



NATIONAL MEETING FALL 2022

Date: 11/17/22

2022 Fall National Meeting
Tampa, Florida

GROUP SOLVENCY ISSUES (E) WORKING GROUP

Wednesday, December 14, 2022

9:30 – 10:30 a.m. ET / 8:30 – 9:30 a.m. CT / 7:30 – 8:30 a.m. MT / 6:30 – 7:30 a.m. PT

HB Plant Ballroom E&F—Level 2—JW Marriott

ROLL CALL

Justin Schrader, Chair	Nebraska	Judy Weaver	Michigan
Jamie Walker, Vice Chair	Texas	Debbie Doggett/Shannon Schmoeger	Missouri
Susan Bernard/Kim Hudson	California	Diana Sherman	New Jersey
Jack Broccoli/William Arfanis	Connecticut	Margot Small	New York
Charles Santana	Delaware	Dale Bruggeman/Tim Biler	Ohio
Virginia Christy/Carolyn Morgan	Florida	Melissa Greiner/Matt Milford	Pennsylvania
Cindy Andersen/Susan Berry/Eric Moser	Illinois	Ted Hurley	Rhode Island
Roy Eft	Indiana	Doug Stolte	Virginia
Kim Cross	Iowa	Amy Malm	Wisconsin
John Turchi	Massachusetts		

NAIC Support Staff: Bruce Jenson/Ramon Calderon

AGENDA

1. Receive and Discuss Referral from Macroprudential (E) Working Group Attachment One
—Justin Schrader (NE)
2. Receive an Overview on the UCAA Project—Debbie Doggett (MO)
and Cameron Piatt (OH)
3. Discuss Takeaways from Targeted Jurisdictional Assessment
—Justin Schrader (NE)
4. Receive an Update on International Activities—Justin Schrader (NE)
5. Any Other Matters—Justin Schrader (NE)
6. Adjournment

[https://naiconline.sharepoint.com/teams/FRSSolvencyMonitoring/Group Solvency Issues WG/2022/Fall NM/GSIWG Agenda 12-14-22.docx](https://naiconline.sharepoint.com/teams/FRSSolvencyMonitoring/Group%20Solvency%20Issues%20WG/2022/Fall%20NM/GSIWG%20Agenda%2012-14-22.docx)

To: Justin Schrader, Group Solvency Issues (E) Working Group Chair and
Jamie Walker, Group Solvency Issues (E) Working Group Vice Chair

From: Marlene Caride, Commissioner, Financial Stability (E) Task Force Chair and
Justin Schrader, Macroprudential (E) Working Group Chair

CC: NAIC Support Staff: Bruce Jenson/Ramon Calderon

Date: July 21, 2022

Re: Referral from the Plan for the List of MWG Considerations

The NAIC Macroprudential (E) Working Group (MWG) of the Financial Stability (E) Task Force (FSTF) was charged with coordinating the various NAIC activities related to private equity (PE) owned insurers. As an initial step, the MWG developed a list of 13 regulatory considerations. These considerations are frequently referenced as private equity (PE) concerns, but the Working Group developed the list with an activities-based frame of mind, recognizing that any ownership type and/or corporate structure could participate in these activities, including but not limited to PE owned insurers. The MWG members discussed detailed elements of the considerations and potential regulatory work, including explicit reference to the 2013 guidance added to the NAIC Financial Analysis Handbook for Form A reviews when a private equity owner was involved, and interested parties added useful comments to these during an exposure period. The MWG and FSTF adopted a final plan for addressing each of the 13 considerations, including many referrals to other NAIC committee groups.

The Financial Condition E Committee adopted this plan with no changes made during its virtual meeting on July 21, 2022. NAIC staff support drafted this referral letter to accomplish the actions captured in the adopted plan. It is unlikely any further modifications will occur to the adopted plan when it is considered for adoption by the full Plenary, but it is a possibility. Please begin work to address these referrals, recognizing the adoption by Plenary is still outstanding.

Each MWG consideration referred to your group is listed below. The summarized notes from the MWG regulator-only discussions follow the consideration in blue font and any interested party comments are also provided in purple font. Please consider these

Washington, DC 444 North Capitol Street NW, Suite 700, Washington, DC 20001-1509

p | 202 471 3990

Kansas City 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197

p | 816 842 3600

New York One New York Plaza, Suite 4210, New York, NY 10004

p | 212 398 9000

www.naic.org

discussion points and comments in addition to your own discussion ideas when developing proposals to address the MWG consideration.

NAIC staff support for the MWG will follow the work your group performs and summarize your activities for reporting up to the FSTF. If you have any questions or need further direction, please contact Todd Sells (tsells@naic.org).

MWG Consideration Items Referred:

1. Regulators may not be obtaining clear pictures of risk due to holding companies structuring contractual agreements in a manner to avoid regulatory disclosures and requirements. Additionally, affiliated/related party agreements impacting the insurer's risks may be structured to avoid disclosure (for example, by not including the insurer as a party to the agreement).

Regulator discussion results:

- Refer this item to the NAIC Group Solvency Issues (E) Working Group. Items discussed:
 - o Instead of requiring for all Form A acquisitions to provide additional disclosures, structure an optional disclosure requirement that can be used when unresolved regulatory concerns exist with the acquisition. For example:
 - Disclosures to allow regulators to assess the goal of the potential owner in acquiring the insurer, how the potential owner will be paid and in what amounts, and the ability of the potential owner to provide capital support as needed.
 - Copies of disclosures provided to the potential owner's investors.
 - o Provide training as needed to states with less experience reviewing complex Form A transactions and refer those states to more experienced states for live help.
 - These options include highlighting the need to use external expertise for complex transactions, especially to understand non-U.S. affiliations and when assessing multiple complex Form A applications, and at the expense of the Form A applicant.

American Investment Council (AIC) Comment (recommended 2 items) - These two items will be included in the referral to the NAIC Group Solvency Issues (E) Working Group for its work on Consideration #1.

- Recommendation: The Working Group should assess, among other items: (i) the need to provide regulatory certainty *vis a vis* when and on what basis additional disclosures could be required; and (ii) whether the additional disclosures would extend approval timelines. We believe such items are critical to insurers being able to access the capital markets effectively and efficiently.
2. Control is presumed to exist where ownership is $\geq 10\%$, but control and conflict of interest considerations may exist with less than 10% ownership. For example, a party may exercise a controlling influence over an insurer through Board and management representation or contractual arrangements, including non-customary minority shareholder rights or covenants, investment management agreement (IMA) provisions

such as onerous or costly IMA termination provisions, or excessive control or discretion given over the investment strategy and its implementation. Asset-management services may need to be distinguished from ownership when assessing and considering controls and conflicts.

Regulator discussion results:

- Refer this item to the NAIC Group Solvency Issues (E) Working Group. Regulators recognized the integral connection of the first two considerations. Items discussed:
 - o An emphasis on training and providing detailed examples to address the complexity and creativity involved in some of these Form A agreements and holding company structures.
 - o It is not practical to get copies of operating agreements from every entity in a group to assess control impacts to the insurers. Consider ways of better targeting the pertinent agreements to assess, including a potential list of questions about less than 10% owners for use when considering Form A applications and/or ongoing analysis.
 - o Consider if Form B (Insurance Holding Company System Annual Registration Statement) disclosure requirements should be modified to address these considerations.

AIC Comment (2 primary concerns) - Regulators asked the AIC to follow the work of the NAIC Group Solvency Issues (E) Working Group on Consideration #2 and make comments on specific recommendations if needed.

- Concerns: 1) The 10% presumption of control needs to remain; and 2) contractual terms contained in service agreements that are negotiated on an arm's length basis are not sufficient to convey the power to direct or cause the direction of an insurer, so long as they are subject to the ultimate supervision and control by the insurer through general oversight of the service provider and other customary contractual provisions.

For Considerations 1 and 2 above:

Risk & Regulatory Consulting (RRC) Comment: In a Form A transaction, whether the owner of the insurer is a PE fund or another type of investor, expectations and structures behind insurer ownership may have changed. Because of that, RRC believes that the stipulations, either limited time or continuing, should protect against adverse policyholder outcomes resulting from that change in dynamic.

- ♣ The regulatory expectation is that owners of insurers should have a long, if not indefinite, time horizon. It is not uncommon for PE funds in general and other similar investment vehicles to have a limited time frame because they are specifically structured investment vehicles such as limited partnerships. For example, requiring that limited partnerships should not have a specific end date would bring that ownership vehicle into line with regulatory expectations.
- ♣ While there are typically no guarantees of additional funding in any ownership situation, having a structure that allows for backstop capital in the event that a need arises should be considered. This could be achieved through a parental guarantee or a capital maintenance agreement.

- ♣ With regards to dividends, even if dividends are permitted, it may be advisable to Memo 2 structure a claw back period. This could be effectuated with allowing dividends to the limited partnership structure but requiring that the funds not be paid out to the partners for some period of time to ensure that the availability is not short-lived.
- ♣ In a limited partnership structure, the limited partners may be considered passive investors and arguably should not be subject to the typical expectations of owners. However, additional understanding and restrictions on the interest of the general partner would be appropriate.
- ♣ In the event that the Form A includes transfer of business to offshore entities, requiring continued maintenance of capital levels similar to those in place prior to the transaction, and ongoing reporting to the U.S. regulator that is in line with the Statutory reporting framework, to ensure that there are no adverse implications to policyholders.
- ♣ Ensuring that corporate governance appropriately balances the desire for strong returns with the need to protect policyholders. For example, the Board and senior management should include members with appropriate background and knowledge of insurance laws and operations. In addition, risk and compliance functions should have appropriate reporting and communication lines to the Board.
- ♣ Policyholder non-guaranteed elements, such as credited rates and dividends, should not be inappropriately reduced from existing levels.