

TO: Jim Mumford (IA)—Chair, Receivership and Insolvency (E) Task Force

FROM: Superintendent Joseph Torti III (RI)—Chair, Financial Condition (E) Committee

DATE: May 10, 2012

RE: E-Committee Responses/Requests regarding IRMA Section 711 Subgroup Recommendations

The Financial Condition (E) Committee met via conference call May 7, 2012, to consider the recommendations provided within the IRMA Section 711 Subgroup Report (attached). The purpose of this memorandum is to inform you of the actions taken by the Committee with respect to each of the recommendations, and to specifically request that the Receivership and Insolvency Task Force address the items referred for further consideration and/or development, as indicated below. Please contact me with any questions or if I can be of further assistance with respect to this issue.

E-Committee Responses/Requests with respect to IRMA Section 711 Subgroup Recommendations

1. ***Subgroup Recommendation 1: Promote Uniform Adoption of IRMA Section 711—Request Financial Condition (E) Committee to urge for the uniform adoption of IRMA Section 711 in conjunction with the IRMA critical elements project.***

E-Committee Response:

The following issues need to be addressed before the Committee is in a position to promote uniform adoption of IRMA Section 711:

- **Inability to quantify Qualified Financial Contract (QFC) exposure.** The Committee agreed appropriate disclosures need to be included within the statutory financial statements in order for regulators to be in a position to quantify the potential impact of IRMA Section 711. There are currently statutory blanks proposals in the development process with respect to derivative disclosures. These proposals should be reviewed to determine whether they provide adequate information to address this limitation, or whether development of further disclosure requirements will be necessary to quantify this exposure.
- **Clarification and uniformity in QFC definition.** The Committee agreed clarification is needed with respect to the definition of QFC to ensure uniform application of Section 711 and appropriate disclosure of QFC exposure. Concerns have been raised that Section 711 could be implemented with a more expansive scope than what is intended. Clarification is needed as to what should be included and/or excluded with respect to the definition of QFC under IRMA. This information should be included in the Annual Statement Instructions applicable to the disclosures discussed above in order to ensure QFC exposure is fully captured.

Therefore, the Committee requests that the Receivership and Insolvency Task Force 1) develop and propose financial statement disclosures necessary to quantify the potential impact of IRMA Section 711, and 2) clarify what should be included and/or excluded within the definition of Qualified Financial Contract under IRMA to ensure appropriate disclosure and application with respect to Section 711.

Note: the Committee will also request that the Financial Analysis Handbook (E) Working Group and Financial Analysis Research and Development (E) Working Group develop handbook guidance and analytical tools in order to facilitate quantification, monitoring and analysis of these exposures once the disclosure and QFC definition issues are addressed.

2. **Subgroup Recommendation 2: Estate Inception Issues**—Receivers should consider practical strategies for successfully managing QFC's at estate inceptions. This consideration may include a better understanding of the triggers for an event of default (filing of action, judicial finding, rehabilitation vs. liquidation and fact of insolvency).

E-Committee Response:

The Committee agrees with this recommendation and requests that the Receivership and Insolvency Task Force gain a further understanding of these issues as expressed in the Subgroup Report and develop additional guidance within the *Receivers' Handbook for Insurance Company Insolvencies* as deemed appropriate.

3. **Subgroup Recommendation 3: State Legislatures Should Consider the 24-hour Stay and Transfer Provisions Consistent with FDIA and Dodd-Frank**—When a state is implementing Section 711, it should consider the 24-hour stay provision and transfer provision similar to FDIA and Dodd-Frank Title II.

E-Committee Response:

The Committee agrees with this recommendation, but is of the opinion it would be difficult to open IRMA for the sole purpose of adding this provision. It was agreed a reasonable alternative would be to develop NAIC guidance to the states (e.g., model guideline) recommending the 24-hour stay provision be considered when a state is implementing Section 711. **Therefore, the Committee requests that the Task Force develop a model guideline for the purpose of recommending to the states that the 24-hour stay provision be included when implementing IRMA Section 711.**

4. **Subgroup Recommendation 4: Sponsor NAIC Training Webinar on Technical Interpretation of Section 711**—Hold webinars walking regulators and interested legislatures through the technical interpretation and meaning of IRMA Section 711.

E-Committee Response:

The Committee agrees it would be appropriate for the Task Force to sponsor NAIC training programs for states to assist regulators and legislators in understanding the technical interpretation of this section. **Therefore, the Committee requests that the Task Force develop training programs for the states with respect to IRMA Section 711 as deemed appropriate.**

5. **Subgroup Recommendation 5: Enhance the Receiver's Handbook for Insurance Company Insolvencies**—Add explanatory guidance to the Handbook of the legal intent of Section 711 by paragraph and/or line, as well as other pertinent legal considerations and references.

E-Committee Response:

The Committee agrees with this recommendation and requests that the Task Force develop enhanced guidance related to the legal intent of IRMA Section 711 for publication within the *Receiver's Handbook for Insurance Company Insolvencies*.

6. **Subgroup Recommendation 6: RITF Members to Serve as a Resource for Future Discussions of Related Regulatory Issues**—*The RITF members should serve as a resource and continue to contribute to joint discussions with other applicable Task Forces/Working Groups/Subgroups on the regulatory issues such as disclosure, circuit breakers, and ability to conduct scenario analysis. Information from the Subgroup’s research should be made available to regulators to assess those issues. These future discussions could include for example: analysis of the need for further disclosures of QFCs and collateral in the Annual/Quarterly Financial Statement Blanks; assessment of the need for additional analysis and examination guidance to encourage monitoring of potential prospective risks that might occur related to QFC levels and collateral positions; and a study of RBC risk charges related to QFCs.*

E-Committee Response:

The Committee agrees with this recommendation and requests that the Task Force serve as a resource and continue to contribute to joint discussions with other applicable Task Forces/Working Groups/Subgroups on regulatory issues pertaining to IRMA Section 711. This includes addressing, developing or supporting related NAIC work streams as deemed appropriate.