MetLife) to expand on the ACLI views on the issue. Mr. Mair stated that what the ACLI is proposing is that the subcategories be a percentage of the total category. He described that if one went back to the original debt framework and its cap of 50% and considers the total debt allowance has been increased to 75%, the senior debt limit and the hybrid debt limit should both be increased. With the ACLI proposal, if one takes those subcategories on a percentage basis, then the senior debt should now be 45% instead of 30%, and the hybrid would be 22.5% instead of 15%. Mr. Mair described how the NAIC staff memo suggests an adjustable debt limit, and the ACLI proposal is that as the total debt limit increases, the subcategories should automatically be increased, which the ACLI sees as a technical correction to the NAIC staff proposal.

Ned Tyrrell (NAIC) asked for clarification on the proposal, noting that it seems that the ACLI proposal is simpler but less nuanced. He noted that under the ACLI proposal, adjusting subcategories described by Mr. Mair would result in a higher amount of debt being added into the available capital. Mr. Mair responded that the ACLI proposal is intended to align the subcategory limits with the total limit. Mr. Tyrrell noted the importance of looking at the
fact that the current limits use a different denominator for the subcategories as the total limit. Specifically, he noted that the total limit of 75% is a percentage of available capital excluding debt, while the subcategories are a percentage of available capital plus total debt. He added that consequently, a group could have a situation where one limit is binding but the other is not. He stated that for most groups, in particular life groups, the debt is concentrated as senior debt, so the subcategory is the binding limit. Mr. Rehagen agreed with Mr. Tyrrell, and he noted that there is not really an existing issue with the current debt limits, and for most companies, all debt was allowed as in addition to available capital. He noted that in summary, he does not believe a change is necessary, but what Mr. Mair is describing is something that could be studied. He asked if any Working Group members believe this is something the Working Group should make a change to the debt limit today.

Mr. Bruggeman offered an example to demonstrate the impact of the proposed change from the ACLI. In his example, a group has available capital of $100 million, and in such a situation, 75% of the total capital would provide the group with an additional $75 million, for a total of $175 million used in the calculation. Then, applying the 30% and 15% to the $175 million, the total allowance is over $78 million from the two individual amounts. Changing the subcategory percentages as well as the rest of the proposal has the result of increasing the amount of debt that can be added into the available capital and count toward the GCC because of the different denominator, and Mr. Bruggeman believes that is the point Mr. Tyrrell was making. He added that they were not trying to match up the 30% and the 15% with the $75 million additional capitals allowed from debt; it is 30% of $175 million. Mr. Tyrrell confirmed that is what is currently embedded within the current GCC. Mr. Bruggeman confirmed that he does not believe a change needs to be made to the debt limit at this time for the proposal. Mr. Barlow asked whether a group would be more restricted if it has a lot of hybrid debt and not much senior debt. Mr. Bruggeman responded that this is correct, as the group would not be able to recognize all of that in the group capital numerator. Mr. Rehagen asked if any Working Group members are opposed to keeping the current debt limit template the same with no changes from this proposal or any suggested modifications from the ACLI. No members objected to keeping the GCC the same for the current debt limits.

Lou Felice (NAIC) suggested that the issue being discussed is one the NAIC may want to keep an eye on because not every group is going to get to 75% of the $175 million; some may only be at 60%, in which case the mathematics changes a bit. Consequently, there will likely be some cases where there is some haircut on the amount of debt that the group can carry simply because it does not have 75% of its otherwise available capital total. Mr. Rehagen agreed, noting that as state insurance regulators begin to receive their filings, to the extent that several such groups are being finalized, it is something the Working Group can look at again more closely. Mr. Bruggeman clarified that the current limit is not allowing groups to obtain debt; rather, it is simply limiting how much debt can be added into the existing available capital and counted within the GCC.

c. **Eliminate Sensitivity Test Related to “Other Debt”**

Mr. Rehagen noted that NAIC staff had proposed the elimination of the sensitivity test around the other debt; given that the industry was not opposed, the proposed change will be made unless Working Group members express disagreement. No members disagreed with the proposal elimination.

d. **Non-Risk Sensitive Foreign Jurisdiction**

Ms. Abbott stated that ACLI members have varying perspectives on this issue; some prefer 50% because 100% can be viewed as punitive, and it gives zero credit for all available capital that is above the required capital. Also, a 100% factor treats capital from those jurisdictions as not existing. Ms. Abbott noted that this is why the ACLI believes 50% seems like a reasonable middle ground for now, and perhaps the Working Group or others could undertake some study to determine if that is the appropriate level. Mr. Rehagen stated that he believes the ACLI proposal is reasonable, and while he does not know exactly what such a proposal that may come from the industry
may look like, he is supportive of reducing the factor to 50% for now, but a different approach could be considered in the future. He asked if any Working Group members are opposed to making the change proposed by NAIC staff. No members objected.

e. **Schedule 1 Related Changes**

Mr. Finnell described how AHIP’s comments are intended to be helpful. He noted that while AHIP is not too concerned where the information is captured, it has numbers who believe in constructing a template that has everything listed in one place. He noted that if it gets broken up in different spots, AHIP believes that would make the process a little more cumbersome. He stated that he also does not believe the state insurance regulators would want to take the items on the template. Ms. Abbott discussed how the ACLI supports efforts to streamline Schedule 1. She noted that the ACLI believes it is important for state insurance regulators to have the detail they need, and the ACLI supports the NAIC staff recommendation to include the information elsewhere in the template. Mr. Rehagen noted that it does not appear that there is agreement between the interested parties on the way to move forward. He stated that he does not have strong opinions, but the first time a company fills the GCC out, it is going to present them with some challenges and confusion. He noted, however, that he believes it will become easier after the first year; therefore, he stated that he is not inclined to make a change at this time. He noted that this is not to suggest that future changes cannot be considered, but he does not want to make a change at this time. Mr. Spudeck agreed stating that he prefers to make no changes at this time, and the GCC instructions is a living document that can always be changed in the future. Mr. Bruggeman noted that there are some oddities when going through the Schedule 1. He noted that if a group elects to exclude the state insurance regulators and then elects to include them, depending upon the situation, when the equity values are rolled up and then onto the schedules, it can create some confusion. He noted that if the group is going from statutory accounting to U.S. generally accepted accounting principles (GAAP) accounting, it gets a little odd if a company all of a sudden says exclude and the state insurance regulator says include. He stated that the dollars kind of flow funny, and he noted that he is testing a couple of groups to see what happens, including double counting, but those things can be part of the training or just need to be handled with care. Mr. Rehagen noted how Missouri would probably be a guinea pig this year because it will require several groups to complete it in 2022. Mr. Bruggeman confirmed that the template could be maintained as it is for now, and no changes are needed at this time. The Working Group did not disagree.

f. **Asset Managers**

Mr. Rehagen noted that the last item deals with asset managers, who are currently treated as financial entities. The question is whether the industry can bring back a proposal and basis for making a proposal that asset managers be considered financial entities subject to an existing capital requirement. Mr. Rehagen stated that the comments do not include such a proposal, so at this time, he is inclined to keep it as is, but he believes the Working Group would always be open to a proposal in the future. The Working Group did not disagree.

Mr. Rehagen asked the Working Group whether it agrees with asking NAIC staff to develop changes to the template and instructions for year-end 2022 based upon the decisions during the call by the Working Group. He indicated that he would review the template and instructions once the changes have been made, and he suggested that both could be exposed for 30 days once he completes his review. The Working Group did not disagree.

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

 GCC 2-9 Meeting Minutes.docx
MEMORANDUM

TO: Group Capital Calculation (E) Working Group
FROM: Dan Daveline, Ned Tyrrell, and Jane Ren
DATE: Nov. 8, 2021
RE: Staff Proposed Changes as a Result of Trial Implementation

While the 2019 GCC Field Test was invaluable in finalizing major changes to the GCC Template and Instructions before implementation, the 2021 Trial Implementation allowed preparers and reviewers of the GCC to focus more on the nuances of the GCC. As expected, a number of changes to the instructions were suggested during the completion of the template based upon comments and feedback from preparers, which the Working Group has been made aware of with each new release of the same during the trial period. Such changes are included in today’s materials, and we request the Working Group to expose these updated instructions with these modifications. The purpose of this memorandum however is to highlight more material changes, or potentially material changes to the extent the Working Group agrees with the staff recommendation. The following summarizes such changes.

Due to the fact that in accordance with draft procedures for the Working Group, template changes need to be adopted earlier in the year before instructional changes, we have listed those that require template changes first so they can be prioritized in discussions.

Template Changes

1. Eliminate Stress Scenario: While some Working Group members may want to consider adding informational stresses to the GCC in the future, the current sentiment among the Working Group seems to suggest that should only be considered after the GCC is fully implemented. Based upon that, it seems appropriate to remove the current stress from the template and the instructions.

2. Debt Allowance: One of the reasons the industry proposed the idea of including stress testing in the GCC for the Trial Implementation was to understand the sensitivity of the debt allowance after an economic downturn, therefore addressing its procyclicality. While it’s true that a 30% decline in the capital of a group can impact the debt allowance of the GCC in certain situations, thereby reducing the GCC ratio, NAIC staff does not believe this is a sufficient cause for increasing the debt allowance. As a reminder, the debt allowance is a proxy for the amount of subordinated capital embedded within the GCC and we believe the current allowance approximates this proxy well. A number of volunteers participating in the Trial Implementation suggested the 30% decline was generally not a very reasonable stress given past performance of the industry during previous financial crisis (e.g., 2008/2009 great
recession). However, some of those volunteers pointed to monetary policy during a financial crisis which actually encourages entities of all industries to increase debt as a means to push back against the negative impact. They pointed to the industry’s issuance of debt immediately after COVID and suggested the GCC should not go against these policies. NAIC staff does not disagree in principle, and would suggest a better way to address these points is through a simple annual 10% cap that enables the debt allowance to increase 10% from the prior year, but only during a period where the Federal Reserve has taken a public position of reducing the cost of borrowing through reducing interest rates either by lowering the Federal Funds rates or by purchasing debt instruments (additional if applicable). However, the 10% increase must be reversed once the Federal Reserve has taken action to reverse its trend (e.g., increase rates or reduce purchasing debt instruments). Perhaps this could be formally implemented only upon issuance of “guidance” by the Working Group that is posted to the Website. The details of whether this is appropriate and how it should be considered for adoption should first be determined by the Working Group. NAIC Staff would welcome proposed changes to the GCC instructions and template that could achieve this type of approach or any other similar approach that reduces the perceived procyclicality of the GCC limitation in this area.

3. **Eliminate Sensitivity Test Related to “Other Debt”** – We recognize that some members of the industry continue to believe that the debt allowance should include “other debt” beyond “senior debt” and “hybrid debt”. However, NAIC staff continues to believe that the approach already adopted by the Working Group to have an individual limit for each of those items (30% and 15% respectively) and the overall cap of those two is appropriate for the previous points made regarding how the debt allowance is a proxy for subordinated capital already within the insurance companies. With the previous consideration about adding an additional 10% annual change meeting the criteria, we further support no change to allow other debt. This should be further deliberated by the Working Group before taking action on this issue and input from interested parties may assist the Working Group in such a deliberation.

4. **Non-Risk Sensitive Foreign Jurisdictions** - One recommendation that has already been made by NAIC staff and regulators during the Trial Implementation is a different approach related to non-risk sensitive foreign jurisdictions. In summary, these are jurisdictions whose capital requirements are not responsive to the magnitude and/or nature of an insurer’s risk profile. During the Trial Implementation, a conservative approach was used on this matter, and the template included a capital charge equivalent to 100% of the carrying value of the non-U.S. insurer, which is similar in the life RBC formula today. However, to be clear, since 2010, the life formula has required companies to use a zero value for foreign affiliates statutory carry value is excluded from both total adjusted capital (the numerator) and RBC (the denominator) of the RBC ratio. This was done to level the playing field between stock and mutual insurers on the basis that most stock insurers where such entities are owned by a sister non-insurance holding company rather than the U.S. life insurance company.
NAIC staff suggestion during the Trial implementation was that groups with such entities consider using a lower factor, such as 50% of the carrying value, and be given the option to calculate the insurers capital requirement using RBC (with reasonable simplifications/estimates) if that is preferred to the 50% carrying value. At this point we have included this option in the revised instructions pending approval with exposure of such a substitute.

5. **Schedule 1 Related Questions/Considerations**: The last item actually includes a number of separate questions or considerations, but they are all related to Schedule 1 and its purpose. More specifically, from the onset, the regulators have always stated they would like a way to make sure that the GCC includes all of the entities included in Schedule Y. Said differently, as drafted today, the Schedule 1 requires all entities to be listed in the Schedule Y, thereby providing that starting point the regulators requested. However, the instructions do provide one exception, and that is for Schedule A and BA entities, since those entities are already reflected in the RBC, and they don’t result in double counting of capital. Instead, these entities are listed in the Q&A tab, thereby having the effect of keeping the Schedule 1 cleaner, but still allowing a way for the regulator to reconcile back to the Schedule Y if they chose to do so. The question is whether similar exceptions in Schedule 1 should be provided for other entities. This would be for simplicity and to allow the regulator to focus on the entities more easily in the group on that matter. NAIC staff welcomes input on these considerations. The following presents such types of entities to the Working Group in a way to see if they would like a different approach:

a. **Other entities included in the RBC**: The GCC does not require non-insurance/non-financial entities to be destacked, but they are required to be included in Schedule 1 and certain limited information included in the Inventory. The question is whether a listing of these entities could be included in the Q&A similar to the Schedule A and BA entities. The idea being that would keep the Schedule 1 cleaner, but for anyone wanting to reconcile back to the Schedule 1, they could do so with the listings in the Q&A. The NAIC raises this issue in case the current approach results in confusion by the preparer, or even for the reviewer since the inventory does not include any calculated capital amounts for these entities.

b. **Consideration of Entities “Not material” or “Excluded” from the GCC ratio**: The GCC currently requires the group to list out its entities on Schedule 1, then mark each as either “Included” or “Excluded” for the purpose of calculating the GCC ratio. Specifically, for those that do not meet the GCC definition of material, the entity can “Exclude” them, however they have to be marked as such. The regulator then reviews the same listing and determines for themselves if each entity should be “Included” or “Excluded”. It’s likely that in the majority of situations, once a regulator
determines an entity may be “Excluded” from the ratio, that they will likely be excluded in the future. This is based upon the fact that the general reason for exclusion tends to be driven by the nature of the entity and its risks, and not its size. However, to clarify, not all entities that are once approved to be excluded always will be, and for that reason there will be a continued need for the GCC to provide information that allows the regulator to decide whether they can be excluded. The question is whether such information could be different than what is provided in Schedule 1, and, if so, whether perhaps such information could be reported elsewhere (e.g., Q&A tab). This would reduce the number of entities on Schedule 1 and perhaps help the regulator to focus on material entities in that schedule. The NAIC raises this issue for two reasons; 1) whether a different approach would allow for a more efficient review of the GCC by the regulator; 2) whether the current approach results in confusion by the preparer.

i. **Sensitivity Analysis**—There is currently a sensitivity analysis related to “Excluded” entities to help the regulator understand the impact of the excluded entities on the GCC. The question is whether this should be removed. To the extent these excluded entities were no longer included in the Schedule 1 and Inventory, this sensitivity analysis could not be calculated, again, suggesting the need for some type of information to still be captured elsewhere in the GCC.

**Instruction Only Changes**

6. **Asset Managers** — The GCC currently considers asset managers as financial entities, and therefore subject to a factor of either 2.5%, 5.0%, or 10% of 3-year average revenue (same as other financial entities) based upon the material risk principles defined in Section II of the instructions. Some members of the industry have suggested that asset managers should instead utilize the regulatory capital standards imposed by the Financial Industry Regulatory Authority (FINRA). NAIC staff have always believed that while the base GCC requirements should generally remain the same as the principles under which they have been developed by the Working Group, it’s only natural that it evolves over time to carve out new factors for specific industry’s where a different factor can be supported. As it relates to the current GCC, this would include either specific financial entities having a different factor than those noted above, or potentially even for non-insurance/non-financial industries, a different factor than is used for all other non-insurance/non-financial entities. Additionally, perhaps more specific to the point, one of the GCC principles is that it defers to the specific capital requirements of the regulator of the entity, which in this case may include FINRA to the extent they have specific capital requirements. NAIC staff attempted to gather information on such requirements through the review of FINRA 15c3-1, but it was unclear how such capital requirements practically work as they seem to be more principle-based. NAIC Staff would
recommend the Working Group consider such a request, but only upon deliverance of documentation, including examples, that enable the regulators to understand. This does not need to be a full presentation to the Working Group unless the members indicate such is needed but could instead be full documentation and time for the Working Group to ask questions.
December 22, 2021

Mr. John Rehagen, Chair
Missouri Department of Insurance
Division Director – Financial Institutions & Professional Registration
NAIC Group Capital Calculation Working Group
Via e-mail: ddaveline@naic.org

Re: Comments on NAIC Group Capital Calculation (E) Working Group exposed proposed changes to the Group Capital Calculation (GCC) following the 2021 Trial Implementation

Dear Mr. Rehagen:

The American Council of Life Insurers appreciates the opportunity to comment on the Proposed changes to the Group Capital Calculation (“GCC”) following the 2021 Trial Implementation. We appreciate the significant and thoughtful work that has gone into the GCC framework and the NAIC’s ongoing commitment to developing a GCC that is fit-for-purpose.

ACLI is generally supportive of the proposed changes, however, we do have some comments to provide in relation to the Debt Allowance, Schedule 1 Considerations, and Non-Risk Sensitive Jurisdictions.

Debt Allowance

In 2020, the NAIC agreed to increase the overall debt cap from 50% to 75% but left the subcategory caps unchanged: (1) Senior debt cap remains at 30%; (2) Hybrid debt cap remains at 15%. ACLI suggests that the subcategory caps should instead be set at a percentage of the overall cap: (1) Senior debt cap should be 60% of the overall cap (i.e., the original 30%/50%); and (2) Hybrid debt cap should be at 30% of the overall cap (15%/50%). Having the subcategories as a percentage of the overall cap allows the subcategories to adjust automatically as the overall cap adjusts up and down.

Schedule 1 Considerations

ACLI supports the streamlining of Schedule 1, however, we want to ensure that regulators have the detail they need for entities that are not already included in the GCC via the parent insurer’s RBC. Our recommendation would be to treat immaterial non-insurance/non-financial entities on Schedule Y of an RBC-filing US insurer like non-financial BA and A entities and create a place for them to be...
identified on Input 6. That way, while they are not listed on Schedule 1, they would continue to receive the same treatment as under the parent insurer’s RBC.

**Non-Risk Sensitive Jurisdictions**

ACLI members have varying perspectives on this issue. Some are comfortable with lowering the risk-charge for non-risk sensitive jurisdictions from 100% to 50%. Others believe that to uphold credibility in the GCC, non-risk sensitive jurisdictions should apply an RBC-type charge in the GCC or default to a 100% factor absent any other information. To move materially away from a 100% factor should require analysis and an explanation for why a different factor, in this case 50%, is more appropriate. They do agree with the proposed alteration to allow groups to calculate the insurer’s capital requirement using RBC, with simplifications, if that is preferable to the 100% risk charge approach.

There is potentially room for a compromise on this issue, where the 50% factor is maintained in the GCC Trial Implementation Instructions, but it is clearly labeled as an interim factor until more thorough analysis can be done on the appropriate factor(s) for non-risk-based jurisdictions. Some key items of the GCC are yet to be finalized and/or may change over time, such as scalars and calibration levels. The non-risk-based jurisdiction factors could be added to that list.

**Conclusion**

Thank you for the opportunity to comment. We look forward to continuing to support the efforts of the Working Group and staff as work continues on other GCC elements, like scalar methodology. As always, we would be happy to discuss our comments, or any other issue, with you or your staff at your convenience.

Many thanks,

Kristin Abbott
December 21, 2021

Dan Daveline  
Assistant Director-Financial Analysis  
National Association of Insurance Commissioners  
Via email: ddaveline@naic.org

Group Capital Calculation (E) Working Group – Staff Memo of Proposed Changes to the GCC as a Result of Trial Implementation

Dear Mr. Daveline:

On behalf of AHIP’s member plans, we welcome the opportunity to comment on the Staff Memo of Proposed Changes to the GCC as a Result of Trial Implementation (Staff Memo). Our comments follow and are arranged by the topics captioned in the Staff Memo:

Template Changes

1. Eliminate Stress Scenario – AHIP agrees with Staff Memo’s proposal to eliminate the stress scenarios in the template. Should the working group consider adding those scenarios back to the template later (which is stated as a possibility in the Staff Memo), we would expect that to be subject to another exposure process at that time and that we would again have an opportunity to comment.

2. Debt Allowance – The Staff Memo proposes that the debt allowance currently provided in the GCC Instructions be allowed to increase 10% from the prior year, but only during a period where the Federal Reserve has taken a public position of reducing the cost of borrowing through reducing interest rates either by lowering the Federal Funds rates or by purchasing debt instruments; the 10% increase would then be reversed once the Federal Reserve has taken action to reverse its trend. AHIP is concerned that the proposed 10% decrement in capital when the Federal Reserve reverses its action could have the same systemic impacts of triggers based on rating agency downgrades as was experienced during the financial crisis. The Financial Analysis Handbook guidance that was recently adopted on the use of the GCC suggests that regulatory analysts focus on year-over-year GCC consistency to identify red flags that would trigger a deeper level of regulatory review of the GCC, both of capital resources and of calculated capital. The subject proposal could trigger unintended "red flags" and a deeper regulator review based solely on the toggling of the debt allowance, rather than an underlying economic cause impacting the group. As new debt is issued or debt retired, the true capital picture may thus be clouded by change to the debt allowance. Therefore, AHIP does not support the proposed changes to the debt allowance presented in the Staff Memo.
Schedule 1 Related Questions/Considerations – Relating to "non-insurance/non-financial entities" and "not material/excluded entities," AHIP prefers the current template structure, which has all Schedule Y entities listed in Schedule 1. Including all entities in Schedule 1 provides better controls to ensure completeness and accuracy. Members report that the control process becomes more complicated if they have multiple lists of entities in different places, and especially if entities move from one list to another.

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We thank you again for the opportunity to comment and for your patience and consideration of our views. We look forward to discussing them with you further.

Sincerely,

Bob Ridgeway
Bridgeway@ahip.org
501-333-2621

Cc: Tom Finnell
Restructuring Mechanisms (E) Working Group  
Virtual Meeting  
March 28, 2022

The Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met March 28, 2022. The following Working Group members participated: Elizabeth Kelleher Dwyer, Co-Chair, Matt Gendron, and Jack Broccoli (RI); Andrew Schallhorn, Co-Chair (OK); Mel Anderson (AR); Rolf Kaumann (CO); Kathy Belfi and Jared Kosky (CT); Judy Mottar and Vincent Tsang (IL); Judy Weaver (MI); Fred Andersen (MN); John Rehagen (MO); Lindsay Crawford (NE); Bob Kasinow (NY); Jeffrey Smith (PA); Amy Garcia (TX); Doug Stolte and David Smith (VA); Steve Drutz (WA); and Amy Malm (WI). Also participating was: Bob Wake (ME).

1. **Heard Introductory Comments**

Superintendent Dwyer stated that it had been some time since the Working Group last met, noting that in December, the Working Group met and discussed a significant number of comments; i.e., over 300 pages of materials. She noted that since that time, NAIC staff reviewed those comments, making changes where they deemed appropriate; then, both co-chairs and their staff began reviewing and developing further changes to address the comments. She stated that Mr. Gendron is on her staff and has done excellent work in wading through all those pages and making suggestions as to changes to the white paper as a result. Both co-chair commissioners then reviewed it, and now the co-chairs are ready for the Working Group to discuss.

2. **Adopted a Referral to the Receivership and Insolvency (E) Task Force**

Superintendent Dwyer noted that during the Working Group’s discussions, one area that has drawn a lot of strong opinions was in the area of guaranty fund coverage and the need for a policyholder to retain such coverage. She summarized a draft referral letter to the Receivership and Insolvency (E) Task Force that draws upon a recommendation from the National Conference of Insurance Guaranty Funds (NCIGF) made during its most recent comments to the Working Group. She described how the referral envisions that the Task Force would expose a Request for NAIC Model Law Development form taken from the recommendation from the NCIGF, discuss and debate the comments, and hopefully submit a response to the Working Group before the Summer National Meeting on the referral and related Request for NAIC Model Law Development form (Attachment Three-A). Barbara F. Cox (NCIGF) stated that the NCIGF supports the referral and is most eager for the work on the model law amendment to begin that would protect policyholders in this situation. Mr. Wake asked if the intent was to get a rubber stamp on the language included in the Request for NAIC Model Law Development form or whether editing could occur. Superintendent Dwyer responded that there could be some wordsmithing, some likely gaps, or improvements, but the intent is not to tie the hands of the Task Force in any way. Ms. Malm made a motion, seconded by Mr. Drutz, to adopt the referral letter (Attachment Three-B) and distribute it to the Task Force along with the Request for NAIC Model Law Development form. The motion passed unanimously.

3. **Discussed Feedback from White Paper Comments**

Superintendent Dwyer referred participants on the call to a listing of topics prepared by Mr. Gendron, which is broken up into two lists, one that requires further Working Group discussion and another where there is a desire for the industry and others to provide more suggestions in terms of language to address previous comments (Attachment Three-C). The first list—i.e., items labeled starting with the letter A—represent areas where further Working Group discussion is needed. The second list—i.e., items labeled starting with the letter B—represent...
comments where it is not clear how the comment should be addressed in the white paper. In short, the Working Group needs some extra help and is open to anybody who wants to send in a comment letter.

a. **Comment A1**

Mr. Wake noted that he could develop potential language for the Working Group to consider that addresses the previous comment from him. However, he requested clarification on whether the intent was actual best practices that are being recommended to the states or places that are just being provided with an overview. Ms. Weaver asked if some of this guidance will go into the *Financial Analysis Handbook* or if it is just part of developing an overview with more specifics developed later. Mr. Gendron responded that to a certain extent, an overview is being developed; although, the Restructuring Mechanisms (E) Subgroup that is chaired by Virginia is coming up with specific financial best practices. He added that whether those standards developed later become accreditation standards is also part of the charges given to the Working Group, but it would be premature to consider those until after the best practices are developed and finalized. Mr. Rehagen noted that his preference would highlight that there are a lot of unanswered questions and concerns that still exist.

b. **Comment A2**

Mr. Wake noted that he seemed to recall that the white paper suggested that a state insurance regulator does not need as high of a standard of review on a corporate division (CD) as an insurance business transfer (IBT), and he questioned that premise. He said he could develop potential language for the Working Group to consider that addresses the previous comment from him.

c. **Comment A3**

Mr. Gendron stated that the next comment pertains to the principles developed by the American Council of Life Insurers (ACLI), which the white paper catalogues. He stated that he believes the ACLI suggested that its best practices be adopted as recommendations, which he believes is a decision to be made by the Working Group. Wayne Mehilham (ACLI) agreed that the ACLI would like its principles adopted as recommendations. Mr. Kosky stated that Connecticut is opposed to the ACLI principle that requires an independent expert. He suggested that such use should be at the discretion of the commissioner for several reasons. Mr. David Smith asked if any decision on making the independence a requirement could be held until the Subgroup discusses and decides on the matter. He noted that the Subgroup’s proposed best practices and foundational principles document will be coming out shortly and asked if that decision could be deferred for the Subgroup.

d. **Comment A4**

Superintendent Dwyer discussed how this issue is likely one that would require a referral to another NAIC group to develop changes to the *Protected Cell Company Model Act* (#290).

e. **Comment A5**

Mr. David Smith noted that he is not sure if this is something that the Subgroup is looking at. He noted that there may be some crossover with statutory accounting where all companies are required to follow. He said to that point, it does not distinguish between an IBT and a CD, and he believes Virginia tries to look for other issues. Mr. Gendron noted that he believes if the Subgroup is focused on the rules of the road for both types, regardless of type, this comment should be addressed, as that is the point of the comment.
f. **Comment A6**

Mr. Gendron noted that he believes the next comment is likely another one that is consistent with what Ms. Weaver noted earlier. To the extent that the Subgroup develops best practices, it will likely have addressed this comment; then, the suggested accreditation requirements can be developed as a recommendation after the procedures to be used by all states are developed.

g. **Comment A7**

Andy Vetter (Northwestern Mutual) stated that as one of the companies signing the comment letter, Northwestern Mutual is looking for a pathway to uniformity on what should be just baseline requirements for jurisdictions that permit these transactions, including not allowing for long-term care (LTC) insurers. Superintendent Dwyer asked if there is a desire to make a statement that would be a standard that long-term cannot be included. Mr. Andersen responded that he would prefer if such a statement is not made, noting that he does not want to completely shut the door, especially with something that might otherwise just slip through a single state. However, he noted that he wants to keep things open for something at the national level if developed. Superintendent Dwyer asked about adding language such as, “The Restructuring Mechanisms (E) Working Group strongly discourages states from entertaining the use of IBT or CD transactions involving long-term care insurance, but if a state does consider, they should bring to a particular NAIC group or a national group for their consideration of some type of national solution, before doing so.” Mr. Rehagen agreed with this language and noted at least taking such action with all the states in which the policyholders for the LTC carrier reside. Mr. Tsang noted that there are two ways of looking at such a transaction, one in which the long-term care insurance (LTCi) business is transferred and another where all the non-LTCi business is transferred. Superintendent Dwyer asked NAIC staff to develop language for possible inclusion in the white paper after review by Rhode Island and Oklahoma. Mr. Rehagen also asked that the domestic state of the insurer consider all the states having to receive notice and approve, as well as all the policyholders, which perhaps could become some type of accreditation standard.

h. **Comment A8**

Mr. David Smith stated that while there may be some of the issues identified in this comment that are not covered by the work of the Subgroup, he believes most of them are. He suggested that the Working Group see what the Subgroup develops, then revisit the matter after that.

i. **Comment A9**

Mr. Gendron suggested that the Working Group add language similar to what was suggested by the National Workers Compensation Reinsurance Association (NWCRA), which suggests that states coordinate with the NWCRA after transactions are paid by the resulting insurer.

j. **Comment B1**

Mr. Gendron requested input from other attorneys and interested parties that may have access to a fuller source of some of these decisions in the public sector and the public domain. Comments can come from any party.

k. **Comment B2**

Superintendent Dwyer recommended that this section be modified as recommended by Mr. Wake by starting with the conclusive action by the court. Mr. Gendron stated that he found a companion case to this case in one
of the Channel Islands, and it is going through a similar time period, but he requested assistance from someone more familiar with the non-U.S. laws and legal research.

1. **Comment B3**

Superintendent Dwyer stated that the comment from Mr. Wake suggested that the introduction of IBTs in the white paper be followed by a description of CDs that are at a similar level, and then a comparison between IBTs and CDs. She noted that it is natural that the co-chairs have more knowledge on IBTs and that someone with a similar knowledge of CDs offers suggestions to address this point. Mr. Kosky indicated that he could assist in drafting language for this section, but he suggested that since they Working Group had not yet approved of such a transaction, it might also be helpful to have another state add more color into what it develops that has reviewed a transaction. Superintendent Dwyer stated that she hopes Illinois can assist with that additional color added.

m. **Comment B4**

Mr. Gendron noted that this item is similar to comment B3, and he expects that the need for additional language from a CD is the same.

n. **Comment B5**

Mr. Gendron stated that he is open to adding language to address this point, and he asked that if Virginia wants to offer some language, he could take it from there. Mr. Stolte noted that he believes the redline version does a good job of addressing the Virginia issue, but the one thing that is not clear is that the anti-novation statute is not just applicable to assumption reinsurance, but all transactions. He added that the Virginia State Corporation Commission (SCC) would most likely never subject itself to another state jurisdiction since Virginia is a court of record. He added that with respect to the Yosemite transaction, Virginia would hold the insurer accountable for non-compliance with the Virginia Statute, and Virginia does not have a specific suggestion developed yet. He stated that what is needed is an accreditation mandate, with a model law or regulation that has uniformity. He noted that what was at issue is about transferring the fundamental insurance promise from one legal entity to another legal entity. He noted Virginia is not opposed to IBT or CD laws, but it believes a model law or regulation is needed. He summarized that he believes the issue calls for a model law and model regulation that becomes an accreditation standard. Superintendent Dwyer asked if there is a better title for incorporating the Virginia points through a new section label. Mr. Stolte responded that he simply referred to the law as anti-novation. Mr. Wake suggested that consent requirements might be the better terminology. Mr. Stolte responded that that is what the statute requires. Mr. Rehagen noted that a section is still needed for other states with assumption reinsurance statutes. Mr. Wake suggested that it could read, “assumption reinsurance model and other acts that limit notations without the affirmative consent of the policyholder”. Superintendent Dwyer indicated that the Working Group would reword it with a similar thought in mind.

o. **Comment B6**

Superintendent Dwyer noted that this was an issue raised by Mr. Wake. Mr. Gendron noted that Mr. Wake provided a lot of good comments, and only a small number of them were not incorporated. Mr. Gendron requested language to address this particular one of only a few where language had not been developed to address this.
p. **Comment B7**

Mr. Gendron noted that Mr. Wake raised a good question about whether recourse is possible under the United Kingdom (UK) law, and a bankruptcy citation was included. He noted that since he is not an expert, he requires assistance.

q. **Comment B8**

Mr. Gendron noted that he tried to address this issue but questioned if it could be better clarified by those with more expertise in this area, and he requested assistance.

r. **Comment B9**

Mr. Gendron stated that several comments were received about adverse consequences to policyholders of long duration products, and while he tried to address this comment, he noted that he was not sure he did the topic justice; therefore, he requested assistance.

Superintendent Dwyer asked if exposing the comments for a 30-day public comment period would be a sufficient time period for individuals to review and develop revised language for the list just reviewed. Ms. Weaver agreed with the 30-day comment period. Mr. Gendron said that would likely allow the Working Group to synthesize something in about a month and a half and then have a call in about two weeks. Superintendent Dwyer stated that comments would be due April 29. NAIC staff were asked to: 1) post the listing of topics discussed on the call as a means to solicit feedback and language; and 2) post the original December 2021 call materials for which the page numbers are used as a reference point in the listing of items that require additional feedback.

Having no further business, the Restructuring Mechanisms (E) Working Group adjourned.
REQUEST FOR NAIC MODEL LAW DEVELOPMENT

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

Please check whether this is:  ☒ New Model Law      or     ☐ Amendment to Existing Model

1. **Name of group to be responsible for drafting the model:**
   
   Restructuring Mechanisms (E) Working Group

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

3. **Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.**

   •  **Property and Casualty Insurance Guaranty Association Model Act (#540)**

   In 2019, the Financial Condition (E) Committee formed the Restructuring Mechanisms (E) Working Group who was charged with the following:

   1. Evaluate and prepare a white paper that:
      a. 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.
      b. Summarizes the existing state restructuring statutes.
      c. 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.
      d. Considers the impact that a restructuring might have on guaranty associations and policyholders that had guaranty fund protection prior to the restructuring.
      e. Identifies and addresses the legal issues associated with restructuring using a protected cell.

   **Background for Proposed Change**
   This proposed change is being precipitated by discussions within the NAICs Restructuring Mechanisms (E) Working Group initiative, which is focused on documenting in the form of a White Paper, the various issues related to insurance business transfers (IBT) and corporate division (CD) transactions. The number of states adopting laws that permit either of these transactions is still relatively low, however one of the most significant issues that has been discussed during the meetings of the Working Group is the need for policyholders of such transactions to retain guaranty fund coverage. Representatives of the National Conference of Insurance Guaranty Funds (NCIGF) have suggested that an amendment to a state’s guaranty fund act, or other related law is necessary to address this issue. They have specifically suggested that the NAIC update the Property and Casualty Insurance Guaranty Association Model Act to incorporate specific language they have developed to address this issue. This will better enable those states that have incorporated #540 into their laws to update their laws for this important issue. This change is needed to ensure policyholders in all states retain their coverage, which is necessary regardless of how few states adopt changes to their laws to allow IBT and CD transactions.

   **Scope of the Proposed Revisions to Model 540**
The scope of the request is limited to addressing the issue of guaranty fund coverage and as a result would be limited to specific suggestion of additional language within the definition of “Covered Claim” within #540. The following is the additional language (underlined language) that is being proposed to be added to Section 5, Definitions, within #540.

H. “Covered claim” means the following:

(a) The claimant or insured is a resident of this State at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured or policyholder is the State in which its principal place of business is located at the time of the insured event; or

(b) The claim is a first party claim for damage to property with a permanent location in this State.

(c) Notwithstanding any other provision in this Act, an insurance policy issued by a member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of another insurer, pursuant to a state statute providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity (commonly known as “Division” or “Insurance Business Transfer” statutes), shall be considered to have been issued by a member insurer which is an Insolvent Insurer for the purposes of this Act in the event that the insurer to which the policy has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in liquidation.

(d) An insurance policy that was issued by a non-member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of a member insurer under a state statute described in subsection (a) shall not be considered to have been issued by a member insurer for the purposes of this Act.

4. Does the model law meet the Model Law Criteria?  ☒ Yes  or  ❑ No  (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states?  ☒ Yes  or  ❑ No  (Check one)

If yes, please explain why:

This proposed change is needed to ensure policyholders in all states retain their guaranty fund coverage, which is necessary regardless of how few states adopted changes to their laws to allow IBT and CD transactions.

It should be noted that with respect to guaranty fund coverage for life and health insurance, the National Organization of Life and Health Insurance Guaranty Associations are suggesting a different approach in addressing the same issue which centers around the need for such transaction to require the assuming or resulting insurer to be licensed in all states where the issuing insurer was licensed or ever was licensed to retain the needed coverage for policyholders.

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

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

☒ 1  ☐ 2  ☐ 3  ☐ 4  ☐ 5  (Check one)

High Likelihood  Low Likelihood
Explanation, if necessary:

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

☐ 1  ☐ 2  ☑ 3  ☐ 4  ☐ 5  (Check one)

High Likelihood                               Low Likelihood

Explanation, if necessary: See previous discussion.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☐ 1  ☐ 2  ☑ 3  ☐ 4  ☐ 5  (Check one)

High Likelihood                               Low Likelihood

Explanation, if necessary:

At this juncture, the changes in concepts being considered are simple and because they have the potential to reduce expenses incurred by receivership estates, we believe such changes will be widely supported by all parties.

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

Not referenced in Accreditation Standards.

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

No.
MEMORANDUM

TO: Receivership and Insolvency (E) Task Force

FROM: Restructuring Mechanisms (E) Working Group

DATE: March 28, 2022

RE: Referral Regarding Potential Change to NAIC Model

The NAIC formed the Restructuring Mechanisms (E) Working Group because of recent changes to state laws in the areas of Insurance Business Transfer (IBT) and Corporate Divisions (CD). The Working Group is in the process of drafting a white paper that, among other things, documents the issues the statutes are designed to address and some of the legal issues. Specific to that point, during public discussions, the Working Group received input from both the National Conference of Insurance Guaranty Funds (NCIGF) and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on how policyholders can retain guaranty fund coverage after such a transaction. The following summarizes such input, which is further explained at the end of this memorandum.

**NCIGF** – The NCIGF’s position is that where there was guaranty fund coverage before the IBT or CD, state insurance regulators should ensure that there is coverage after the IBT or CD. An IBT or CD should not reduce, eliminate, or in any way affect guaranty fund coverage. A CD or IBT should not create, expand, or in any way affect coverage. The NCIGF suggested that possible technical gaps may exist in states that have adopted the *Property and Casualty Insurance Guaranty Association Model Act* (#540) and proposed specific changes to the model to address.

**NOLHGA** – Described the three conditions that are needed for guaranty fund coverage after an IBT or CD. In general, restructuring statutes (or state insurance regulators reviewing proposed restructuring transactions) should clearly provide that assuming or resulting insurers must be licensed so policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction. This means the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

To that end, attached is a Request for NAIC Model Law Development form, which sets forth proposed changes to Model #540, as suggested by the NCIGF. The Working Group is not the technical expert in this area, but it does support the intent of retaining guaranty fund coverage; therefore, the Working Group asks the Receivership and Insolvency (E) Task Force to review the attached and determine where
such changes could generally be supported. We are not trying to determine if this is the exact change to make to the model at this time, but rather whether the Task Force supports the project and would be willing to complete an update to the language if approved by the Financial Condition (E) Committee and the Executive (EX) Committee. To the extent possible, perhaps the Task Force could expose the attached Request for NAIC Model Law Development form, debate it, and return it to the Working Group prior to the Summer National Meeting, where the request could be made to the Financial Condition (E) Committee.

Please let the Working Group know if you have any questions.

The following is a more comprehensive summary of the positions of the NGIGF and the NOLHGA:

The Working Group received input from the NOLHGA about the concerns for insurance consumers of personal lines life and health insurance business. The NOLHGA indicated that for there to be guaranty association coverage in the event of a life or health insurer insolvency, there are three conditions that must be present. Those conditions are:

1. The consumer seeking protection must be an eligible person under the guaranty association statute; typically, this is achieved by being a resident of the guaranty association’s state at the time of the insurer’s liquidation.

2. The product must be a covered policy.

3. The failed insurer for which protection is being sought must be a member insurer of the guaranty association of the state where the policyholder resides. To be a member insurer, the insurer must be licensed in that state or have been licensed in the state to write the lines of business covered by the guaranty association.

In most states, coverage can also be provided for an “orphan” policyholder of the insurer by the guaranty association in the insolvent insurer’s domestic state. Orphan policyholders are policyholders who are residents of states where the guaranty association cannot provide coverage because the insolvent insurer is not a member insurer due to not being licensed at the time required by the Life and Health Insurance Guaranty Association Model Act (#520). The orphan policyholder situation can arise when a policyholder purchases a policy in a state where the issuing company is licensed—i.e., is a member of the guaranty association—but subsequently moves to a state where the issuing insurance company was never licensed; i.e., is not a member of the guaranty association. The provision in Model #520, and the laws of most states, that provides that orphan policies are covered by the guaranty association in the insolvent insurer’s domestic state is designed to plug the gap in these rare situations.

A key factor when considering a life or health IBT or CD transaction is whether the resulting insurer is or will be a member insurer in each state. If the resulting insurer is a member insurer of the same guaranty associations as the transferring insurer, guaranty association coverage will be preserved and not changed
for all policyholders. Of course, specific guaranty association coverage will be determined if/when the resulting insurer is placed under an order of liquidation with a finding of insolvency. If the resulting insurer is not a member insurer of the same guaranty associations as the transferring insurer, policyholders may lose guaranty association coverage or be covered as orphans by the guaranty association in the insurer’s domestic state. Orphan coverage was not designed to plug the gap in this situation. Shifting the coverage obligation to the domestic state guaranty association could result in guaranty association coverage being concentrated in that state.

To address these concerns with respect to IBT and CD transactions involving life or health insurance, restructuring statutes (or state insurance regulators reviewing proposed restructuring transactions) should clearly provide that assuming or resulting insurers must be licensed so policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction. This means the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

One interpretation of Model #540 is that based on the definitions of “Covered Claim,” “Member Insurer,” “Insolvent Insurer,” and “Assumed Claim Transaction,” an orphan policyholder could not be covered by the state guarantee association. Consequently, there is a concern that no guaranty association coverage would be provided if policies are transferred to a nonmember insurer. Many property/casualty (P/C) guaranty fund statutes require that the policy be issued by the now-insolvent insurer, and it must have been licensed either at the time of issue or when the insured event occurred. However, these limitations are designed to avoid coverage being provided when the policy at issue did not “contribute” to the association, which would not exist in the case of an assessable policy later transferred to an insurer that was not a member at the time the policy was issued. Moreover, the restrictions exist to prevent claims resulting from a company regulated as surplus lines, or a similar structure, to benefit from the protections afforded licensed business when a licensed company is liquidated.

The NCIGF’s position is that where there was guaranty fund coverage before the IBT or CD, state insurance regulators should ensure there is coverage after the IBT or CD. An IBT or CD should not reduce, eliminate, or in any way affect guaranty fund coverage. A CD or IBT should not create, expand, or in any way affect coverage. The NCIGF suggested that possible technical gaps may exist in states that have adopted Model #540. These gaps could include the definitions of “Covered Claim,” “Member Insurer,” “Insolvent Insurer,” and “Assumed Claims Transaction” found in Section 5 of the model.

Fulfilling this intent will likely require that P/C guaranty fund statutes be amended in each of the states where the original insurer was a member of a guaranty association before the transaction becomes final. The NCIGF indicated that it created a subcommittee to address this issue and oversee a coordinated national effort to enact the necessary changes in each state. It should be noted that the same membership
and timing issues that are raised by IBTs could also be raised in the case of any other policy novation, including the assumption reinsurance transactions.
# Topics for WG to discuss:

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<tbody>
<tr>
<td><strong>A1</strong></td>
<td>“How does this differ from Best Practices? If the intent is a two-tier recommendation, that’s awkward. “A good system will do X, but any system had better do Y.” Furthermore, if there’s going to be a two-tier system, the “best” should be more robust and detailed that the minimum, and we have the opposite here.”</td>
<td>Bob Wake</td>
<td>127</td>
</tr>
<tr>
<td><strong>RI Thought:</strong></td>
<td>We think this language could be added directly to the White Paper. However, we were hesitant to add this without receiving feedback from the Working Group on whether they thought this Best Practice should be addressed.</td>
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<td><strong>A2</strong></td>
<td>“With respect to intraholding company transactions, do we really need any lesser standard of review. If anything, an IBT to a nonrelated party might need fewer guardrails because the assuming company has its own interests to consider but we have all seen transactions where the self-interest isn’t enough to prevent the assuming company from going down in flames and taking policyholder for the ride. Note that all CDs, by their nature are intra-group transactions at the time they’re consummated. And we have seen that both CDs and intra-group IBTs can seriously harm people who are left in the bad company.”</td>
<td>Bob Wake</td>
<td>128</td>
</tr>
<tr>
<td><strong>RI Thought:</strong></td>
<td>We think this language could be added directly to the White Paper. However, we were hesitant to add this without receiving feedback from the Working Group on whether they thought this Best Practice should be addressed.</td>
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<tr>
<td><strong>A3</strong></td>
<td>Suggested “incorporation of the ACLI principles and guidelines into the White Paper”</td>
<td>ACLI</td>
<td>229</td>
</tr>
<tr>
<td><strong>RI Thought:</strong></td>
<td>This language has been added directly to the White Paper on page 27. However, we were hesitant to add this without receiving feedback from the Working Group on how they feel about adding best practice suggestions to the White Paper, as long as we attribute the comments to a specific trade.</td>
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<tr>
<td><strong>A4</strong></td>
<td>Swiss Re suggests “an assessment of the use of protected cells in connection with an insurance business transfer”</td>
<td>Swiss Re</td>
<td>223</td>
</tr>
</tbody>
</table>
### ATTACHMENT 3C-DISCUSSION TOPICS.DOCX & ADDITIONAL CALLS FOR FEEDBACK

**RI Thought:** The Working Group has heard these comments from two commenters throughout the process. However, before adding it, we thought the Working Group itself should likely be polled to see if they’re open to addressing the issue as we understand that the use of protected cells have generated a substantial number of regulatory questions.

<table>
<thead>
<tr>
<th>A5</th>
<th>Statutory minimums (best practices) should have degree of parity between IBTs and CDs to prevent regulatory arbitrage.</th>
<th>Swiss Re</th>
<th>234</th>
</tr>
</thead>
<tbody>
<tr>
<td>RI Thought:</td>
<td>The Working Group has heard these comments, but it seems like an issue the Working Group should discuss before adding this to the White Paper.</td>
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<tr>
<th>A6</th>
<th>White Paper should recommend incorporation of all of the UKs Part VII standards and processes</th>
<th>NYL/W&amp;S/NW ML/MM</th>
<th>236-237</th>
</tr>
</thead>
<tbody>
<tr>
<td>RI Thoughts:</td>
<td>This comment seems to tee up several steps that we thought the Working Group should consider:</td>
<td></td>
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<tr>
<td>-</td>
<td>Accreditation requirements of robust UK Part VII regulatory and court review process</td>
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<tr>
<td>o</td>
<td>Would require that this WG identify some best practices first, then refer those to F committee to consider as accreditation requirements.</td>
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<td>o</td>
<td><em>As a first step, is there any appetite at the WG to consider such a process?</em></td>
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<tr>
<td>-</td>
<td>UK process identified as including:</td>
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<tr>
<td>o</td>
<td>Independent Expert Report</td>
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<td>▪</td>
<td>ACLI then explains that even if Departments have sufficient staff, as a standard this would help protect consumers</td>
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<td>o</td>
<td>Notice to all impacted policyholders</td>
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<td>o</td>
<td>Court approval should be required</td>
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<td>o</td>
<td><em>Does the WG want to consider adding these 3 specific recommendations to the white paper as best practices?</em></td>
<td></td>
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<table>
<thead>
<tr>
<th>A7</th>
<th>LTCI should be Ineligible for Division or Transfer</th>
<th>NYL/W&amp;S/NW ML/MM</th>
<th>238</th>
</tr>
</thead>
<tbody>
<tr>
<td>RI Thought:</td>
<td>We think this language could be added directly to the White Paper, but it seems like an issue the Working Group should discuss before adding this to the White Paper.</td>
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</table>
**ATTACHMENT 3C-DISCUSSION TOPICS.DOCX & ADDITIONAL CALLS FOR FEEDBACK**

<table>
<thead>
<tr>
<th>A8</th>
<th>Study and report upon the financial standards to apply to RMs</th>
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<tbody>
<tr>
<td></td>
<td>a) Intragroup vs. third party transactions</td>
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<td>b) Comparison to procedures in law (Form A, dividends,</td>
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<td></td>
<td>reinsurance, affiliates, investment restrictions, governance)</td>
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<td></td>
<td>c) Required longer-term projections, capital surcharges</td>
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<td></td>
<td>d) Definition and license of run-off insurers</td>
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<td></td>
<td>e) Reformulation of RBC or possible suspension of RBC for RMs</td>
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<td></td>
<td>through allowing chief insurance regulator latitude</td>
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<td></td>
<td>f) Study and develop a paper comparing differences between</td>
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<tr>
<td></td>
<td>Solvency II and U.S. solvency standards</td>
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<td></td>
<td>g) Regulatory principles currently being developed by subgroup</td>
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<td></td>
<td>h) Study and develop a paper on distinctions by line of business</td>
</tr>
<tr>
<td></td>
<td>i) Guaranty association coverage</td>
</tr>
<tr>
<td></td>
<td>j) Assumption reinsurance laws</td>
</tr>
<tr>
<td></td>
<td>k) Legal recognition of RMs</td>
</tr>
</tbody>
</table>

ProTucket | 252 |

**RI Thought:** We think this language could be added directly to the White Paper, but it seems like an issue the Working Group should discuss before adding this to the White Paper. Alternatively, it could be addressed by the Subgroup through their efforts.

<table>
<thead>
<tr>
<th>A9</th>
<th>Add language to the White Paper that discusses the National Workers Compensation Reinsurance Association (NWCRA) NFP and the need for states to coordinate with it to ensure obligations after the transaction are paid by the resulting insurer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NWCRA</td>
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</table>

**RI Thought:** We think this language could be added directly to the White Paper, but it seems like an issue the Working Group should discuss before adding this to the White Paper.

### II. Topics to solicit additional outside feedback:

<table>
<thead>
<tr>
<th>B1</th>
<th>Suggests “adding how many Part VII transfers failures” as a comparison to the 300 successfully cited transfers</th>
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<tbody>
<tr>
<td></td>
<td>Bob Wake</td>
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</table>

**RI Thought:** We should solicit additional feedback from commenters to address this note.

<table>
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<tr>
<th>B2</th>
<th>Suggests rewriting “the Prudential/Rothesay section to address the issues, but make the outcome clearing from the beginning. But what IS the outcome. The court of appeals didn’t actually approve the transfer, but remanded the case to the High Court to be heard by a different judge.”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bob Wake</td>
</tr>
</tbody>
</table>
**ATTACHMENT 3C-DISCUSSION TOPICS.DOCX & ADDITIONAL CALLS FOR FEEDBACK**

**RI Thought:** We should solicit additional feedback from commenters to address this note.

Specifically, UK High Court eventually approved the transaction in November 2021, but we can’t identify an official UK decision.

| B3 | “This doesn’t really fit here. The introduction to IBTs ought to be followed by a description of CDs that operates at a similar level, and then the comparison between IBTs and CDs, which is probably where the NCOIL Model goes-it can be included in the comparison with existing state law.” | Bob Wake | 118 |

**RI Thought:** We added introductory language about Corporate Division states here, but should solicit additional feedback from commenters to address this note.

| B4 | “Some of the material below needs to go above-there should be an introduction to the CD concept at about the same level of detail as the introduction to the IBT concept” | Bob Wake | 118 |

**RI Thought:** We added language to address this comment, but don’t think we’ve done enough. Please offer specific language to assist the Working Group here.

| B5 | “The question is whether a foreign state could prevent its own policyholders from being transferred without consent. This wouldn’t necessarily be limited to implicit conflicts with preexisting assumption laws-if a state explicitly sought to block or impose conditions on foreign IBTs affecting domestic business, which state prevails?” | Bob Wake | 123 |

**RI Thought:** This is a critical question, but we’re not sure how to address it. Perhaps a commenter could propose language and conclusions for the Working Group to consider.

| B6 | “As noted below, the doctrine of comity is separate from these two constitutional provisions...The whole section needs some editorial work.” | Bob Wake | 124 |

**RI Thought:** We added language to address this comment, but don’t think we’ve done enough. Please offer specific language to assist the Working Group here.
## ATTACHMENT 3C-DISCUSSION TOPICS.DOCX & ADDITIONAL CALLS FOR FEEDBACK

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<tr>
<td><strong>B7</strong></td>
<td>“Was this expected at the time of the transfer? If not, was there any recourse possible under UK law.”</td>
<td>Bob Wake</td>
</tr>
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</table>

RI Thought: We should solicit additional feedback from commenters to address this note.

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<tbody>
<tr>
<td><strong>B8</strong></td>
<td>If State A had an IBT and State B had the Assumption Reinsurance Model Act or an anti-novation statute, how would those statutes interact if State A attempted to approve the transfer of policies located in State B</td>
<td>Virginia</td>
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RI Thought: We added language to address this comment in Section 4B, but don’t think we’ve done enough. Please offer specific language to assist the Working Group here.

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<tbody>
<tr>
<td><strong>B9</strong></td>
<td>Add focus in the White Paper on Adverse Consequences to Policyholders of Long Duration Products</td>
<td>NYL/W&amp;S/NW ML/MM</td>
</tr>
</tbody>
</table>

RI Thought: We added language to address this comment, but don’t think we’ve done enough. Please offer specific language to assist the Working Group here.
National Treatment and Coordination (E) Working Group
Virtual Meeting
March 9, 2022

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met March 9, 2022. The following Working Group members participated: Jay Buschmann Co-Chair (MO); Cameron Piatt, Co-Chair (OH); Cindy Hathaway (CO); William Mitchell (CT); Alisa Pritchard (DE); Carolyn Morgan and Alison Sterett (FL); Stewart Guerin and Mike Boutwell (LA); Kari Leonard (MT); Karen Feather (PA); Amy Garcia (TX); Jay Sueoka (UT); Ron Pastuch (WA); Amy Malm (WI); and Linda Johnson (WY).

1. Heard Opening Remarks

Mr. Piatt provided a summary of his involvement with the Working group and announced his position as co-chair. He added that Debbie Doggett (MO) could not attend today’s meeting due to scheduling conflicts.

2. Tabled Proposal 2021-07 (Instructions Regarding Company Responses)

Mr. Piatt said the proposal for company response to state inquiries has been tabled. During discussions on a regulator-only call, it was determined that states have processes or procedures in place on the timing of company responses. Hearing no objections, the Working Group tabled further discussion of proposal 2021-07.

3. Heard an Update on the Domestic Surplus Lines Insurers Drafting Group

Crystal Brown (NAIC) said the Working Group established the Domestic Surplus Lines Insurers Drafting Group to address a memo from the Chief Financial Regulator Forum for domestic surplus lines insurers (DSLI). The Drafting Group reviewed and provided responses to each question from the original memo in the response memo of Attachment 4. The Drafting Group addressed these questions through discussion, surveys, and a review of each DSLI state’s statute/regulation.

Through the Drafting Group’s work, it developed the DSLI chart that provides insurers with the information needed to become a DSLI. Only states that allow for DSLI carriers are included on the chart. Most states utilize the Uniform Certificate of Authority Application (UCAA) primary application for the authorization of a DSLI. The chart provides the following information: 1) statute/regulation reference; 2) additional requirements; 3) board of director requirements; 4) minimum capital and surplus requirements; 5) requirements for existing admitted business fees; and 6) state website and contact information.

Ms. Garcia made a motion, seconded by Mr. Sueoka, to approve the responses to the Chief Financial Regulator Forum’s referral (Attachment Four-A). The motion passed unanimously.

4. Heard an Update on the Biographical Affidavit Database Project

Jane Barr (NAIC) said the bio database project will move forward effective April 1. During the development phase, industry and state insurance regulator user input is imperative to the development of the electronic application functionality. Ms. Barr mentioned that volunteers are needed for development and testing. Any interested users should email Ms. Barr directly. Ms. Barr added that the ad hoc group will resume its semi-monthly calls to complete the domestic corporate amendment application and instructions. Once the domestic corporate amendment application is completed, the ad hoc group will move on to the Form A application and Form E
notifications for development in 2023 with an implementation date sometime at the beginning of 2024. Next, the current expansion and foreign corporate amendment applications will be enhanced with new technology and developed on the new format by year-end 2024. During 2024, the ad hoc group will begin discussions on the biographical affidavit database. Input from affiants, industry, third-party vendors, and state users will be imperative to the success of this database. Ms. Barr stressed that volunteers are needed during the information gathering process and development of the electronic tool, and all interested parties should contact Ms. Barr.

5. Discussed Other Matters

Ms. Brown explained that an issue was brought to the attention of NAIC staff regarding individual affiants that held multiple board positions within a group; i.e., 50+. Attached in the materials are several templates that NAIC staff created that could be used in lieu of the blank addendum pages currently provided on the website. Jeff Martin (UnitedHealth Group—UHG) said the UHG has multiple affiants that hold numerous positions in their holding group that the UHG has used when submitting bios that he believes would work for other companies in a similar structure. The attached proposal removes the addendum pages and creates a separate attachment with options that would fit the scenario of the affiant. Ms. Barr added that this is just a temporary work around until the bio database is developed. Ms. Brown said one example allows for multiple positions listed for one company so multiple entries did not need to be created on the blank addendum page.

Gina Hudson (Liberty Mutual) said Liberty Mutual lists an attachment along with the cover letter because she believes the cover letter would include this information. Ms. Brown said the cover letter does not request all the pertinent information currently listed on the bio. Mr. Martin asked if the Working Group will consider creating a template for licenses and memberships. Ms. Barr suggested that any other examples should be emailed to NAIC staff by March 18, and those templates will be included in the current exposure with comments due by April 20.

Ms. Barr explained that the biographical database project timeline will move forward in 2022 with the following:

- Roll out of the primary and redomestication applications.
- The development and testing phase will take most of the second and third quarter with an anticipated release date by October or November. The Working Group may decide to release the application on Jan. 1, 2023, instead of late 2022.
- Next will be the domestic corporate amendment application in 2023 followed by the Form A and Form E.
- The Form A application will tie into the existing regulatory only Form A database, so testing may take longer; the anticipated release date may be year-end 2023.
- Then, the conversion of the current expansion and foreign state corporate amendment applications will be enhanced and follow the new format with a release date in early to mid-2024.
- Last will be the development of the biographical affidavit database; testing and development will include industry, third-party vendors, and state users.

Ms. Barr said the ad hoc group will work continuously throughout the year, and volunteers should specify which project they want to participate in. She added that it is anticipated that all states will move forward with the electronic application. Any questions should be directed to Ms. Barr.

The next Working Group meeting is tentatively set for mid-May.

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

TO: Judy Weaver (MI), facilitator of the Chief Financial Regulator Forum

FROM: National Treatment and Coordination (E) Working Group

DATE: March 21, 2022

RE: Authorization of Domestic Surplus Lines Insurers

On its August 26, 2020 call, the National Treatment and Coordination (E) Working Group received a referral from the Chief Financial Regulator Forum on how to best handle Domestic Surplus Lines Insurers (DSLIs). The Working Group established a drafting group made up of both National Treatment and Coordination (E) Working Group and Surplus Lines (C) Working Group members to address the referral through discussion and surveys to the DSLI states. The drafting group addressed the following questions and developed guidance as requested in the referral:

- How to handle active or runoff admitted market premium written within the state of domicile post-DSLI authorization;
  - Of the states that responded to the initial survey a majority indicated that active or runoff admitted market premium was not allowed after conversion to a DSLI. Companies must either:
    - allow for the admitted business to lapse or expire;
    - be removed from the company through novation, cancellation, non-renewal or some other mechanism approved by the Director or Commissioner;
    - be assumed by a direct writer; or
    - cease writing admitted business on a specific date and allow the admitted block to go into runoff.

- How to address a DSLI that requests authorization to write both admitted and nonadmitted premiums in the state of domicile (unless prohibited in the legislation);
  - Based on the drafting group’s review of each state’s statute and the survey, state’s do not allow a DSLI to carry admitted policies on their books.

- The best approach for an analyst or examiner to review and test a sample of admitted policies that were subsequently converted to the nonadmitted market for a newly authorized DSLI;
  - The drafting group did not find that any state’s allowed for admitted business to be converted to non-admitted business.

- An understanding as to whether a DSLI with admitted premiums would continue to be eligible for guaranty fund protection;
Based on the drafting group’s review of each state’s statute and the surveys, no states allow for DSLI carrier to carry admitted business on their books and non-admitted business is not eligible for guaranty fund coverage.

- The best way for the state department of insurance to disclose authorized DSLIs; and
  - Based on the survey results, many states report DSLI carriers on their state website. Carriers also report DSLI status on Schedule T.

- The best method to be assured that the insurer is accurately reporting DSLI status, on its Schedule T, for its state of domicile.
  - The Annual Statement Instructions provide a DSLI status for those entities that are a DSLI.

The drafting group utilized the information obtained through their review of the state statutes and survey responses to develop a chart regarding the requirements for becoming a new DSLI carrier or converting from an admitted carrier to a DSLI. The chart was referred to the Working Group for review and posting to the UCAA webpage.

If you have any questions regarding the information outlined or guidance proposed, please contact NAIC staff: Jane Barr or Crystal Brown.

Cc: Debbie Doggett, Cameron Piatt NTC(E)WG co-chairs; NAIC staff support: Jane Barr, Crystal Brown and Andy Daleo
To: Commissioner Scott White (VA), Chair, Financial Condition (E) Committee

From: Richard Kohan (NC), Chair, Mortgage Guaranty Insurance (E) Working Group

Date: March 7, 2022

Re: Updated Request for Extension

The Mortgage Guaranty Insurance (E) Working Group is in the process of fulfilling its charge to update the Mortgage Guaranty Insurance Model Act (Model #630). The Working Group anticipated completion of its Charge by the 2022 Spring National Meeting. As Chair, I would like to update that request to the Financial Condition (E) Committee in accordance with NAIC procedures.

As background, the NAIC engaged Milliman to assist the Working Group in developing a Mortgage Guaranty Insurance Capital Model that will become part of the new capital standard for mortgage insurers. Subsequent to discussion at the 2019 Fall National Meeting, the Working Group exposed the Draft Mortgage Guaranty Insurance Capital Model, Mortgage Guaranty Insurance Model Act (#630), Mortgage Guaranty Insurance Standards Manual, and a proposed Mortgage Guaranty Insurance Exhibit. In 2021, the Working Group finalized the Mortgage Guaranty Insurance Exhibit that was integrated into the 2021 financial statement. The data for year-end 2021 will be provided by April 1, 2022 and will require a thorough analysis. After the data is analyzed, I anticipate reconvening the Working Group to continue our work Model #630.

At this time, we believe we can complete this work by the 2023 Spring National Meeting. The request for additional time is to allow the necessary time to address comments regarding the above referenced documents and ensure that a comprehensive regulatory framework is in place to effectively regulate these complex insurance entities. We are aware that we have been unable to complete our work within the one-year time period expected under the NAIC model law process and request an extension until the 2023 Spring National Meeting in order to finalize a product that can be adopted by the domestic states of the mortgage insurers, as well as any other state also wishing to adopt the same.