Draft date: 3/6/23

2022 Spring National Meeting
Louisville, Kentucky

FINANCIAL REGULATION STANDARDS AND ACCREDITATION (F) COMMITTEE
Wednesday, March 22, 2023
9:00 – 10:00 a.m.
Omni Louisville—Commonwealth Ballroom—Level 2

ROLL CALL

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<th>Name</th>
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<tr>
<td>Lori K. Wing-Heier, Chair</td>
<td>Alaska</td>
<td>Mike Causey</td>
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<td>Vicki Schmidt, Co-Vice Chair</td>
<td>Kansas</td>
<td>Jon Godfread</td>
<td>North Dakota</td>
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<td>Sharon P. Clark, Co-Vice Chair</td>
<td>Kentucky</td>
<td>Andrew R. Stolfi</td>
<td>Oregon</td>
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<td>Alan McClain</td>
<td>Arkansas</td>
<td>Elizabeth Kelleher Dwyer</td>
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<td>Andrew N. Mais</td>
<td>Connecticut</td>
<td>Larry D. Deiter</td>
<td>South Dakota</td>
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<td>Timothy N. Schott</td>
<td>Maine</td>
<td>Scott A. White</td>
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<td>Gary D. Anderson</td>
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<td>Eric Dunning</td>
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NAIC Support Staff: Bailey Henning/Sara Franson/Dan Schelp/Bruce Jenson

AGENDA

1. Consider Adoption of its 2022 Fall National Meeting Minutes  
   — Director Lori K. Wing-Heier (AK)  
   Attachment One

2. Discuss Revisions Adopted in 2022 to NAIC Publications Referenced in the Accreditation Standards—Director Lori K. Wing-Heier (AK)  
   Attachment Two

3. Discuss Comments Received on the Exposure of Proposed Revisions to the Part A Insurance Holding Company Systems Accreditation Standard—Director Lori K. Wing-Heier (AK)  
   Attachment Three

4. Discuss a Response from Life Actuarial (A) Task Force on the Part A Liabilities and Reserves Accreditation Standard—Director Lori K. Wing-Heier (AK)  
   Attachment Four

5. Discuss Any Other Matters Brought Before the Committee  
   — Director Lori K. Wing-Heier (AK)

6. Adjournment
The Financial Regulation Standards and Accreditation (F) Committee met in Tampa, FL, Dec. 13, 2022. The following Committee members participated: Lori K. Wing-Heier, Chair (AK); Vicki Schmidt, Co-Vice Chair (KS); Sharon P. Clark, Co-Vice Chair (KY); Alan McClain (AR); Andrew N. Mais (CT); Gary D. Anderson (MA); Timothy N. Schott (ME); Mike Causey represented by Jackie Obusek (NC); Eric Dunning (NE); Andrew R. Stolfi represented by TK Keen (OR); Elizabeth Kelleher Dwyer represented by John Tudino (RI); Michael Wise (SC); Larry D. Deiter (SD); Scott A. White (VA); and Jeff Rude (WY).

1. **Adopted its Summer National Meeting Minutes**

   Commissioner Schmidt made a motion, seconded by Commissioner Mais, to adopt the Committee’s Aug. 10 minutes (see NAIC Proceedings – Summer 2022, Financial Regulation Standards and Accreditation (F) Committee). The motion passed unanimously.

   Director Wing-Heier said the Committee met Dec. 12 in regulator-to-regulator session, pursuant to paragraph 7 (consideration of individual state insurance department’s compliance with NAIC financial regulation standards) of the NAIC Policy Statement on Open Meetings, to vote to award continued accreditation to Colorado, Nevada, and North Dakota and to reinstate Puerto Rico’s accreditation.

2. **Adopted its 2023 Proposed Charges**

   Director Wing-Heier stated there were no changes to the Committee’s charges from the prior year.

   Superintendent Schott made a motion, seconded by Commissioner Clark, to adopt its charges (Attachment One). The motion passed unanimously.

3. **Received an Update on the Part A Liabilities and Reserves Accreditation Standard**

   Director Wing-Heier stated that the Committee is committed to ongoing review of the accreditation standards to ensure they are up to date and support the goals of the NAIC’s accreditation program. Recently, a question came up about significant elements in the Part A Liabilities and Reserves accreditation standard that require sections of the Actuarial Opinion and Memorandum Regulation (#822). Those significant elements address requirements related to statements of actuarial opinion, the appointed actuary, and adequacy of reserves. Specifically, the question about this standard is whether the requirements in Model #822 are duplicative of requirements in the NAIC Valuation Manual, which is also required for accreditation. An initial review of the two requirements indicates they are potentially duplicative.

   However, before taking any action, it is important to have the subject matter experts (SMEs) weigh in and make a knowledgeable assessment of the issue. A referral (Attachment Two) was therefore sent to the Life Actuarial (A) Task Force to consider the issue. The Task Force exposed the issue for public comment period ending Dec. 7, and no comments were received that support maintaining both requirements. The Task Force will continue its discussion of the issue and provide a recommendation to the Committee for consideration, likely at the 2023 Spring National Meeting. Any change to the standards will go through a separate exposure period at the Committee level to provide for adequate consideration by all parties.

   Having no further business, the Financial Regulation Standards and Accreditation (F) Committee adjourned.
MEMORANDUM

TO: Commissioner Lori K. Wing-Heier, (AK), Chair, Financial Regulations Standards and Accreditation (F) Committee
   Commissioner Vicki Schmidt, (KS), Co-Vice Chair, Financial Regulations Standards and Accreditation (F) Committee
   Commissioner Sharon P. Clark, (KY), Co-Vice Chair, Financial Regulations Standards and Accreditation (F) Committee

FROM: Dale Bruggeman (OH), Chair, Statutory Accounting Principles (E) Working Group
       Kevin Clark (IA), Vice Chair, Statutory Accounting Principles (E) Working Group

DATE: February 27, 2023


In 2001, the Financial Regulation Standards and Accreditation (F) Committee approved a motion to adopt the Accounting Practices and Procedures Manual – Effective January 1, 2001, Version 1999 (AP&P Manual) as an accreditation standard. The intention of this memorandum is to update the Committee on changes the Statutory Accounting Principles (E) Working Group has made to the AP&P Manual in 2022 up to the 2023 date of submission for publication. This memo is to provide the customary annual update regarding changes to the AP&P Manual.

Attachment A to this memo includes a detailed listing of the changes made to the AP&P Manual in 2022. On behalf of the Working Group, it is our opinion that none of these items, either individually or collectively, should be considered “significant” as defined by the financial solvency accreditation standards.

As outlined in the NAIC Policy Statement on Maintenance of Statutory Accounting Principles (SAP Policy Statement), modifications will be made to the AP&P Manual each year. As such, it will be reprinted with an “as of” date associated with it. For example, the next printing of the AP&P Manual, which encompasses the attached modifications, will be titled Accounting Practices and Procedures Manual – as of March 2023. This process allows for an efficient way to update the AP&P Manual and virtually guarantees that users have the latest version. Reprints and updates are necessary because of the evolutionary nature of accounting—in both the statutory accounting principles and the generally accepted accounting principles arenas—and are positive for users of the AP&P Manual.

The Working Group sincerely requests that the Committee consider the items listed in Attachment A as “insignificant” changes to the AP&P Manual. We will continue to notify the Committee of any changes to the AP&P Manual and to advise if, in our opinion, those changes are “significant” by financial solvency accreditation standards.

cc Bailey Henning, Sara Franson, Sherry Shull, Robin Marcotte, Julie Gann, Jake Stultz, Wil Oden and Jason Farr

Summary of Changes to the
As of March 2022 Accounting Practices and Procedures Manual
included in the As of March 2023 Manual

The following summarizes changes made to the As of March 2022 Accounting Practices and Procedures Manual (Manual) and shown in the As of March 2023 version.

Section 1 summarizes revisions that result in a new SSAP or new SAP concept to statutory accounting principles. Revisions that introduce original or modified accounting principles can be reflected in an existing or new SSAP. When revisions that result in a new SAP concept are made to an existing SSAP, the effective date is identified in the Status section, New SSAPs and new SAP concepts that revise existing SSAPs are commonly accompanied by a corresponding issue paper that reflects the tracked revisions for historical purposes. If language in an existing SSAP is superseded, that language is shaded and the new or revised SSAP is referenced. Completely superseded SSAPs and nullified interpretations are included in Appendix H.

Section 2 summarizes revisions that clarify existing statutory accounting principles. These revisions are characterized as language clarifications which do not modify the original intent of a SSAP, or changes to reference material. Such revisions are depicted by underlines (new language) and strikethroughs (removed language) and will not be tracked in subsequent manuals. Revisions that clarify existing statutory accounting principles are effective when adopted unless a specific effective date is noted.

Section 3 summarizes revisions to the Manual appendices.

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<td>How to Use This Manual; Summary of Changes; Preamble</td>
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TO: [Lori K. Wing-Heier], Chair
Financial Regulation Standards & Accreditation (F) Committee

FROM: [Pat Gosselin], Chair
Blanks (E) Working Group

DATE: January 4, 2023

RE: Items Impacting Current Accreditation Standard

Please find attached a list of items adopted by the Blanks (E) Working Group during 2022. The Blanks Working Group adopts numerous changes to the Annual Statement Blanks and Instructions each year. Most of the changes are made to clarify current requirements or are considered enhancements to existing reporting. The changes adopted in 2022 do not represent a substantive change to any reporting requirements.

I am planning to be present when the Financial Regulation Standards & Accreditation (F) Committee meets in the event any member of the committee wishes to discuss these issues.
Changes to blanks and instructions adopted during 2022

1. Add a footnote to Exhibit 7 in the Life/Fraternal statement and the Health Statement (Life Supplement) to capture amount of Federal Home Loan Bank (FHLB) Funding Agreements reported in columns 1 through 6 of the exhibit (2021-16 SAPWG). (2021-15BWG) Effective Dec. 31, 2022.

2. For Note 9 – Income Taxes, remove the 9C illustration instructions for the DTA and DTL components which states that “reporting entities should disclose those items included as “Other” (Lines 2a13, 2e4, 3a5 and 3b3) as additional lines for those items greater than 5% in the printed/PDF filing document”, as the illustration is not set up to accommodate variable lines. Add formulas for calculation of total and subtotal on the illustration for 9C. For Note 15 – Leases, modify the illustrations to add a “Thereafter” line and add a formula for “Total” line. (2021-16BWG) Effective Dec. 31, 2022.


4. Add columns and lines to U&I (Parts 1, 2, 2A, 2B, and 2D) and the Exhibit of Premiums, Enrollment and Utilization in the annual statement bring the lines of business reporting in line with Life/Fraternal and Property. Add columns and lines to the Exhibit of Premiums, Enrollment and Utilization and U&I Analysis of Claims Unpaid quarterly pages. The appropriate adjustments to the instructions are also being made. (2021-19BWG) Effective Dec. 31, 2022.

5. Starting at Line 72 of the Life/Fraternal Five-Year Historical add or delete lines that do not pull in the specific lines of business reported on the Life/Fraternal Analysis of Operations by Lines of Business detail pages for life (individual and group), annuities (individual and group), and A&H for Line 33 of those pages. (2021-20BWG) Effective Dec. 31, 2023.

6. Add instruction to the Investment Schedules General Instructions to exclude non-rated residual tranches or interests from being reported as bonds on Schedule D, Part 1 and add lines to Schedule BA for the reporting of those investments (2021-15 SAPWG). (2021-21BWG) Effective Dec. 31, 2022.

7. Add a new reporting requirement in the investment schedules for investment transactions with related parties. In addition to capturing direct loans in related parties, it will also capture information involving securitizations (or other similar investments) where the related party is a sponsor/originator, along with whether the underlying investment is in a related party. (2021-22BWG Modified) Effective Dec. 31, 2022.

8. Added a group of lines for Residual Tranches or Interests in the Asset Valuation Reserve Equity and Other Invested Asset Component blank and renumber lines below them. Modify instructions as appropriate for the added lines. (2021-23BWG) Effective Dec. 31, 2022.

9. Add new questions to General Interrogatories Part 1 asking if the reporting entity accepts cryptocurrency for payment of premiums, which cryptocurrencies are accepted, and whether they are held for investment or immediately converted to U.S. dollars (2021-24 SAPWG). (2022-01BWG) Effective Dec. 31, 2022.

10. Add four new electronic-only columns to Schedule D, Part 6, Section 1, for Prior Year Book/Adjusted Carrying Value (BACV) (Column 16), Prior Year Nonadmitted Amount (Column 17), Prior Year Sub-2 Verified Value (Column 18), and Prior Year VISION Filing Number (Column 19) (2021-22 SAPWG). (2022-02BWG) Effective Dec. 31, 2022.


15. Modify the Health Actuarial Opinion Instructions. Add definitions of “actuarial asset” and “actuarial liability.” Modify Section 4 – Identification, Section 5 – Scope, and Section 7 – Opinion to clarify that the actuary’s opinion covers actuarial assets as well as actuarial liabilities. Modify Section 9 to clarify that the guidance related to the type of opinion rendered by an appointed actuary covers both actuarial assets and actuarial liabilities. (2022-07BWG) Effective Dec. 31, 2022.

16. Modify the instructions in Section 1, Section 3, and Section 8 of the P/C Actuarial Opinion Instructions to reflect the changes adopted by the Actuarial Opinion (C) Working Group. (2022-08BWG) Effective Dec. 31, 2022.

17. Changes to the Life/Fraternal VM-20, Requirements for Principle Based Reserves for Life Products, Reserves Supplement blank Part 2, and adding a Question 3, a disclosure of the year that the Life Principle-Based Reserving (PBR) Exemption was actively filed, and a confirmation of the eligibility criteria in the case of ongoing exemptions. Also, correct references to a state “granting” an exemption, since this is often not the case (e.g., the exemption may be allowed). For the VM-20 Reserves Supplement Instructions, add instructions for the new disclosure item, Question 3. Correct the references to a state “granting” an exemption. For the Supplemental Exhibits and Schedules Interrogatories (Quarterly Statement), for Question 8, add instructions on how to respond if the company is utilizing the ongoing exemption. The same instructions can also be found in the Valuation Manual, Section II, Subsection 1G(1). (2022-09BWG) Effective Dec. 31, 2022.


21. Modify Five-Year Historical Data questions 68 and 69 to reference group comprehensive and modify questions 70 and 71 to reflect inclusion of all health lines of business other than group comprehensive. Crosschecks for these questions are being modifies accordingly. (2022-13 BWG Modified) Effective Dec. 31, 2022.

MEMORANDUM

TO: Lori K. Wing-Heier, Chair, Financial Regulation Standards and Accreditation (F) Committee

FROM: Tom Botsko, Chair, Capital Adequacy (E) Task Force and Property and Casualty Risk-Based Capital (E)
Working Group

DATE: February 1, 2023

RE: Accreditation Standards – Changes to the RBC Formulas and Instructions for Health, Life, and P/C

Attached please find a brief description of changes to the 2022 risk-based capital (RBC) reports, including an overview and instructions, for health, life, and property/casualty (P/C). These changes were adopted by the Capital Adequacy (E) Task Force and the Executive (EX) Committee and Plenary in 2022. The significance of these changes was viewed as it relates to the overall RBC standard.

No changes to the RBC formulas or instructions were deemed to be significant for health, life, or P/C.

Any questions can be directed to NAIC staff:

- P/C – Eva Yeung
- Life – Dave Fleming
- Health — Crystal Brown

Health RBC Formula

Not Significant

Added benchmarking guidelines to the underwriting risk instructions for investment income.

Life RBC Formula

Not Significant

Added an instruction to address changes made to Schedule BA and the asset valuation reserve (AVR) to isolate the reporting of residual tranches.

Not Significant

Made structural changes to LR025, Life Insurance, to expand the categorization of policies with instructional and factor changes.

P/C RBC Formula

Not Significant

Included the Karen Clark & Company (KCC) catastrophe model as one of the approved third-party commercial vendor catastrophe models.
Not Significant  Incorporated wildfire peril as one of the catastrophe risk perils for informational-purposes only in the Rcat component.

Not Significant  For companies qualifying for exemption under PR027INT C(10), did not require to report PR027C Lines 1 through 10.

Not Significant  Removed the embedded 2% operational risk contained in the R3 credit risk component.

Not Significant  Removed the trend test for the information-only footnote in PR033.

Not Significant  Updated the Line 1 industry average development factors in PR017 and PR018.
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Susan Bernard (CA), Chair, Financial Examiners Handbook (E) Technical Group
      John Litweiler (WI), Vice-Chair, Financial Examiners Handbook (E) Technical Group

DATE: Feb. 3, 2023

RE: Consideration for Financial Accreditation Standards

2023 Financial Condition Examiners Handbook

The Accreditation Program Manual (Manual) includes Review Team Guidelines to be used for financial examinations performed using the risk-focused surveillance approach that is found in the NAIC Financial Condition Examiners Handbook (Handbook). This memorandum is to update the Financial Regulation Standards and Accreditation (F) Committee (FRSAC) on changes the Financial Examiners Handbook (E) Technical Group has made to the Handbook in 2022.

Modifications are made to the Handbook each year, and a new edition is available annually. This process allows for an efficient way to update the Handbook and ensures that users have the latest version. The Technical Group made several changes to the Handbook in 2022, all of which it considers non-significant; i.e., having no impact on accreditation guidance.

During 2022, the Technical Group made the following changes:

Non-Significant Changes to the Handbook:
- Revisions to incorporate elements and topics of the Common Framework for the Supervision of Internationally Active Insurance Groups (IAIGs) throughout the Handbook. Additional considerations for IAIGs were included throughout the following:
  - Narrative guidance in Sections 1-1, 1-3, 1-11 and 2-1.
  - Repositories: Capital and Surplus, Investments, Reinsurance Assuming, Reinsurance Ceding, Reserves/Claims Handling (Health), Reserves/Claims Handling (Life), Reserves/Claims Handling (P/C), and Underwriting.

- Revisions to enhance regulatory guidance in the following areas:
  - Terrorism Reinsurance: Additional guidance was added regarding Terrorism Reinsurance that was previously included in the Solvency Monitoring Risk Alert, which includes the background of the Terrorism Risk Insurance Act (TRIA) and possible procedures for regulators to consider when assessing an insurer’s solvency.


- Affiliated Relationships: Guidance was added to emphasize the importance of understanding and evaluating affiliated relationships in monitoring the services provided by and receivable balances due from key agents and producers. Potential procedures were added to the Underwriting Repository for examiners to consider regarding risks surrounding affiliated relationships.
- Start-Up Insurers: Guidance was added to help evaluate the reasonableness of a start-up insurer’s business plan, projections and strategy, and level of funding needed to meet targets. Possible procedures were added to the Capital and Surplus Repository to help the exam team address the reasonableness of the aforementioned areas.

- Revisions to Exhibit E helped to clarify that Audit Awareness Letters should be received when there has been a change in auditor.

- Revisions to the Capital and Surplus Repository to align the recently added ORSA procedures to the work conducted in evaluating risks related to an insurer’s capital and surplus.

- Revisions to the Investments Repository and the Reserves/Claims Handling (Life) Repository help to provide additional guidance and potential procedures to assist examiners in evaluating related party investment holdings and asset adequacy of complex investments.

- Revised guidance related to information technology (IT) in the following areas:
  - Additional guidance was added in Section 1-3 to describe a new process for communicating and addressing prospective IT risks. Exhibit C, Part Three (IT Review Summary Memo) was also updated to include a new subsection that details this process and includes an additional column in the IT findings chart where examiners can recommend ongoing monitoring.
  - Guidance was added for monitoring companies that heavily outsource IT functions and cross references to applicable procedures within Exhibit C Part Two (IT Work Program).

The Technical Group will continue to notify the FRSAC of any changes to the Handbook and advise if, in our opinion, these changes are “significant” by accreditation expectations.
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Carrie Mears (IA), Chair Valuation of Securities (E) Task Force
       Charles Therriault, Director, NAIC Securities Valuation Office

CC: Dan Daveline, Director, NAIC Financial Regulatory Services
    Marc Perlman, Managing Investment Counsel, NAIC Securities Valuation Office

DATE: February 13, 2023

RE: Report of the Valuation of Securities (E) Task Force

A. Purpose – This report is presented to assist the Financial Regulation Standards and Accreditation (F) Committee to determine if amendments to the Purposes and Procedures Manual of the NAIC Investment Analysis Office adopted by the Valuation of Securities (E) Task Force in 2022 require corresponding changes in either the Financial Regulation Standards (defined below) or state laws or regulations adopted in conformity with Part A: Laws and Regulations of the Financial Regulation Standards.

B. Financial Regulation Standards – The NAIC Policy Statement on Financial Regulation Standards (SFRS) in the 2023 Accreditation Program Manual consists of four parts: Part A identifies laws and regulations deemed necessary to financial solvency regulation; Part B identifies regulatory practices and procedures that supplement and support enforcement of the financial solvency laws and regulations discussed in Part A; Part C contains three standards related to an insurance department’s organizational and personnel policies; and Part D focuses on Organization, licensing and change of control of domestic insurers. This report is concerned with the financial solvency standards in Part A. Those standards relevant to this report are shown immediately below and can be characterized as NAIC model legislation, codified NAIC guidance (i.e., the Accounting Practices and Procedures Manual): analytical work product of the NAIC staff (including the NAIC Investment Analysis Office) and state laws and regulations that contain substantially the same standards as NAIC model legislation or guidance. A review indicates that the work product of the NAIC Investment Analysis Office is directly or indirectly incorporated into the following Part A standards. For example:

- Standard 5 requires that insurer owned securities be valued in accordance with the standards promulgated by the NAIC Investment Analysis Office;
• **Standard 2**, the *Risk-Based Capital (RBC) for Insurers Model Act* (#312)\(^4\) assigns RBC factors for securities based on their credit risk as measured by NAIC Designations;

• **Standard 3**, the *Accounting Practices and Procedures Manual*\(^5\) uses NAIC Designations produced by the SVO or SSG, or by insurers through the filing exempt process and or Price Grids produced by the SSG to identify valuation rules applicable to an investment and the reserved capital amount the insurer must report;

• **Standard 8**, pertaining to state investment regulations often incorporate NAIC mechanisms that relate asset allocations to credit risk expressed in the form of NAIC Designations;\(^6\) and

• **Standard 10**, the *Credit for Reinsurance Model Act* (#785)\(^7\) identifies insurer owned securities compiled by the SVO into a List of Investment Securities published quarterly in the NAIC AVS + Plus product, and letters of credits issued by the institutions on the NAIC Qualified U.S. Financial Institutions List administered by the SVO, as eligible for use as collateral in reinsurance transactions.

**C. Investment Analysis Office Standards Identified in the Purposes and Procedures Manual** – All SVO and SSG standards related to the assessment of credit risk in insurer owned securities, identification of additional non-payment risk in securities, classification of certain assets as bonds or as bond-like for reporting purposes, the valuation of insurer owned securities, and other activities conducted by the SVO or the SSG in support of state insurance regulatory objectives, are determined and promulgated by the Valuation of Securities (E) Task Force and published in the *Purposes and Procedures Manual*. In 2022, the *Purposes and Procedures Manual* was revised once, in December, with all policies, analytical procedures and instructions adopted during 2022 effective for year-end financial reporting. Amendments to the *Purposes and Procedures Manual* would automatically be reflected in the SFRS if any or all of the SFRS Standards identified in paragraph A of this memorandum have been adopted by an accredited state or incorporated by reference into the laws or regulations of an accredited state. For example, amendments to the *Purposes and Procedures Manual* would be directly incorporated by reference if the laws or regulations of an accredited state refer to or incorporate Standard 5 on valuation. Amendments to the *Purposes and Procedures Manual* would be indirectly incorporated by reference if the law or regulations of a state refers to or incorporates any other Standard that itself uses NAIC Designations or other analytical products of the Investment Analysis Office as a component; for example, Standard 2 in the case of RBC and/or Standard 3 in the case of statutory accounting.

**D. Conclusion** – In our opinion, reasoning as discussed above, amendments to the *Purposes and Procedures Manual* adopted by the Valuation of Securities (E) Task Force in 2022 can be characterized as maintenance items consistent with the existing regulatory framework and automatically incorporated into the Part A Standards identified above. The amendments identified in Attachments One did not create processes or practices external to the *Purposes and Procedures Manual* or other NAIC model legislation, guidance or analysis of NAIC staff that would suggest the need to consider an amendment to NAIC model legislation or guidance or legislative action on the part of an accredited state.

We hope this is responsive to the issues and concerns before the Committee.
Attachment One

RECENT CHANGES TO THE PURPOSES AND PROCEDURES MANUAL
Published in the December 31, 2022 Publication

- Adopted updates to permit un-guaranteed and unrated subsidiary obligors in WCFI transaction, with SVO discretion to notch – the Task Force directs the SVO to rely upon the NAIC Designation or NAIC CRP Rating equivalent of the obligor, subsidiary or affiliate’s parent entity if the obligor, subsidiary or affiliate does not have an NAIC CRP Rating and the SVO cannot assign an NAIC Designation to it. The Task Force authorizes the SVO, based on its analytical judgement and in its sole discretion, to notch such NAIC Designation down or decline to assign an NAIC Designation.

*The Valuation of Securities (E) Task Force adopted this amendment on Apr. 5, 2022*

- Adopted updates clarifying the SVO’s role regarding accounting and reporting determinations – these changes clarify, in accordance with Part One, that the SVO can assign NAIC Designations to investments which it does not think are eligible for Schedule D or BA reporting so long as it has the methodology to do so. The SVO, however, would have the authority, at its discretion, to notify the appropriate regulators of any investments which, in its opinion, would not or might not be eligible for reporting on Schedules D or BA. The SVO would also maintain its authority to offer its accounting and reporting opinion, when requested to do so, as part of its Regulatory Treatment Analysis Service, it being understood that such opinions would not be authoritative and might not reflect the opinion of the relevant state regulator.

*The Valuation of Securities (E) Task Force adopted this amendment on Aug. 11, 2022*

- Adopted updates to the definition of Principal Protected Securities (PPS) – PPS typically have both a principal protected component and a performance component whose payments originate from, or are determined by, non-fixed income like sources and, therefore, pose the risk of non-fixed income like cashflows. Additional transaction examples were included for demonstrative purposes only, to highlight the intent behind the principle-based PPS definition and the core regulatory concern (that there are Other Non-payments Risks associated with PPSs beyond the contractually promised payments that may not be reflected in a CRP rating) but are not intended to encompass all possible PPS variants. Each of these examples meets the definition of a PPS. Any design that circumvents the definition, and related examples, through technical means but which in substance achieves the same ends or poses the same risk, shall be deemed a PPS.

*The Valuation of Securities (E) Task Force adopted this amendment on Aug. 11, 2022*

- Adopted updates to Part Four to reflect a consistent reference to “NAIC Designation Category” and the additional price points needed to determine them. – the changes reflect the adoption of new Risk Based Capital (RBC) factors for each NAIC Designation Category in 2021 by the Capital Adequacy (E) Task Force and its parent, the Financial Condition (E) Committee. These technical updates reflect a consistent reference to “NAIC designation Category” and the nineteen price points needed to determine them using the new RBC factors.

*The Valuation of Securities (E) Task Force adopted this amendment on Aug. 11, 2022*
- Adopted updates to Part One and Part Three to reflect changes adopted by the Statutory Accounting Principles (E) Working Group to SSAP No. 25 – Affiliates and Other Related Parties and SSAP No. 43 – Loan-Backed and Structured Securities for Subsidiary, Controlled and Affiliated (SCA) and Related Party Investments. The changes in section for Subsidiary, Controlled and Affiliated (SCA) and Related Party Debt or Preferred Stock Investments clarifies that it includes non-control relationships. Additionally, the amendment divides SCA and related party investments into two categories: (1) those with direct or indirect credit risk exposure to the SCA or related party, which are not filing exempt, and (2) those with no direct or indirect credit exposure to the SCA or related party, which are filing exempt. Transactions in category (1) could include structures in which the non-issuer underlying credit exposure would qualify as a related party pursuant to paragraph 4.a. in SSAP No. 43R – Loan-Backed and Structured Securities. Transactions in category (2) are captured by a new defined term called Related Party Filing Exempt Investments which would mean any investment (i) issued by an SCA or related party special purpose entity (SPE) which itself is not an obligor or ultimate source of the investment repayment, or (ii) issued as part of a structure in which the originator, sponsor, manager, servicer, other influential transaction party is an affiliate or related party of the reporting insurance company. SCA and Related Party Filing Exempt Investments would be eligible for filing exemption unless otherwise ineligible (for reasons other than their affiliate or related party status). The P&P Manual also clarifies that state insurance regulators are permitted, as specified in Part One of the P&P, to require an insurance company to file what would otherwise be an SCA and Related Party Filing Exempt Investment for analysis and/or assignment of an NAIC Designation only by the SVO, thereby making it ineligible for filing exemption in the future.

The Valuation of Securities (E) Task Force adopted this amendment on Dec. 14, 2022

END NOTES

1 "...The purpose of the Part A: Laws and Regulations standards are to assure that an accredited state has sufficient authority to regulate the solvency of its multi-state domestic insurance industry in an effective manner. ... A state may demonstrate compliance with a Part A standard through a law, a regulation, an established practice, which implements the general authority granted to the state or any combination of laws, regulations or practices, which achieves the objective of the standard ...” Accreditation Program Manual. "...For those standards included in the Part A ... where the term “substantially similar” is included, a state must have a law, regulation, administrative practice or a combination of the above that addresses the significant elements included in the NAIC model laws or regulations. ...” Accreditation Interlineations (Substantially Similar)

2 "...Part B sets out standards required to ensure adequate solvency regulation of multi-state insurers ... In addition to a domestic state’s examination and analysis activities, other checks and balances exist in the regulatory environment. These include ... analyses by NAIC’s staff, ... and to some extent the evaluation by private rating agencies...” Accreditation Program Manual

3 The SFRS requires that securities owned by insurance companies be valued in accordance with standards promulgated by the NAIC’s Capital Markets and Investment Analysis Office approved by VOS TF while other invested assets should be valued in accordance with procedures promulgated by the Financial Condition (E) Committee. The Investment Analysis Office refers to two independent staff functions: i.e., that of the SVO and that of the NAIC Structured Securities Group (SSG). The SSG was formally established as an NAIC staff function in 2013 and assumes responsibility for the conduct of the year-end financial surveillance of insurer owned residential mortgage backed securities (RMBS) and commercial mortgage backed securities (CMBS), conducted by the SVO since 2009. The SSG is also presumptively the segment of NAIC professional staff that would lead assessment of structured finance products generally.
The financial modeling process administered by the SSG generates intrinsic price values (referred to as Price Grids) for legacy RMBS and CMBS and NAIC Designations for non-legacy RMBS and CMBS. These standards are contained in Part Four of the Purposes and Procedures Manual. Price Grids are used by insurers to generate NAIC Designations in accordance with procedures specified in Statement of Statutory Accounting Principles (SSAP) No. 43R *Loan Backed and Structured Securities* of the NAIC Accounting Practices and Procedures Manual. Accordingly, to the extent that the NAIC Accounting Practices and Procedures Manual are incorporated by reference in any standard, Price Grids and NAIC Designations derived by reference to them would also be incorporated.

The SFRS requires the adoption of the Risk Based Capital (RBC) for Insurers Model Act (#312) or a substantially similar law or regulation. RBC factors are tied to NAIC designations assigned by the SVO or in certain cases, for example in the case of Mortgage-Related Securities, by the SSG; NAIC Designations assigned by insurance companies pursuant to the filing exempt rule contained in the Purposes and Procedures Manual or NAIC Designations derived by insurance companies for RMBS and CMBS from Price Grids produced by the SSG pursuant to SSAP No. 43R. "...This standard does not articulate a threshold level for minimum capital and surplus required for insurers to transact business... Risk-based capital will, however, effectively require minimums when adopted by states." Accreditation Interlineations - Financial Regulation Standards

The SFRS requires the use of the codified version of the Accounting Practices and Procedures Manual. Valuation procedures applicable to long-term invested assets are determined by the nature of the insurer (life or property/casualty) and the NAIC designation assigned to the security by the SVO or SSG; NAIC Designations assigned by insurance companies pursuant to the filing exempt rule contained in the Purposes and Procedures Manual or NAIC Designations derived by insurance companies for RMBS and CMBS from Price Grids produced by the SSG pursuant to SSAP No. 43R. "...To satisfy this standard, ... specific adoption of the NAIC Annual Statement Blank, NAIC Annual Statement Instructions, and the NAIC Accounting Practices and Procedures Manual [is required]." Accreditation Interlineations - Financial Regulation Standards

The SFRS requires a diversified investment portfolio. Although the Investment of Insurers Model Act (Defined Limits or Defined Standards) is not specifically identified, portions of one or the other model acts have been adopted by many of the states and these relate specific asset allocations to NAIC designations provided by the SVO or in some cases by the SSG; NAIC Designations assigned by insurance companies pursuant to the filing exempt rule contained in the Purposes and Procedures Manual or NAIC Designations derived by insurance companies for RMBS and CMBS from Price Grids produced by the SSG pursuant to SSAP No. 43R. "...This standard ... [will require] that statutes, together with related regulations and administrative practices, provide adequate basis to prevent, or correct, undue concentration of investment by type and issue and unreasonable mismatching of maturities of assets and liabilities. The standard is not interpreted to require an investment statute that automatically leads to a fully diversified portfolio of investments." Accreditation Interlineations - Financial Regulation Standards

The **NAIC Investment of Insurers Model Act [Defined Limits Version]** (#280) imposes a 3% limit on the amount an insurer can invest in a single person (the threshold diversification limit) and also imposes a percentage limit on total investments of a defined credit quality, expressed by reference to NAIC Designation categories (the threshold credit quality limit). An additional percentage limit is then assigned to specific asset categories, which may or may not be subject to adjustment with the two threshold requirements. The limits identified in the Model Act are what would guide portfolio allocation decisions. Once made the insurer would shift to monitoring changes in the portfolio and rebalancing the allocations accordingly. Assuming a process for the identification of concentrations caused by indirect exposures, the insurer would aggregate such exposures with similar risks across all activities.

The SFRS requires the adoption of the **Credit for Reinsurance Model Act** (#791) and **Credit for Reinsurance Model Regulation** (#786) or substantially similar laws. The SVO maintains a list of banks that meet defined eligibility criteria to issue letters of credit in support of reinsurance obligations or that are eligible to serve as trustees under various arrangements required by state insurance law.
MEMORANDUM

TO: Director Lori K. Wing-Heier (AK), Chair, Financial Regulations Standards and Accreditation (F) Committee, Commissioner Vicki Schmidt, (KS), Co-Vice Chair, Financial Regulations Standards and Accreditation (F) Committee and Commissioner Sharon P. Clark, (KY), Co-Vice Chair, Financial Regulations Standards and Accreditation (F) Committee

FROM: Rachel Hemphill (TX), Chair, Life Actuarial (A) Task Force, Craig Chupp (VA), Vice Chair, Life Actuarial (A) Task Force

DATE: March 1, 2023


In 2017, the Financial Regulation Standards and Accreditation (F) Committee approved a motion to adopt the Valuation Manual – Effective January 1, 2020 as an accreditation standard. The intention of this memorandum is to update the Committee on changes the Life Actuarial (A) Task Force made to the Valuation Manual in 2022. The changes were adopted by the Executive (EX) Committee and Plenary at the 2022 Summer Meeting.

Attachment A to this memo includes a detailed listing of the changes made to the Valuation Manual in 2022. Of the 2022 Valuation Manual amendments, 2020-12 warrants additional notice due to the potential for increases to reserve requirements for life insurance and annuity companies with certain hedging practices. The other 2022 Valuation Manual amendments could be characterized as clarifications, additional guidance, updates to the basis used in prescribed assumption tables, or requests for additional documentation. In light of the considerations above and on behalf of the Task Force, it is our opinion that none of these items, either individually or collectively, should be considered “significant” as defined by the financial solvency accreditation standards.

As outlined in the Valuation Manual, amendments will be adopted annually by the Executive (EX) Committee and Plenary at each NAIC Summer Meeting. As such, the Valuation Manual will be reposted with an effective date of January 1 of the year following Executive Committee and Plenary adoption. For example, the current Valuation Manual, which encompasses the attached modifications, is titled the 2023 Edition - Valuation Manual. This process allows for an efficient way to update the Valuation Manual and ensures that users have the latest version.

The Task Force sincerely requests that the Committee consider the items listed in Attachment A as “insignificant” changes to the Valuation Manual. We will continue to notify the Committee of any changes to the Valuation Manual and to advise if, in our opinion, those changes are “significant” by financial solvency accreditation standards.
<table>
<thead>
<tr>
<th>LATF VM Amendment</th>
<th>Valuation Manual Reference</th>
<th>Valuation Manual Amendment Proposal Descriptions</th>
<th>LATF Adoption Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020-12</td>
<td>VM-01, VM-20, VM-21, VM-31</td>
<td>Create consistency between CDHS determination in VM-20 and VM-21. Revise hedge modeling to only require CDHS if modeling future hedging reduces the reserves under VM-20 or TAR under VM-21.</td>
<td>6/9/22</td>
</tr>
<tr>
<td>2021-11</td>
<td>VM-21, section 12 and various others</td>
<td>Add a section for other assumptions requirement in VM-21 which covers general guidance and requirements for assumptions, and expense assumptions.</td>
<td>2/3/22</td>
</tr>
<tr>
<td>2021-13</td>
<td>VM-20 Sect. 9.C.6.e, VM-20 Sect. 9.C.7, VM-31 Sect. 3.D.3.o.</td>
<td>It has been observed that adding the prescribed mortality margins for some Life/LTC combination products cause modeled reserves to decrease rather than increase.</td>
<td>11/4/21</td>
</tr>
<tr>
<td>2022-01</td>
<td>VM-20 Section 8.C.18</td>
<td>Clarifying the Valuation Manual treatment of the pre-reinsurance ceded reserve and the reserve credit for retrocessions</td>
<td>3/10/22</td>
</tr>
<tr>
<td>2022-02</td>
<td>VM-31</td>
<td>Revise language and add an explicit cross-reference to the VM-21 section since it has further details on how to demonstrate compliance</td>
<td>3/31/22</td>
</tr>
<tr>
<td>2022-03</td>
<td>VM-20, VM-21, VM-31</td>
<td>General cleanup, including updating cross-references, better consistency between VM-20 and VM-21, where reasonable, and making clarifying edits.</td>
<td>3/31/22</td>
</tr>
<tr>
<td>2022-04</td>
<td>VM-20 Section 9.F.8, App 2.F, App 2.G</td>
<td>LIBOR transition to the Secured Overnight Financing Rate (SOFR) - Updated VM-20 prescribed swap spreads guidance to facilitate the LIBOR transition to SOFR.</td>
<td>6/30/22</td>
</tr>
<tr>
<td>2022-05</td>
<td>VM-51 App 1, App 4</td>
<td>Add dividend plan code &amp; Covid-19 indicator; change field identifier; correct Appendix 1 reference.</td>
<td>5/12/22</td>
</tr>
</tbody>
</table>

The individual amendment proposals reside on the Industry tab on the NAIC website and are accessible by following the link below:

**LATF Adopted Amendments for the 2023 VM.**
The following significant elements were modified from the initial March 8, 2021 E Committee referral and exposed by the F Committee on Aug. 14, 2021 for a 1-year exposure beginning January 1, 2022 (pending approval by Plenary at the Fall National Meeting). The modifications to n(i) and n(ii) allow Commissioners to grant exemptions to the group capital calculation to groups meeting the standards set forth in Model Regulation #450 Section 21A and Section 21B without the requirement to file at least once.

The significant elements are separated into those that incorporate the group capital calculation and those that incorporate the liquidity stress test.

6. Insurance Holding Company Systems (Group Capital Calculation)

State law should contain the NAIC Insurance Holding Company System Regulatory Act (#440), or an act substantially similar, and the department should have adopted the NAIC Insurance Holding Company System Model Regulation (#450).

Insurance Holding Company Systems – continued

Changes to Existing
k. Filing requirements for the enterprise risk filing similar to those specified in Section 4L(1) of the Model #440?

New
l. Filing requirements for the group capital calculation filing similar to those specified in Section 4L(2) of Model #440?

i. The ultimate controlling person of every insurer subject to registration shall annually file a group capital calculation completed in accordance with the NAIC Group Capital Calculation Instructions as directed by the lead state commissioner similar to section 4L(2)?

ii. Provision for exempting an insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer, similar to 4L(2)(a)?

iii. Provision for exempting an insurance holding company system that is required to perform a group capital calculation specified by the U.S. Federal Reserve? If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the GCC, similar to 4L(2)(b)?

iv. Provision for exempting an insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital, similar to 4L(2)(c)?

v. Provision for exempting an insurance holding company system that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program and whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts the GCC as the worldwide group capital assessment for U.S. insurance groups who operate in that jurisdiction, similar to 4L(2)(d)?

vi. Provision that gives the lead state the authority to require the GCC for U.S. operations of any non-U.S. based insurance holding company system where after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes, similar to 4L(2)(e)?

Changes to Existing
cc. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.
New
m. Provision prohibiting the making, publishing, disseminating, circulating or placing before the public in any way the group capital calculation and resulting group capital ratio under Section 4L(2) and/or the liquidity stress test along with its results and supporting disclosures required under Section 4L(3), by any insurer, broker, or other person engaged in any manner of the insurance business, except if the sole purpose of the announcement is to rebut a materially false statement, similar to Section 8G of Model #440?

n. Filing requirements for the group capital calculation filing similar to those specified in Section 21 of Model #450?
   i. Provision that gives the lead state the authority to exempt the filing of the group capital calculation provided the criteria are similar to those allowed under Section 21A of Model #450?
      o Although not required for accreditation, in order to grant an exemption, is the filing required at least once?
   ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are similar to those allowed under Section 21B of Model #450?
      o Although not required for accreditation, in order to grant an exemption, is the filing required at least once?
   iii. Provision that gives the lead state the authority to require the group capital calculation of any group that previously met an exemption or submitted a limited filing if any insurer in the holding company system either triggers an RBC action level event, is deemed in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer, similar to those allowed under Section 21C of Model #450?
   iv. Provision that sets forth the criteria for a jurisdiction to be included on the NAIC listing that “recognize and accept the group capital calculation” similar to that required under Section 21D and Section 21E of Model #450?

6. Insurance Holding Company Systems (Liquidity Stress Test)

State law should contain the NAIC Insurance Holding Company System Regulatory Act (#440), or an act substantially similar.

Insurance Holding Company Systems – continued

Changes to Existing
o. Additions to the filing requirements for the enterprise risk filing specified in Section 4L(1) of the Model #440 (see next item).

New
c. Define “NAIC Liquidity Stress Test Framework” similar to that in Section 1K?
d. Define “Scope Criteria” similar to that in Section 1M?
p. Filing requirements for the liquidity stress test filing similar to those specified in Section 4L(3) of Model #440:
   vii. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year’s Liquidity Stress Test to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook similar to Section 4L(3)?
   viii. Insurers meeting at least one threshold of the Scope Criteria for a specific data year are scoped into that year’s NAIC Liquidity Stress Test Framework unless the lead state, after consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year similar to Section 4L(3)(a)? Insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year?
ix. Provision requiring compliance with the NAIC Liquidity Stress Test Framework’s instructions and reporting templates for the specific data year and any lead state insurance commissioner determinations in consultation with the Financial Stability Task Force or its successor, provided within the Framework similar to Section 4L(3)(b)?

Changes to Existing

c. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.

q. Provision prohibiting the making, publishing, disseminating, circulating or placing before the public in any way the group capital calculation and resulting group capital ratio under Section 4L(2) and/or the liquidity stress test along with its results and supporting disclosures required under Section 4L(3), by any insurer, broker, or other person engaged in any manner of the insurance business, except if the sole purpose of the announcement is to rebut a materially false statement, similar to Section 8G of Model #440?
MEMORANDUM

To: Financial Regulation Standards and Accreditation (F) Committee
From: Financial Condition (E) Committee
Date: March 8, 2021
Re: 2020 Revisions to Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450). These revisions implemented a Group Capital Calculation (GCC) for the purpose of group solvency supervision and Liquidity Stress Test (LST) for macroprudential surveillance.

Please find attached, memorandums and proposed changes to the Accreditation (E) Committee as adopted by the Financial Condition (E) Committee related to these most recent changes to #440 and #450. Each of the memorandum’s summarize the basis for recommending that certain provisions of these model changes become part of the Accreditation program as well as suggested timing. With respect to timing, consistent with action taken by the Financial Regulation Standards and Accreditation (F) Committee to use an expedited process in 2019 with respect to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) due to the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), we recommend a similar expedited process with respect to states who are a Group Wide Supervisor of a group with operations in the EU or UK. The attached provide further details on the specifics of such recommendations.

F Committee exposed the referral for a 1-year comment period beginning January 1, 2022 (pending approval by Plenary at the Fall National Meeting).

The exposure by F Committee differs from the original exposure in two ways:
- The proposed effective date for all states is January 1, 2026.
- The proposed significant elements for the group capital calculation were modified to allow commissioners to grant exemptions to groups meeting the qualifications set forth in Model #450 Section 21A and Section 21B without the requirement to file at least once.

Note: In conjunction with the motion, the F Committee strongly encourages all states with a group impacted by the Covered Agreement to adopt the group capital calculation revisions to Model #440 and Model #450 for those groups effective Nov. 7, 2022. The Committee also strongly encourages states with a group impacted by the liquidity stress test to adopt the relevant revisions to Model #440 as soon as possible.
MEMORANDUM

To: Financial Condition (E) Committee

From: Group Capital Calculation (E) Working Group

Date: February 25, 2021

Re: 2020 Revisions to Insurance Holding Company System Regulatory Model Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)

Executive Summary

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450). These revisions implemented a Group Capital Calculation (GCC) for the purpose of group solvency supervision and Liquidity Stress Test (LST) for macroprudential surveillance. This memorandum makes recommendations with respect to the accreditation standards that this Working Group believes is appropriate with respect to only the GCC and expect the Financial Stability (EX) Task Force to make separate recommendations to the Committee with respect to the LST.

The GCC was developed as a result of discussions which began in 2015. The GCC is a natural extension of work state insurance regulators had begun, in part by lessons learned from the most recent financial crisis, to better understand an insurance group’s financial risk profile for the purpose of enhancing policyholder protections. While state insurance regulators currently have the authority to obtain information regarding the capital positions of non-insurance affiliates, they do not have a consistent analytical framework for evaluating such information. The GCC is designed to address this shortcoming and will serve as an additional financial metric that will assist state insurance regulators in identifying risks that may emanate from a holding company system. The GCC, and related financial reporting, will provide comprehensive transparency to state insurance regulators, making risks more easily identifiable and quantifiable. For these reasons, the Working Group recommends adoption of #440 and #450 as accreditation standards for all states with the normal accreditation timeline, which would result in an effective date of January 1, 2026.

In addition, the GCC is intended to comply with the requirements under the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. On Dec. 18, 2018, a similar Covered Agreement was signed with the United Kingdom (UK). The GCC is intended to meet the requirement that the states have a “worldwide group capital calculation” in place by Nov. 7, 2022 in order to avoid the EU from imposing a group capital assessment or requirement at the level of the worldwide parent undertaking. Failure of any state to do so for any U.S. group operating in such jurisdiction raises the potential for any supervisor in the EU or UK to impose its own group capital calculation (e.g., Solvency II capital requirements) on that group and therefore all of the U.S. insurers within that group. Due to this agreement, the Working Group recommends that the accreditation standard become effective Nov. 7, 2022 for those states who are the Group Wide Supervisor of a group with operations in the EU or UK.
A statement and explanation of how the potential standard is directly related to solvency surveillance and why the proposal should be included in the standards:

The current Insurance Holding Company Systems accreditation standard requires that state law shall contain the significant elements from Model #440 and Model #450. These models have provided state insurance departments the framework for insurance group supervision since the early 1970s. Following the 2008 financial crisis, state regulators identified group supervision as an area where improvements could be made to the U.S. system. In December 2010, the NAIC adopted changes to the models enhancing the domestic legal structure under which holding companies are supervised. In December 2014, the NAIC adopted revisions to clarify legal authority and powers to act as a group-wide supervisor for internationally active insurance groups. These changes are newly required elements of the NAIC Accreditation Program and have been satisfactorily adopted by nearly all accredited U.S. jurisdictions. As discussed in the preceding paragraphs, the GCC was designed to enhance these same standards that were previously included as accreditation standards.

A statement as to why ultimate adoption by every jurisdiction may be desirable:

The Group Capital Calculation (E) Working Group believes that all states that are the lead state for a group subject to the GCC should be required to adopt the model revisions. The GCC is a tool intended to help protect the policyholders in all states from the risk that can emanate from outside the domestic insurer and will be an input into the Group Profile Summary (GPS). After an initial filing by all insurance groups, the GCC is required for all U.S. insurance groups with greater than $1 billion in premium. The groups subject to the GCC are expected to have domestic insurers in most U.S. states. Therefore, it is recommended that that the new significant elements apply to all states.

A statement as to the number of jurisdictions that have adopted and implemented the proposal or a similar proposal and their experience to date:

We are not currently aware of any states that have adopted the 2020 revisions to Model #440 and Model #450, although we have been advised that many states have begun their legislative processes for adoption of these revisions.

A statement as to the provisions needed to meet the minimum requirements of the standard. That is, whether a state would be required to have “substantially similar” language or rather a regulatory framework. If it is being proposed that “substantially similar” language be required, the referring committee, task force or working group shall recommend those items that should be considered significant elements:

The current accreditation standard for Model #440 and Model #450 requires state adoption on a substantially similar basis. Therefore, the Group Capital Calculation (E) Working Group supports the attached proposed significant elements (Attachment A) be adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Group Capital Calculation (E) Working Group recommends that the accreditation standard become effective Nov. 7, 2022, the end of the 60-month period contemplated under the Covered Agreement, with enforcement of the standard to commence Jan. 1, 2023. However, the Working Group is also supportive of the effective date being bifurcated to allow those states that are not the Group Wide Supervisor of a group with operations in the EU or UK to be subject to a later effective date in line with the normal accreditation timeline, which would result in an effective date of January 1, 2026.
There were also revisions made to Section 8 of Model #440 regarding Confidential Treatment. The Group Capital Calculation (E) Working Group strongly supports the use of language similar to that contained in Section 8G of Model #440. This language was considered very critical to the GCC as its very important that members of the insurance industry (or regulators) not be allowed to make the results of the GCC public in any way as they are designed as regulatory-only tools. Unlike RBC that has regulatory trigger points, the GCC does not, and the regulators of these groups believed it would be detrimental if these tools were used by insurers as a means to advertise their relative solvency strength.

An estimate of the cost for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it, if reasonably quantifiable:

The NAIC has not performed a cost/benefit analysis with respect to the 2020 revisions to Model #440 and Model #450, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, the possible exemptions allowed under Model #450 are specifically designed to consider the cost to complete the GCC by the insurance company and the benefits of the GCC to the lead-state commissioner. More specifically, all insurers are required to submit the GCC at least once, after which time the expectation is that the lead state commissioner will evaluate the added insight brought to the state from GCC; then, provided the group has premium less than $1 billion, no international business, no risky non-regulated entities and no banks or similar capital regulated entities in the group, the lead state commissioner can exempt the group from filing in the future.

In addition, the construction of the GCC also considers cost of completion and specifically provides a principle-based approach where the insurance company can exclude non-risky affiliates from the calculation and also provides the insurance company to group the information of multiple non-insurance/non-regulated affiliates as a means to further reduce the burden of completion. In short, the GCC is only as complex as the insurance group has structured itself, and therefore the GCC already inherently considers the cost to comply.
6. Insurance Holding Company Systems

State law should contain the NAIC Insurance Holding Company System Regulatory Act (#440), or an act substantially similar, and the department should have adopted the NAIC Insurance Holding Company System Model Regulation (#450).

Insurance Holding Company Systems – continued

Changes to Existing

k. Filing requirements for the enterprise risk filing similar to those specified in Section 4L(1) of the Model #440?

New

l. Filing requirements for the group capital calculation filing similar to those specified in Section 4L(2) of Model #440?

i. The ultimate controlling person of every insurer subject to registration shall annually file a group capital calculation completed in accordance with the NAIC Group Capital Calculation Instructions as directed by the lead state commissioner similar to section 4L(2)?

ii. Provision for exempting an insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state and assumes no business from any other insurer, similar to 4L(2)(a)?

iii. Provision for exempting an insurance holding company system that is required to perform a group capital calculation specified by the U.S. Federal Reserve? If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the GCC, similar to 4L(2)(b)?

iv. Provision for exempting an insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital, similar to 4L(2)(c)?

v. Provision for exempting an insurance holding company system that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program and whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts the GCC as the worldwide group capital assessment for U.S. insurance groups who operate in that jurisdiction, similar to 4L(2)(d)?

vi. Provision that gives the lead state the authority to require the GCC for U.S. operations of any non-U.S. based insurance holding company system where after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes, similar to 4L(2)(e)?

Changes to Existing

cc. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.

New

m. Provision prohibiting the making, publishing, disseminating, circulating or placing before the public in any way the group capital calculation and resulting group capital ratio under Section 4L(2) and/or the liquidity stress test along with its results and supporting disclosures required under Section 4L(3), by any insurer, broker, or other person engaged in any manner of the insurance business, except if the sole purpose of the announcement is to rebut a materially false statement, similar to Section 8G of Model #440?

n. Filing requirements for the group capital calculation filing similar to those specified in Section 21 of Model #450?

i. Provision that gives the lead state the authority to exempt the filing of the group capital calculation provided the criteria are similar to those allowed under Section 21A of Model #450?

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The significant elements exposed by F Committee on Aug. 14, 2021 include a modification to element n.i and n.ii. Please see separate document containing the modified significant elements.
ii. Provision that gives the lead state the authority to accept a limited group capital filing provided the criteria are similar to those allowed under Section 21B of Model #450?  

See above comment regarding modifications.

iii. Provision that gives the lead state the authority to require the group capital calculation of any group that previously met an exemption or submitted a limited filing if any insurer in the holding company system either triggers an RBC action level event, is deemed in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer, similar to those allowed under Section 21C of Model #450?

iv. Provision that sets forth the criteria for a jurisdiction to be included on the NAIC listing that “recognize and accept the group capital calculation” similar to that required under Section 21D and Section 21E of Model #450?
MEMORANDUM

To: Financial Condition (E) Committee

From: Financial Stability (E) Task Force

Date: February 22, 2021

Re: 2020 Revisions to Insurance Holding Company System Regulatory Act (#440)

Executive Summary

On Dec. 9, 2020, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC Insurance Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450). These revisions implemented a Group Capital Calculation (GCC) for the purpose of group solvency supervision and Liquidity Stress Test (LST) for macroprudential surveillance. This memorandum makes recommendations with respect to the accreditation standards that this Task Force believes is appropriate with respect to only the LST and expect the Group Capital Calculation (E) Working Group to make separate recommendations to the Committee with respect to the GCC.

Post-financial crisis, regulators from all financial sectors across the globe recognized the need for macroprudential surveillance and tools to address macroprudential risks. While the solvency framework established and managed by the Financial Condition (E) Committee thoroughly addresses legal entity insurers and insurance groups, there was no group with a macroprudential scope. This Task Force was created to fill this gap, and in 2017 was charged to “analyze existing post-financial crisis regulatory reforms for their application in identifying macroprudential trends, including identifying possible areas of improvement or gaps, and propose . . . enhancements and/or additions to further improve the ability of state insurance regulators and industry to address macroprudential impacts.” The Task Force created the NAIC Macroprudential Initiative (MPI) to focus its efforts in four key areas: liquidity risk, recovery and resolution, capital stress testing, and exposure concentrations. Liquidity risk was consistently recognized as a key macroprudential risk by federal and international regulatory agencies, and there were several attempts to assess potential market impacts emanating from a liquidity stress in the insurance sector. Many of these analyses relied heavily on anecdotal assumptions and observations from behaviors of other financial sectors.

In order to provide more evidence-based analyses, the Task Force decided to develop a LST for large life insurers that would aim to capture the impact on the broader financial markets of aggregate asset sales under a liquidity stress event. Unlike capital adequacy, which has risk-based capital as a standardized legal entity capital assessment tool and the newly created Group Capital Calculation to provide a capital analysis tool at the group level, there is no regulatory liquidity assessment or stress tool. The Task Force focused on large life insurers due to the long-term cash buildup involved in many life insurance contracts and the potential for large scale liquidation of assets, not because liquidity risk does not exist in other insurance segments. Thus, the primary goal of the LST is to provide quantitative as well as qualitative insights for macroprudential surveillance, such as identifying the amount of asset sales that could occur during a specific stress scenario; but it will also aid micro prudential regulation as well. Because this stress testing is complex and resource-intensive, a set of scope criteria were developed to identify life insurers with large balances of activities assumed to be highly correlated with liquidity risk; thus, many life insurers will not be subject to the LST.
A statement and explanation of how the potential standard is directly related to solvency surveillance and why the proposal should be included in the standards:

The current Insurance Holding Company Systems accreditation standard requires that state law shall contain the significant elements from Model #440 and Model #450. These models have provided state insurance departments the framework for insurance group supervision since the early 1970s. Following the 2008 financial crisis, state regulators identified group supervision as an area where improvements could be made to the U.S. system. In December 2010, the NAIC adopted changes to the models enhancing the domestic legal structure under which holding companies are supervised. In December 2014, the NAIC adopted revisions to clarify legal authority and powers to act as a group-wide supervisor for internationally active insurance groups. These changes are newly required elements of the NAIC Accreditation Program and have been satisfactorily adopted by nearly all accredited U.S. jurisdictions. As discussed in the preceding paragraphs, the LST was designed to enhance these same standards that were previously included as accreditation standards.

Macropuendential risks can directly impact regulated legal entity insurers and groups, and/or can emanate from or be amplified by these insurers and transmitted externally. The NAIC solvency surveillance framework must address macroprudential risks to ensure that the companies states regulate remain financially strong for the protection of policyholders, while serving as a stabilizing force to contribute to financial stability, including in stressed financial markets. The LST is the first new tool developed for the macroprudential program within the financial solvency framework.

A statement as to why ultimate adoption by every jurisdiction may be desirable:

The Financial Stability Task Force believes that all states that are the lead state for a group subject to the LST should be required to adopt the model revisions. The LST is a tool intended to help assess the impacts the life insurance industry can have on the broader financial markets in a time of stress. Ideally, the tool would have been required of all life insurance groups, but this was not possible due to the complexity and resources required to accomplish such liquidity stress testing. Thus, the LST uses a set of scope criteria to identify those life insurers with significant amounts in activities assumed to have high liquidity risk, thus representing the larger portion of the life insurance industry in terms of liquidity risk rather than representing the entire life insurance industry. If a scoped-in life insurance group was not subject to the LST because a state did not adopt the model revisions, this would significantly reduce the ability of the NAIC to represent the results as truly macroprudential and reflective of the majority of risks of the life insurance sector. Additionally, the LST results will be helpful to the lead states in their group supervision efforts as well.

Though not every state will be the lead state of a scoped-in group, the Task Force still believes the model revisions for the LST should be adopted in every state. It is fairly common for legal entity insurers to move from one group to another, impacting the group dynamics including the lead state determination, and each state should have the LST in their statutes to ensure they will be prepared for any future appointment as lead state. Also, even without legal entities changing groups, business acquisition and operational changes within existing groups might subject a previously excluded group to the LST. Therefore, it is recommended that that the new significant elements apply to all states.

A statement as to the number of jurisdictions that have adopted and implemented the proposal or a similar proposal and their experience to date:

We are not currently aware of any states that have adopted the 2020 revisions to Model #440, although we have been advised that many states have begun their legislative processes for adoption of these revisions.
A statement as to the provisions needed to meet the minimum requirements of the standard. That is, whether a state would be required to have “substantially similar” language or rather a regulatory framework. If it is being proposed that “substantially similar” language be required, the referring committee, task force or working group shall recommend those items that should be considered significant elements:

The current accreditation standard for Model #440 and Model #450 requires state adoption on a substantially similar basis. Therefore, the Financial Stability (E) Task Force supports the attached proposed significant elements (Attached) be adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Financial Stability (E) Task Force recommends that the accreditation standard become effective Nov. 7, 2022, concurrent with the Group Capital Calculation revisions to the model, with enforcement of the standard to commence Jan. 1, 2023.

There were also revisions made to Section 8 of Model #440 regarding Confidential Treatment. The Financial Stability (E) Task Force strongly supports the use of language similar to that contained in Section 8G of Model #440. This language was considered very critical to the LST as its very important that members of the insurance industry (or regulators) not be allowed to make the results of the LST public in any way as they are designed as regulatory-only tools using complex assumptions for potential future stress events and the results could easily be misinterpreted and misrepresented by other users, causing true financial harm to the insurers.

An estimate of the cost for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it, if reasonably quantifiable:

The NAIC has not performed a cost/benefit analysis with respect to the 2020 revisions to Model #440, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, the LST scope criteria selects the larger, more complex life insurers, and all of these already perform some form of internal liquidity stress tests. While there are regulatory requirements for inputs and outputs, truly significant costs are avoided by using their existing internal stress testing systems instead of specifying a regulatory model.
6. Insurance Holding Company Systems

State law should contain the NAIC Insurance Holding Company System Regulatory Act (#440), or an act substantially similar.

Insurance Holding Company Systems – continued

Changes to Existing

k. Additions to the filing requirements for the enterprise risk filing specified in Section 4L(1) of the Model #440 (see next item).

New

c. Define “NAIC Liquidity Stress Test Framework” similar to that in Section 1K?

d. Define “Scope Criteria” similar to that in Section 1M?

l. Filing requirements for the liquidity stress test filing similar to those specified in Section 4L(3) of Model #440:

i. The ultimate controlling person of every insurer subject to registration and also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year’s Liquidity Stress Test to the lead state insurance commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook similar to Section 4L(3)?

ii. Insurers meeting at least one threshold of the Scope Criteria for a specific data year are scoped into that year’s NAIC Liquidity Stress Test Framework unless the lead state, after consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should not be scoped into the Framework for that data year similar to Section 4L(3)(a)? Insurers that do not trigger at least one threshold of the Scope Criteria are considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year, unless the lead state insurance commissioner, in consultation with the NAIC Financial Stability Task Force or its successor, determines the insurer should be scoped into the Framework for that data year?

iii. Provision requiring compliance with the NAIC Liquidity Stress Test Framework’s instructions and reporting templates for the specific data year and any lead state insurance commissioner determinations in consultation with the Financial Stability Task Force or its successor, provided within the Framework similar to Section 4L(3)(b)?

Changes to Existing

c. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators similar to Section 8? If sharing confidential information with the NAIC and third-party consultants is permitted, appropriate confidentiality protections should be included.

m. Provision prohibiting the making, publishing, disseminating, circulating or placing before the public in any way the group capital calculation and resulting group capital ratio under Section 4L(2) and/or the liquidity stress test along with its results and supporting disclosures required under Section 4L(3), by any insurer, broker, or other person engaged in any manner of the insurance business, except if the sole purpose of the announcement is to rebut a materially false statement, similar to Section 8G of Model #440?
INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT-MODEL #440

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Section 1. Definitions note

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

A. “Affiliate.” An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. “Commissioner.” The term “commissioner” shall mean the insurance commissioner, the commissioner’s deputies, or the Insurance Department, as appropriate.

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

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

D. “Group-wide supervisor.” The regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 7.1 to have sufficient significant contacts with the internationally active insurance group.
E. “Group Capital Calculation instructions” means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

F. “Insurance Holding Company System.” An “insurance holding company system” consists of two (2) or more affiliated persons, one or more of which is an insurer.

G. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

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

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

H. “Internationally active insurance group.” An insurance holding company system that (1) includes an insurer registered under Section 4; and (2) meets the following criteria: (a) premiums written in at least three countries, (b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system’s total gross written premiums, and (c) based on a three-year rolling average, the total assets of the insurance holding company system are at least fifty billion dollars ($50,000,000,000) or the total gross written premiums of the insurance holding company system are at least ten billion dollars ($10,000,000,000).

I. “Enterprise Risk.” “Enterprise risk” shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner’s authority over companies deemed to be in hazardous financial condition].

J. “NAIC” means the National Association of Insurance Commissioners.

K. “NAIC Liquidity Stress Test Framework.” The “NAIC Liquidity Stress Test Framework” is a separate NAIC publication which includes a history of the NAIC’s development of regulatory liquidity stress testing, the Scope Criteria applicable for a specific data year, and the Liquidity Stress Test instructions and reporting templates for a specific data year, such Scope Criteria, instructions and reporting template being as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

L. “Person.” A “person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

M. “Scope Criteria.” The “Scope Criteria,” as detailed in the NAIC Liquidity Stress Test Framework, are the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for that data year.

N. “Securityholder.” A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

O. “Subsidiary.” A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.
OL.P. “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

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

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

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

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

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

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

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

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

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

(b) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary;
(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following: ].

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

D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

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

A. Filing Requirements.

(1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).
For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:

1. The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the “acquiring party”), and

   a. If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

   b. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person’s subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

2. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer’s stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender’s ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;

3. Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

4. Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

5. The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;

6. The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

7. A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;
(8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;

(11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

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

(12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4L(1), for so long as control exists;

(13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(14) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

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

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

C. Alternative Filing Materials.

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

(1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:

(a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner
may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.

(5) The commissioner may retain at the acquiring person’s expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner’s staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

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

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

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

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

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

(1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

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

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

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

(1) “Acquisition” means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An “involved insurer” includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

B. Scope

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

(2) This section shall not apply to the following:

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(a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);

(c) The acquisition of already affiliated persons;

(d) An acquisition if, as an immediate result of the acquisition,

(i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,

(ii) There would be no increase in any market share, or

(iii) In no market would

(I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and

(II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer’s condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

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

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Section 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an
economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

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

D. Competitive Standard

(1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.

(2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

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

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

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>4%</td>
<td>4% or more</td>
</tr>
<tr>
<td>10%</td>
<td>2% or more</td>
</tr>
<tr>
<td>15%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>5% or more</td>
</tr>
<tr>
<td>10%</td>
<td>4% or more</td>
</tr>
<tr>
<td>15%</td>
<td>3% or more</td>
</tr>
<tr>
<td>19%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

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

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in Paragraph (1) of this subsection if:
(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer’s market is two percent (2%) or more.

(c) For the purposes of Section 3.1D(2):

(i) The term “insurer” includes any company or group of companies under common management, ownership or control;

(ii) The term “market” means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(iii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(d) Even though an acquisition is not prima facie violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under Section 3.1E(1) if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

(1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(b) Such an order shall not be entered unless:

(i) There is a hearing;
(ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and

(iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

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

(c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(a) A monetary penalty of not more than $10,000 for every day of violation; or

(b) Suspension or revocation of the person’s license.

(3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than $50,000.

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

Section 4. Registration of Insurers

A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) Section 4;

(2) Section 5A(1), 5B, 5D; and

(3) Either Section 5A(2) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

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

B. Information and Form Required. Every insurer subject to registration shall file the registration statement with the commissioner on a form and in a format prescribed by the NAIC, which shall contain the following current information:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;
(3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales or exchange of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer’s assets to liability, other than insurance contracts entered into in the ordinary course of the insurer’s business;

(e) All management agreements, service contracts and all cost-sharing arrangements;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer’s stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

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

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

Alternative Section 4B(7):

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

(8) Any other information required by the commissioner by rule or regulation.

C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer’s admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section. The definition of
materiality provided in this subsection shall not apply for purposes of the Group Capital Calculation or the Liquidity Stress Test Framework.

E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.

F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.

G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.

I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.

J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filings.

(1) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person’s knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(2) Group Capital Calculation. Except as provided below, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the lead state commissioner. The report shall be completed in accordance with the NAIC Group Capital Calculation Instructions, which may permit the lead state commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the commissioner in accordance with the procedures within the Financial Analysis Handbook adopted by the NAIC. Insurance holding company systems described below are exempt from filing the group capital calculation:

(a) An insurance holding company system that has only one insurer within its holding company structure, that only writes business [and is only licensed] in its domestic state, and assumes no business from any other insurer;
(b) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state commissioner shall request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state commissioner, the insurance holding company system is not exempt from the group capital calculation filing.

(c) An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction as described in [insert cross-reference to appropriate section of Credit for Reinsurance Law] that recognizes the U.S. state regulatory approach to group supervision and group capital.

Drafting Note: On September 22, 2017, the United States and the European Union (EU) entered into the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.” A similar agreement with the United Kingdom (UK) was signed on December 18, 2018. Both agreements are considered to be a “covered agreement” entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that addresses the U.S. state regulatory approach to group supervision and group capital, and provides that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group. Under the revised Credit for Reinsurance Models, not only are jurisdictions that are subject to the EU and UK Covered Agreements treated as Reciprocal Jurisdictions, but any other Qualified Jurisdiction can also qualify as Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.

(d) An insurance holding company system:

(i) That provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook, and

(ii) Whose non-U.S. group-wide supervisor that is not in a Reciprocal Jurisdiction recognizes and accepts, as specified by the commissioner in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

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

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

(f) Notwithstanding the exemptions from filing the group capital calculation stated in Section 4L(2)(a) through Section 4L(2)(d), the lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation.

(g) If the lead state commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system shall file the group
capital calculation at the next annual filing date unless given an extension by the lead state
commissioner based on reasonable grounds shown.

(3) Liquidity Stress Test. The ultimate controlling person of every insurer subject to registration and
also scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific year’s
Liquidity Stress Test. The filing shall be made to the lead state insurance commissioner of the
insurance holding company system as determined by the procedures within the Financial Analysis
Handbook adopted by the National Association of Insurance Commissioners;

(a) The NAIC Liquidity Stress Test Framework includes Scope Criteria applicable to a specific
data year. These Scope Criteria are reviewed at least annually by the Financial Stability
Task Force or its successor. Any change to the NAIC Liquidity Stress Test Framework or
to the data year for which the Scope Criteria are to be measured shall be effective on
January 1 of the year following the calendar year when such changes are adopted. Insurers
meeting at least one threshold of the Scope Criteria are considered scoped into the NAIC
Liquidity Stress Test Framework for the specified data year unless the lead state insurance
commissioner, in consultation with the NAIC Financial Stability Task Force or its
successor, determines the insurer should not be scoped into the Framework for that data
year. Similarly, insurers that do not trigger at least one threshold of the Scope Criteria are
considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data
year, unless the lead state insurance commissioner, in consultation with the NAIC Financial
Stability Task Force or its successor, determines the insurer should be scoped into the
Framework for that data year.

(i) Regulators wish to avoid having insurers scoped in and out of the NAIC Liquidity
Stress Test Framework on a frequent basis. The lead state insurance
commissioner, in consultation with the Financial Stability Task Force or its
successor, will assess this concern as part of the determination for an insurer.

(b) The performance of, and filing of the results from, a specific year’s Liquidity Stress Test
shall comply with the NAIC Liquidity Stress Test Framework’s instructions and reporting
templates for that year and any lead state insurance commissioner determinations, in
consultation with the Financial Stability Task Force or its successor, provided within the
Framework.

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

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

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

A. Transactions Within an Insurance Holding Company System

(1) Transactions within an insurance holding company system to which an insurer subject to registration
is a party shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Agreements for cost sharing services and management shall include such provisions as
required by rule and regulation issued by the commissioner;

(c) Charges or fees for services performed shall be reasonable;
(d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(e) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties;

(f) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs;

(g) If an insurer subject to this Act is deemed by the commissioner to be in a hazardous financial condition as defined by [insert citation for Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition] or a condition that would be grounds for supervision, conservation or a delinquency proceeding, then the commissioner may require the insurer to secure and maintain either a deposit, held by the commissioner, or a bond, as determined by the insurer at the insurer’s discretion, for the protection of the insurer for the duration of the contract(s) or agreement(s), or the existence of the condition for which the commissioner required the deposit or the bond.

In determining whether a deposit or a bond is required, the commissioner should consider whether concerns exist with respect to the affiliated person’s ability to fulfill the contract(s) or agreement(s) if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation or a delinquency proceeding, and a deposit or bond is necessary, the commissioner has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract(s) or agreement(s) in any one year, and whether such deposit or bond should be required for a single contract, multiple contracts or a contract only with a specific person(s);

Drafting Note: This section is intended to apply to a broad range of affiliate managerial and support service contracts including, for example, general managerial services, financial accounting and actuarial services, data management, investment portfolio management and support and policy and policyholder services. (Performance collateralization for reinsurance and other risk transfer or financial contracts with affiliates is typically addressed in the underlying contractual agreements and is beyond the scope of these deposit/bond requirements). The intent of the deposit or bond is to ensure the affiliated services provided under the contract(s) are fulfilled. In determining appropriate circumstances when a commissioner may require a deposit or bond, the commissioner should evaluate and consider whether an insurer subject to this act is in a hazardous financial condition or a condition that would be grounds for substantial regulatory action, including supervision, conservation or a delinquency proceeding. If it is, the deposit or bond requirement would be available as an additional regulatory remedy at the discretion of the commissioner. Note, the commissioner should consider whether the affiliated person is already required to post a deposit or bond under applicable laws regulating third-party administrators.

(h) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons’ records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate. At the request of the insurer, the affiliate shall provide that the receiver can obtain a complete set of all records of any type that pertain to the insurer’s business; obtain access to the operating systems on which the data is maintained; obtain the software that runs those systems either through assumption of licensing agreements or otherwise; and restrict the use of the data by the affiliate if it is not operating the insurer’s business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the
Drafting Note: The “at no additional cost to the insurer” language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the insurer. Since records and data of the insurer are the property of the insurer, the insurer should not pay a cost to segregate commingled records and data from other data of the affiliate.

(i) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership shall be subject to [the receivership act of the state].

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer’s admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer’s admitted assets as of the 31st day of December next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer’s admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) With respect to life insurers, three percent (3%) of the insurer’s admitted assets as of the 31st day of December next preceding;

(c) Reinsurance agreements or modifications thereto, including:

(i) All reinsurance pooling agreements;

(ii) Agreements in which the reinsurance premium or a change in the insurer’s liabilities, or the projected reinsurance premium or a change in the insurer’s liabilities in any of the next three years, equals or exceeds five percent (5%) of the insurer’s surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts, tax allocation agreements, guarantees and
all cost-sharing arrangements;

(e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (0.5%) of the insurer’s admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;

(f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer’s surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

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

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

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

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.

(4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.

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

(6) Supervision, seizure, conservatorship or receivership proceedings.

(a) Any affiliate that is party to an agreement or contract with a domestic insurer that is subject to Subsection 5A(2)(d) shall be subject to the jurisdiction of any supervision, seizure, conservatorship or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator or liquidator for the insurer appointed pursuant to supervision and receivership acts for the purpose of interpreting, enforcing and overseeing the affiliate’s obligations under the agreement or contract to perform services for the insurer that:

(i) Are an integral part of the insurer’s operations, including, but not limited to management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment or any other similar functions; or

(ii) Are essential to the insurer’s ability to fulfill its obligations under insurance policies.
(b) The commissioner may require that an agreement or contract pursuant to Subsection 5A(2)(d) for the provision of services described in (i) and (ii) above specify that the affiliate consents to the jurisdiction as set forth in this Subsection 5A(6).

Drafting Note: Subsection 5A(6) is not intended to subject affiliates, in particular those that may be subject to regulation in other jurisdictions, to the general jurisdiction of pending supervision, seizure, conservation or receivership court proceedings in this state or the general authority of a supervisor, conservator or receiver for a domestic insurer. Rather, the jurisdiction and authority conferred by this provision is limited to ensuring that a domestic insurer continues to receive essential services from an affiliate that it has contracted with to provide such services, in accordance with the terms of the contract and applicable law, during the aforementioned proceedings. Subsection 5A(6)(b) gives the commissioner discretion to require documentation of an affiliate’s consent to this jurisdiction in the agreement or contract. In determining appropriate circumstances when a commissioner may require such provision, the commissioner should consider the scope and materiality to the domestic insurer of the contract, the nature of the holding company system, and whether examination or investigation of the domestic insurer warrants requirement of such a provision.

B. Dividends and other Distributions

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

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

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

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

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

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

C. Management of Domestic Insurers Subject To Registration.

1. Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.

2. Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer’s annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than $300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer’s surplus as regards policyholders is reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer’s business is diversified among several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer’s insured risks;

(5) The nature and extent of the insurer’s reinsurance program;

(6) The quality, diversification and liquidity of the insurer’s investment portfolio;

(7) The recent past and projected future trend in the size of the insurer’s investment portfolio;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer’s reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

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

B. Access to Books and Records.

(1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this Chapter.

(2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of $[insert amount] for each day’s delay, or may suspend or revoke the insurer’s license.

C. Use of Consultants. The commissioner may retain at the registered insurer’s expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner’s staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

E. Compelling Production. In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

A. Power of Commissioner. With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

(2) Clarifying the membership and participation of other supervisors in the supervisory college;

(3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
(4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) Establishing a crisis management plan.

B. Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner’s participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

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

A. The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this state; or

(3) Has substantial insurance operations in the United States and this state, but the commissioner has determined pursuant to the factors set forth in Subsections B and F that the other regulatory official is the appropriate group-wide supervisor.

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

B. In cooperation with other state, federal and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. However, the commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) The place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group’s written premiums, assets or liabilities;

(2) The place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group;

(3) The location of the executive offices or largest operational offices of the internationally active insurance group;

(4) Whether another regulatory official is acting or is seeking to act as the group-wide supervisor under
a regulatory system that the commissioner determines to be:

(a) Substantially similar to the system of regulation provided under the laws of this state, or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

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

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

C. Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, in the event of a material change in the internationally active insurance group that results in:

(1) The internationally active insurance group’s insurers domiciled in this state holding the largest share of the group’s premiums, assets or liabilities; or

(2) This state being the place of domicile of the top-tiered insurer(s) in the insurance holding company system of the internationally active insurance group, the commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to Subsection B.

D. Pursuant to Section 6, the commissioner is authorized to collect from any insurer registered pursuant to Section 4 all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered pursuant to Section 4 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty (30) days to provide the commissioner with additional information pertinent to the pending determination. The commissioner shall publish in the [insert name of state administrative record] and on its Internet website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

E. If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

   (a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and

   (b) Reasonable and effective mitigation measures are in place;

(2) Request, from any member of an internationally active insurance group subject to the commissioner’s supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

   (a) Governance, risk assessment and management,
(b) Capital adequacy, and
(c) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of Section 8, through supervisory colleges as set forth in Section 7 or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under Section 4, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the commissioner.

F. If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The commissioner's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the commissioner is authorized to refuse recognition and cooperation.

G. The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Section 4, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group, that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

H. The commissioner may promulgate regulations necessary for the administration of this section.

I. A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Section 8. Confidential Treatment

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

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

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

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

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

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

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

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

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

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

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

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

(c) Excluding documents, material or information reported pursuant to Section 4L(3), prohibit the NAIC or third-party consultant designated by the commissioner from storing the information shared pursuant to this Act in a permanent database after the underlying analysis is completed;

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

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

(f) For documents, material or information reporting pursuant to Section 4L(3), in the case of an agreement involving a third-party consultant designated by the commissioner, provide for notification of the identity of the consultant to the applicable insurer, the insurer’s written consent.

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

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

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

G. The group capital calculation and resulting group capital ratio required under Section 4L(2) and the liquidity stress test along with its results and supporting disclosures required under Section 4L(3) are regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and are not intended as a means to rank insurers or insurance holding company systems generally. Therefore, except as otherwise may be required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly to be made, published, disseminated, circulated or placed before the public in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement or statement containing a representation or statement with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the group capital calculation, resulting group capital ratio, an inappropriate
comparison of any amount to an insurer’s or insurance group’s group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer’s or insurance group’s liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

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

**Section 9. Rules and Regulations**

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

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

A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer’s policyholders, creditors and shareholders or the public may require.

B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder’s meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner hereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer’s policyholders, creditors and shareholders or the public may require.

C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.
Section 11. Sanctions

A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of $[insert amount] for each day’s delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is $[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than $[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than $[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than $[insert amount] or be imprisoned for not more than one to three (3) years or both.

E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined $[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.

F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision.]

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.
Section 13. Recovery

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.

B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

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

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

Section 15. Judicial Review, Mandamus

A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial de novo, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.

C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.
Section 16. Conflict with Other Laws

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

Section 17. Separability of Provisions

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

Section 18. Effective Date

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

Alternative Section 1. Findings

A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:

(1) Engage in activities which would enable them to make better use of management skills and facilities;

(2) Diversify into new lines of business through acquisition or organization of subsidiaries;

(3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;

(4) Implement sound tax planning conclusions; and

(5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;

(2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;

(3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.

C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:

(1) Facilitating the achievement of the objectives enumerated in Subsection A;

(2) Requiring disclosure of pertinent information relating to changes in control of an insurer;

(3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) Providing standards governing material transactions between the insurer and its affiliates.

D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.
Alternative Section 2. Subsidiaries of Insurers

A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

1. Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
2. Acting as an insurance broker or as an insurance agent for its parent or for any of its parent’s insurer subsidiaries;
3. Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
4. Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
5. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
6. Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
7. Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
8. Ownership and management of assets which the parent corporation could itself own or manage;
9. Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
10. Financing of insurance premiums, agents and other forms of consumer financing;
11. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
12. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

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

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

1997 Proc. 4th Quarter 11 (amendments adopted).
INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING FORMS AND INSTRUCTIONS-MODEL # 450

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Section 19. Transactions Subject to Prior Notice - Notice Filing

A. An insurer required to give notice of a proposed transaction pursuant to Section 5 of the Act shall furnish the required information on Form D, hereby made a part of these regulations.

B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

   (1) Identify the person providing services and the nature of such services;

   (2) Set forth the methods to allocate costs;

   (3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
(4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(6) Define books and records and data of the insurer to include all books and records and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;

(7) Specify that all books and records and data of the insurer are and remain the property of the insurer, and:
   (a) Are subject to control of the insurer;
   (b) Are identifiable; and
   (c) Are segregated from all other persons’ records and data, or are readily capable of segregation at no additional cost to the insurer;

Drafting Note: The “at no additional cost to the insurer” language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the insurer. Since records and data of the insurer are the property of the insurer, the insurer should not pay a cost to segregate commingled records and data from other data of the affiliate.

(8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(9) Include standards for termination of the agreement with and without cause;

(10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in Subsections 19B(11), 19B(12), 19B(13), 19B(14) and 19B(15) of this regulation;

(11) Specify that, if the insurer is placed in supervision, seizure, conservatorship or receivership pursuant to supervision and receivership acts or seized by the commissioner under the State Receivership Act:
   (a) All of the rights of the insurer under the agreement extend to the receiver or commissioner to the extent permitted by [law of the state]; and,
   (b) All records and data of the insurer shall be identifiable, and segregated from all other persons’ records and data or readily capable of segregation at no additional cost to the receiver or the commissioner;

Drafting Note: The “at no additional cost to the receiver or the commissioner” language is not intended to prohibit recovery of the fair and reasonable cost associated with transferring records and data to the receiver or the commissioner. Since records and data of the insurer are the property of the insurer, the receiver or commissioner should not pay a cost to segregate commingled records and data from other data of the affiliate.

(c) A complete set of all books and records and data of the insurer will immediately be made available to the receiver or the commissioner, shall be made available in a usable format, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner’s request, and the cost to transfer data to the receiver or the commissioner shall be fair and reasonable; and,

Drafting Note: The fair and reasonable cost to transfer data to the receiver or commissioner refers to the cost associated with
physically or electronically transferring records and data files to the receiver or commissioner. This cost does not include costs to separate comingled data and records that should have been segregated or readily capable of segregation.

(d) The affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or commissioner.

(12) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to [supervision and receivership acts]; and

(13) Specify that the affiliate will provide the essential services for a minimum period of time [specified in the agreement] after termination of the agreement, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to [supervision and receivership acts], as ordered or directed by the receiver or commissioner. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court;

(14) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure, notwithstanding supervision, seizure, conservatorship or receivership pursuant to [supervision and receivership acts]; and a seizure by the commissioner under the State Receivership Act, and will make them available to the receiver, or commissioner as ordered or directed by the receiver or commissioner, for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court; and,

(15) Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver’s authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to [supervision and receivership acts], and portions of the insurer’s policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate’s commitments under Subsections 19B(11), 19B(12), 19B(13) and 19B(14) of this regulation will extend to such guaranty association(s).

Section 20. Enterprise Risk Report

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

Section 21. Group Capital Calculation

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

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

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

3. Has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
5. The non-insurers within the holding company system do not pose a material financial risk to the insurer’s ability to honor policyholder obligations.

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

   (1) The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1,000,000,000; and all of the following additional criteria are met:

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

      (b) Does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and

      (c) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

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

   (1) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in [insert cross-reference to appropriate section of Risk-Based Capital (RBC) Model Act] or a similar standard for a non-U.S. insurer; or

   (2) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in [insert cross-reference to appropriate section of Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition]; or

   (3) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

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

   (1) With respect to the [insert cross-reference to Section 4L(2)(d) of the Model Act]

      a. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
b. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Section 21D(1)(a).

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

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

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

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

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

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

Section 212. Extraordinary Dividends and Other Distributions

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

(1) The amount of the proposed dividend;

(2) The date established for payment of the dividend;

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

(4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(a) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer’s own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed
dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer’s own securities in the preceding two (2) calendar years;

(5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(6) A brief statement as to the effect of the proposed dividend upon the insurer’s surplus and the reasonableness of surplus in relation to the insurer’s outstanding liabilities and the adequacy of surplus relative to the insurer’s financial needs.

B. Subject to Section 5B of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsection A(4).

Section 223. Adequacy of Surplus

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

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

2013 3rd Quarter (editorial revision).
VIA EMAIL – Bmeyer@naic.org  
December 23, 2022

Hon. Lori K. Wing-Heier, Chair  
Financial Regulation Standards and Accreditation (F) Committee

Attention: Becky Meyer, CPA  
Senior Accreditation Manager  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO  64106

Re: Financial Regulation Standards and Accreditation (F) Committee  
Exposed Accreditation Standards: 2020 Revisions to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation (#450)

Dear Director Wing-Heier:

The National Risk Retention Association (“NRRA”) appreciates the opportunity to submit our comments for consideration by the Financial Regulation Standards and Accreditation (F) Committee (“Committee”) with respect to the above exposed accreditation standard modifications. These, of course, include consensus agreement that would allow the lead state regulator to grant exemption to the Group Capital Calculation (“GCC”) requirement to qualifying groups that meet the standards set forth in Sections 21A and 21B of Model Regulation #450 without the requirement to file at least once. Please also know that, prior to our preparation of this letter, we have participated in discussions with the NAIC RRG Task Force and the VCIA on this topic.

NRRA fully supports the recommendation permitting the lead state regulator of a group to grant an exemption from the requirement to file the GCC to any group that otherwise meets the standards of Model Regulation #450 Sections 21A and 21B, without the requirement to file at least once.

NRRA has a significant interest in the exposed accreditation standard modifications associated with the GCC. We are an IRC Section 501(c) (6) non-profit and non-partisan trade association that is dedicated to the development, education, and promotion of U.S. alternatives to traditional insurance and specifically risk retention groups (“RRGs”).

An RRG is a unique insuring entity enabled under the federal Liability Risk Retention Act (“LRRA”), 15 U.S.C. Sec. 3901 et seq., that sets it quite apart from a traditional insurer. Pursuant to the LRRA:
An RRG must be chartered and licensed in a single U.S. state, following which an RRG may operate in all U.S. states based on that single license and is subject almost exclusively to regulation by its domiciliary regulator consistent with the LRRA; An RRG must be owned by its insureds and insure only its owners (or it must be owned by an organization whose members are insured by the RRG and whose owners are the only persons who are provided insurance by the RRG); An RRG is restricted to writing only commercial liability insurance (or reinsurance); and, All insureds of an RRG must operate in the same or related business or activities and consequently share the same or similar liability exposure that is insured by the RRG.

Given the restrictions of the LRRA, the vast majority of RRGs are small insurance companies formed and closely regulated under the captive insurance laws of their domiciliary states. Because of the unique LRRA-mandated characteristics specific only to RRGs, an RRG that is directly owned by its insureds (particularly in its early stages of formation), or an RRG that is association-owned, can occasionally trip the “presumption of control” trigger as defined within the insurance holding company system statutory provisions of the RRG’s domiciliary state that is the basis for requiring registration pursuant to these provisions.

While many RRGs may, by their very nature as insured owned entities, be required to meet the insurance holding company system registration and reporting obligations imposed by the statutory provisions and regulations of their domiciliary states, few, if any, of these RRGs are likely to be members of a group that falls outside the scope of the exemption criteria of Sections 21A and 21B of Model Regulation #450.

In only some instances, RRGs are subject to the same standards and reporting obligations as apply to any traditional liability insurer, such as Risk Based Capital (“RBC”) reporting and financial statement reporting consistent with the NAIC’s Accounting Practices and Procedures. The broad application of submission of the GCC filing, however, would sweep up smaller insurers, including RRGs, into an additional reporting obligation that can be costly and burdensome to the insurer and effectively yield little or no additional value to the insurer’s lead state regulator beyond the existing regulatory oversight tools at the regulator’s disposal.

A particular concern for NRRA and its RRG members is the potential “chilling effect” the GCC filing requirement could have on RRG formations and membership. The existing registration and reporting requirements imposed on an RRG that might be deemed a member of an insurance holding company system can be a significant burden on their own. The prospect that any insured of an RRG may be deemed an ultimate controlling person by virtue of his/its ownership status in the RRG and therefore be subject to the additional obligations and information disclosures of the GCC could serve as a substantial disincentive to RRG membership. Moreover, the disclosure and reporting requirement entailed in the GCC is one that simply would not be encountered by a prospective insured in any other typical traditional insurance purchase transaction.
Hon. Lori K. Wing-Heier, Chair  
Financial Regulation Standards and Accreditation (F) Committee  
December 23, 2022  
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For all of these reasons, NRRA believes it is therefore entirely appropriate to extend to the lead state regulator the ability to grant exemption altogether from the GCC requirement for groups meeting the standards of Sections 21A and 21B of Model Regulation #450, without the requirement to file at least once. A “blanket,” one-size-fits-all approach to applying the GCC requirement simply is not feasible or workable for all insurance companies that are members of insurance holding company systems, and the lead state regulator should have the flexibility to determine the regulatory value to be gained by requiring the GCC filing.

The National Risk Retention Association appreciates your consideration of our comments in this matter. Should you have any questions or need any further input in this matter, please do not hesitate to contact the undersigned.

Very truly yours,

Joseph E. Deems  
Executive Director

JED:mp
Cc: Tim Sullivan, NRRA Chair  
Tina Truax-McCuin, Vice-Chair  
Jon Harkavy, Vice-Chair
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee
FROM: Risk Retention Group (E) Task Force
DATE: September 1, 2022
RE: Response to Group Capital Calculation Accreditation Standard Exposure

The Risk Retention Group (E) Task Force is charged with following the work of the Financial Regulation Standards and Accreditation (F) Committee and providing input on the applicability to risk retention groups (RRGs) of new or revised standards. The F Committee exposed significant elements to include the 2020 revisions to the Insurance Holding Company System Model Act (#440) and Insurance Holding Company System Model Regulation (#450) as updates to the Part A accreditation standards. The revisions implement a Group Capital Calculation (GCC) for the purpose of group solvency supervision and a Liquidity Stress Test (LST) for macroprudential surveillance.

The Task Force discussed the proposed revisions and provides the following recommendations.

Liquidity Stress Test
The Task Force recommends the proposed significant elements not be included in the RRG Part A standards because the Liquidity Stress Test applies to large life insurers and RRGs are not authorized to write life business.

Group Capital Calculation
The Task Force recommends that the proposed significant elements be included in the RRG Part A standards, with the understanding that the proposed significant elements are adopted as exposed. Specifically, the allowance for commissioners to grant exemptions to groups meeting the qualifications set forth in Model #450 Section 21A and Section 21B without the requirement to file at least once. This flexibility is necessary to allow for the unique nature of many RRG holding company groups without limiting regulatory authority in situations when the filing is appropriate.

Thank you for the opportunity to comment on this matter.
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Rachel Hemphill, Chair, Life Actuarial (A) Task Force
       Craig Chupp, Vice-Chair, Life Actuarial (A) Task Force

RE: Comparison of Model #822 to VM-30 for Accreditation Purposes

DATE: March 1, 2023

Background

On October 13, 2022 a memorandum from the Financial Regulation Standards and Accreditation (F) Committee was received by the Life Actuarial (A) Task Force requesting that the Task Force consider the necessity of maintaining the Actuarial Opinion and Memorandum Regulation (#822) as an accreditation standard. The memorandum noted that revisions to the Standard Valuation Law (#820) that became effective in 2020, and in particular VM-30 “Actuarial Opinion and Memorandum Requirements”, contained a large degree of overlap with the requirements of #822. At a November 17, 2022 meeting of the Task Force, Becky Meyer (NAIC) presented the memorandum, which was then subsequently exposed for 21 days to receive feedback from regulators and interested parties.

Recommendation

After Dan Schelp (NAIC) delivered an NAIC Legal Division comparison (Attachment 1) of the significant elements in Model #822 to those in VM-30, the Task Force voted unanimously to recommend that Model #822 be removed as an accreditation standard. Please note that this should not be construed as a requirement that states rescind their versions of Model #822, only that adoption of the Valuation Manual is the new accreditation standard for life insurance and annuity actuarial opinion and memorandum requirements.
MEMORANDUM

TO: Life Actuarial (A) Task Force

FROM: NAIC Legal Division
Daniel Schelp—Chief Counsel, Regulatory Affairs

RE: Comparison of Model #822 to VM-30 for Accreditation Purposes

DATE: January 18, 2023

Both the Standard Valuation Law (#820) and the Actuarial Opinion and Memorandum Regulation (#822) are currently part of the NAIC’s Liabilities and Reserves Accreditation Standard. Model #820 provides that the Valuation Manual should be adopted uniformly by the states. It came to the attention of the Financial Regulation Standards and Accreditation (F) Committee that there is substantial overlap between the significant elements of Model #822 and the Valuation Manual with respect to actuarial opinions; i.e., VM-01 “Definitions for Terms in Requirements” and VM-30 “Actuarial Opinion and Memorandum Requirements.” The Committee requested that the Life Actuarial (A) Task Force review the accreditation standard for Model #822 to determine whether VM-01 and VM-30 meet the necessary actuarial opinion requirements of Model #822. This would permit Model #822 to be removed from the accreditation standards, with the Valuation Manual standing alone as the accreditation standard for actuarial opinions.

To help facilitate this discussion by the Task Force, the NAIC Legal Division has prepared the following comparison of the significant accreditation elements of Model #822 with VM-01 & VM-30 to determine whether state adoption of the Valuation Manual is substantially similar to Model #822 for accreditation purposes:

**Actuarial Opinion and Memorandum Regulation (#822)**

**v. Scope provisions similar to those in Section 3?**

Section 1A(1) “Scope” of VM-30 provides, as follows: “The following provisions contain the requirements for the actuarial opinion of reserves and for supporting actuarial memoranda in accordance with Section 3 of Model #820, and are collectively referred to as Actuarial Opinion and Memorandum (AOM) requirements.” In addition, Section 3B of Model #820 is applicable to all actuarial opinions filed after the operative date of the Valuation Manual. Section III of the Introduction to the Valuation Manual provides:
III. Actuarial Opinion and Report Requirements

Requirements regarding the annual actuarial opinion and memorandum pursuant to Section 3 of Model #820 are provided in VM-30, Actuarial Opinion and Memorandum Requirements. The requirements in VM-30 are applicable to all annual statements with a year-ending date on or after the operative date of the Valuation Manual. Existing actuarial opinion and memorandum requirements continue to apply to all annual statements with a year-ending date before the operative date of the Valuation Manual.

Unlike the reserving requirements under VM-20, there is no small company exemption applicable to the actuarial opinion and memorandum requirements. Therefore, VM-30 should apply to all applicable actuarial opinions filed after the operative date of the Valuation Manual. It is the opinion of the NAIC Legal Division that VM-30 meets the requirements of this significant element.

w. Definitions similar to Section 4?

Section 1A(1) of VM-30 provides for the definition of “Actuarial Opinion”, while VM-01 contains the definitions of “Actuarial Standards Board” and “Annual Statement.” VM-01 also provides for the definition of “Appointed Actuary” that is similar to Section 5C of Model #822, and the definition of “Qualified Actuary” that is similar to Section 5B. Section 2B of VM-30 then provides for the definition of “Asset Adequacy Analysis” that meets the standards of Section 5D of Model #822. It is the opinion of the NAIC Legal Division that VM-01 and VM-30 meet the requirements of this significant element.

x. General Requirements similar to Section 5?

Section 2 of VM-30 provides general requirements under Model #822 for Section 5A “Submission of Statement of Actuarial Opinion”; Section 5C “Appointed Actuary”; Section 5D “Standards for Asset Adequacy Analysis”; and Section 5E “Liabilities Covered” of Model #822. VM-01 then provides for the general requirements for the definition of “Qualified Actuary” under Section 5B of Model #822. However, it should be noted that Section 2A(1) of VM-30 does not provide that the commissioner may grant an extension for submission of the statement of actuarial opinion similar to Section 5A(2) of Model #822. It is the opinion of the NAIC Legal Division that VM-01 and VM-30 meet the requirements of this significant element.

y. Provisions for statement of actuarial opinion based on an asset adequacy analysis similar to Section 6?

Section 2A(1) of VM-30 provides for the General Requirements for Submission of Statement of a Life Actuarial Opinion, while Section 3A of VM-30 provides for Statement of Actuarial Opinion Based on an Asset Adequacy Analysis similar to Section 6 of Model #822. It should be noted that the Alternate Option(s) to the requirements of Section 6B(6)(c) set forth in Section 6F of Model #822 permitting the commissioner to accept the valuation of a foreign insurer are not fully addressed in VM-30. However,
Section 3A(7)(c) of VM-30 does provide alternative language for use in such situations. It is the opinion of the NAIC Legal Division that VM-30 meets the requirements of this significant element.

z. Provisions for description of an actuarial memorandum including an asset adequacy analysis similar to Section 7?

Section 3B of VM-30 provides for a Description of the Actuarial Memorandum, Including an Asset Adequacy Analysis similar to Section 7 of Model #822. It is the opinion of the NAIC Legal Division that VM-30 meets the requirements of this significant element.

aa. Provisions for regulatory asset adequacy issues summary similar to Section 7?

Section 3B(13) of VM-30 provides for a Regulatory Asset Adequacy Issues Summary similar to Section 7C of Model #822. It is the opinion of the NAIC Legal Division that VM-30 meets the requirements of this significant element.