

FINANCIAL CONDITION (E) COMMITTEE

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Financial Condition (E) Committee
Washington, DC
September 24, 2009

The Financial Condition (E) Committee met in Washington, DC, Sept. 24, 2009. The following Committee members participated: Alfred W. Gross, Chair, represented by Doug Stolte (VA); Linda S. Hall represented by Gloria Glover (AK); Steve Poizner represented by Kim Hudson (CA); Kevin McCarty represented by Al Willis (FL); Susan E. Voss represented by Jim Armstrong (IA); Michael T. McRaith represented by Jack Messmore (IL); Glenn Wilson represented by Manny Munson-Regala (MN); Neil N. Jasey represented by Bob Kasinow (NJ); James Wrynn represented by Kermitt Brooks, Joe Fritsch and Lou Felice (NY); Joel Ario represented by Steve Johnson (PA); Joseph Torti, III (RI); Leslie A. Newman represented by Mark Jaquish (TN); and Mike Geeslin represented by Danny Saenz (TX). Also participating was: David Smith (VA).

1. Formation of New Working Group

Mr. Stolte announced that at the Summer National Meeting, the Committee received a recommendation from the Statutory Accounting Principles Working Group to form a new working group to address a concern that the general account was not being compensated for risk associated with a guaranty. Mr. Stolte announced that Blaine Shepherd (MN) had volunteered to chair this working group, which will study the need to develop new regulatory guidance requiring the establishment of risk charges for the risk assumed by the general account in support of individual separate account products guaranteed by the general account. At the conclusion of such study, the working group will provide a recommendation to the Committee, including a request for model law development/change if the recommendation is for the NAIC to devote its resources to such an effort. A motion was made by Mr. Armstrong to form this new working group. The motion was seconded by Mr. Saenz and passed unanimously. Regulators interested in participating in the working group were asked to contact NAIC staff. It was announced that the working group would try to hold an organizational call in the fourth quarter and begin work on its charge in 2010.

2. 2010 Charges

Mr. Stolte noted that included in the materials were proposed charges for 2010 for the Committee, its task forces and working groups, including a separate handout for some modifications to the charges of the Reinsurance Task Force. He indicated that most of the charges for 2010 are consistent with those from 2009, with minor changes to address specific items. A motion was made by Mr. Johnson to adopt the proposed charges for 2010 (Attachment One). The motion was seconded by Mr. Hudson and passed unanimously.

3. Adopt the Report of the Task Forces and Working Groups

Mr. Stolte noted that included in the various task force and working group reports, action was taken by the Reinsurance Task Force on a Sept. 15 conference call to adopt a draft bill called the Reinsurance Regulatory Modernization Act of 2009. During that call, it was announced that the act would be forwarded directly to the Government Relations Leadership Council for its review and next steps, including direct submission to Congress. This decision was made because the drafting of the legislation was considered to be a matter of implementation of the Reinsurance Framework as adopted by the full NAIC membership in December 2008. It was also noted during this call that interested parties could comment upon the draft if and when it is introduced in Congress.

A motion was made by Mr. Johnson to adopt the reports of the following task forces and working groups: the Capital Adequacy Task Force; the Examination Oversight Task Force; the Receivership and Insolvency Task Force; the Reinsurance Task Force; the Risk Retention Group Task Force; the Valuation of Securities Task Force; the Financial Analysis Working Group (Attachment Two); the Investment of Insurers Model Act Revision Working Group (Attachment Three); the NAIC/AICPA Working Group (Attachment Four); the National Treatment and Coordination Working Group (Attachment Five); and the Restructuring Mechanisms for Troubled Companies Subgroup (Attachment Six). Also included in the reports was the Accounting Practices and Procedures Task Force; however, excluded from that report was the issue of *SSAP No. 10—Income Taxes*, which was considered separately. The motion was seconded by Mr. Armstrong and passed unanimously.

4. SSAP No. 10—Income Taxes

Mr. Stolte noted that included in the materials was a marked-up copy of *SSAP No. 10—Income Taxes*, although conforming changes to the related Question & Answer appendix had yet to be developed. Mr. Stolte made a motion to hold a joint conference call of the Statutory Accounting Principles Working Group, Accounting Practices and Procedures Task Force, and Financial Condition Committee to consider the changes to SSAP No. 10. The motion was seconded by Mr. Jaquish. Mr. Fritsch proposed an amendment to the motion to adopt SSAP No. 10 as adopted by the Statutory Accounting Principles Working Group and Accounting Practices and Procedures Task Force, with the understanding that if adopted, the revised SSAP No. 10 would be exposed for one week and there would be a joint conference call of the three groups to finalize the language. The motion was seconded by Mr. Johnson. There was discussion of proper procedure given the situation. Mr. Stolte noted that he did not consider the motion by Mr. Fritsch to be friendly, and it was noted by NAIC legal staff that a vote must first be taken on Mr. Fritsch's amendment to the motion.

Mr. Johnson stated that he believed a decision on the issue should be made today, as all members of the Committee were present, and there was a need to provide clarity to the issue. He said the issues have been debated, and the draft SSAP No. 10 in front of the Committee was consistent with what has been adopted. He noted that he had no problem debating the issue further, but that a decision should be made today. Mr. Stolte asked Mr. Johnson if he believed it was appropriate that the issue had been adopted before it was clear what was adopted.

Mr. Smith stated that Virginia has serious concerns with the substantive revisions that have been made to SSAP No. 10. He noted that in December 2008, the Statutory Accounting Principles Working Group rejected similar revisions on the basis that they didn't meet regulatory objectives. He indicated that it was Virginia's belief that the issue had not been adequately studied in order to make a decision, as the potential impact had not been quantified. He noted that the industry constantly demands the Statutory Accounting Principles Working Group to thoroughly study an issue and consider the impact to insurers' surplus before making decisions on other accounting changes that may affect capital and surplus. Mr. Smith stated that the SSAP No. 10 proposal was significantly modified during the Statutory Accounting Principles Working Group's meeting Sept. 21, and that not until the Committee meeting had any regulators seen the revised wording to verify it was consistent with what was adopted. The Statutory Accounting Principles Working Group and Accounting Practices and Procedures Task Force adopted the proposal without ever seeing, much less reviewing, such language—something that Virginia representatives had witnessed since being members of both groups.

Mr. Smith noted that the report from the Working Group to the Task Force failed to mention the increase from 10% to 15%. He noted that the true impact of the revisions is not known because the Working Group has not attempted to study or quantify the impact. He cautioned regulators to make sure they understand the potential impact of the adopted change, and said regulators should not be influenced by misleading and incorrect statements that this change would only result in an increase of admitted assets equal to 5% of surplus. He said there was no percentage of surplus limit on the amount of loss carrybacks in the paragraph 10a asset, and he cautioned regulators that the impact could increase significantly. He also cautioned regulators on the limits in paragraph 10b, noting that the one-year limit was the more constraining limit, as opposed to the 10% of capital and surplus, and thus the increase to three years could also significantly increase this portion of this admissible asset. He discussed the current one-year limitation results as being much more auditable information. He stated that the only reason deferred tax assets were deemed to be admitted assets during the base portion of codification was to achieve surplus neutrality in order to appease industry complaints at the time.

Mr. Smith said that in summary, Virginia believes the changes to SSAP No. 10 fail the statutory statement of concepts of conservatism and recognition. Mr. Smith stated Virginia believes there is no basis for the increase from 10% to 15%, or one year to three years, and that industry indicated that the changes were meant to be a compromise of the original proposal of 25% and five years. He stated that if this proposal is adopted, insurers will be making projections of taxable income for up to three years in the future. Mr. Smith stressed that utilization of such projections will make it difficult for insurers to estimate the realization capability of such assets, and they could potentially utilize unaudited budgets and forecast, or even industry trends, to establish these assets. He noted that the Securities and Exchange Commission requires registrants to separately discuss the quality of their deferred tax assets. No such requirement is contemplated in this proposal. He also stated there was no risk-based capital charge associated with this proposal. Insurers can file consolidated tax returns and may not see any cash for these deferred tax assets for years. Mr. Smith noted that under the proposal, insurers could lose previously admitted deferred tax assets as their risk-based capital reached the trend test level, which could create volatile and illusory capital and surplus. He discussed how the substantive changes to SSAP No. 10 should be rejected and that a newly formed subgroup, which Virginia volunteered to chair, should be created to study the issue before a decision is made on modifications to SSAP No. 10.

Mr. Fritsch noted that the changes to SSAP No. 10 had been exposed, and the majority of the language adopted had been public since November 2008. He indicated that he believed the changes made to the exposed document were fairly insignificant, and that most of the changes were actually conservative. He noted that he did not believe delaying the decision for another week would result in any different decision. He said the changes were still consistent with the statutory statement of concepts. He noted that regardless of what people said about why deferred taxes were adopted at all during the base portion of codification, the change to the limit of 10% to 15% was still conservative. Mr. Stolte responded that the current 10% and one year of recoverability did not meet the statutory statement of concepts, but was adopted during base codification only to allow the entire codification project to be surplus-neutral for the industry. Mr. Smith noted that the original exposure of the changes to SSAP No. 10 limited tax loss carrybacks to one year, as opposed to the three years that were adopted in this current version, which he did consider to be a significant change.

Mr. Messmore noted that although he was not at the meeting of the Working Group or Task Force, the report of the task force indicated that there was a robust discussion on the merits of the changes, and also that the changes expire at the end of 2010, with a new group formed to evaluate a long-term approach to deferred tax assets. He indicated that he supported the motion from Mr. Fritsch.

Mr. Johnson agreed with Mr. Fritsch that the changes to SSAP No. 10 are still consistent with the statutory statement of concepts. He discussed the need for regulators to be flexible, as the entire landscape within the capital markets has changed. He discussed the need for regulators to be realistic in what is required of insurers. He said part of the role of regulators is to ensure that adequate capital is made available to the industry, and excessively high regulatory requirements actually deter this and can have a detrimental impact on consumers. He said he was comfortable with the changes to SSAP No. 10 and noted that if a regulator was concerned with the level of deferred tax assets within an individual insurer, there are other regulatory tools available to control these amounts. He stated that the transparency of the amount of deferred tax assets was very good, and therefore it would be very easy for regulators to take other actions if they were concerned. He stated that he was interested in the Committee charging the Capital Adequacy Task Force with developing a new risk-based capital charge for this increase to deferred tax assets. He noted that such a charge was substantiated, as it would add risk to the balance sheet. He indicated that the referral should also consider the need to look at a similar additional charge for *SSAP No. 43R—Loan Backed and Structured Securities*. Mr. Stolte agreed with the suggestion of recalibration of risk-based capital with this change and the change to SSAP No. 43.

Mr. Fritsch discussed the Statutory Accounting Principles Working Group's decision to establish a subgroup to study all aspects of deferred taxes, and that if they conclude that a change to risk-based capital should be made, a recommendation would be made at that time. He stated that he continued to believe there was a need for certainty at this time related to the SSAP No. 10 issue, and stated that he did not believe there was a need for additional risk-based capital for SSAP No. 43R because it's an improvement to SSAP No. 43. Mr. Stolte responded that he disagreed with the comment on SSAP No. 43, only because regulators had adopted *SSAP No. 98—Treatment of Cash Flows When Quantifying Changes in Valuation and Impairments, an Amendment of SSAP No. 43—Loan Backed and Structured Securities*. Mr. Johnson agreed.

Mike Monahan (American Council of Life Insurers—ACLI) stated that interested parties strongly support the action taken by the Working Group and Task Force on SSAP No. 10. He noted that industry was in need of certainty on the issue. He said they support a conference call to work on the details on the language, but they support adoption of the change at this meeting. Mr. Stolte noted that the Committee members should be aware that this issue was controversial, and therefore would receive further significant, robust discussion by the NAIC membership. Mr. Messmore called the question regarding the amendment requested by Mr. Fritsch. The motion passed, with California, Illinois, Iowa, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island and Texas voting Yes; and Alaska, Florida and Tennessee voting No. With the amended motion on the floor, the Working Group adopted SSAP No. 10 with California, Illinois, Iowa, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island and Texas voting Yes; and Alaska, Florida and Tennessee voting No. The action resulted in the adoption of the statement as adopted by the Statutory Accounting Principles Working Group and Accounting Practices and Procedures Task Force, with the revised SSAP No. 10 exposed for one week followed by a joint conference call of the three groups in order to finalize the language.

Mr. Johnson suggested that all chief financial regulators educate their commissioners on the issue before it is voted on by the full NAIC membership. He noted that there should be significant discussion on these types of issues at all levels of the committee process. Mr. Stolte noted his support for the comments made by Mr. Johnson. Mr. Fritsch indicated that NAIC staff should begin work on questions and answers of SSAP No. 10 immediately. He discussed the need for certainty and expressed his concern regarding the issue. Mr. Stolte responded that process and full deliberation was important, but perhaps a special call could occur to deal with the issue sooner rather than later. Superintendent Torti discussed how the issue was difficult, and agreed it was important for the issue to be pulled and discussed separately. He said there were issues dealing with accreditation that were pulled from the consent agenda for this meeting, and those were unanimously adopted, but it was important for the issue to receive full deliberation.

Mr. Johnson asked that the Committee not forget the possible new charge to the Capital Adequacy Task Force related to SSAP No. 10 and SSAP No. 43R. It was suggested and agreed that this be discussed on the joint conference call. Mr. Felice noted the recent increase in items being referred to the Capital Adequacy Task Force. He expressed his support for these issues being referred to the Task Force, but requested that the Task Force be notified more timely as these arise.

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

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Draft: 9/24/09

FINANCIAL CONDITION (E) COMMITTEE

The mission of the Financial Condition (E) Committee is to be the central forum and coordinator of solvency-related considerations of the NAIC relating to accounting practices and procedures; blanks; valuation of securities; the Insurance Regulatory Information System (IRIS); financial analysis and solvency; zone examinations and examiner training; and issues concerning insurer insolvencies and insolvency guarantees. In addition, the Committee interacts with the technical task forces.

Ongoing Maintenance of NAIC Programs, Products or Services:

1. The Financial Condition (E) Committee will monitor all of the changes to the *Annual/Quarterly Statement Instructions*, risk-based capital formulas, *Financial Condition Examiners Handbook*, *Accounting Practices and Procedures Manual*, *Financial Analysis Handbook*, *Purposes and Procedures Manual of the NAIC Securities Valuation Office*, NAIC model laws, NAIC accreditation standards and other NAIC publications. This charge is ongoing.—*Essential*
2. The Capital and Surplus Relief Working Group will:
 - Consider an implementation schedule for the Capital and Surplus Relief WG recommendations.—*Important*
 - As assigned, consider any process changes or other related issues brought to light when developing the Capital and Surplus Relief WG recommendations.—*Important*
3. The Credit Default Swap Working Group will:
 - Assist the membership with any policy issues related to credit default swaps, if a holistic approach is not taken by the U.S. Congress to address the issues previously identified by the NAIC.—*Essential*
 - Consider, as necessary, the recommended courses of action suggested by the technical committees in addressing the potential areas where financial regulation can be fortified; assist with summarizing this information to the membership on a periodic basis.—*Important*
4. The Financial Analysis Working Group will:
 - Analyze nationally significant insurers and groups that exhibit characteristics of trending toward or being financially troubled; determine if appropriate action is being taken.—*Essential*
 - Interact with domiciliary regulators and lead states to assist and advise as to what might be the most appropriate regulatory strategies, methods and action(s).—*Essential*
 - Support, encourage, promote and coordinate multi-state efforts in addressing solvency problems, including identifying adverse industry trends.—*Essential*
 - Review and make appropriate updates and enhancements to the *Troubled Insurance Company Handbook*.—*Essential*
 - Upon notice that a security has been placed under regulatory review, the chair of Financial Analysis Working Group, or his or her representative, will be deemed a member of the Invested Asset (E) Working Group of the Valuation of Securities (E) Task Force. The chair, or his or her representative, is charged with contributing the perspective and expertise of the regulatory group to the development of NAIC regulatory guidance for the security under review.—*Essential*
5. The Financial Guaranty Insurance Guideline Working Group will, after action is taken by the New York State Insurance Department or other states, consider the need to modify the Financial Guaranty Insurance Guideline (#1626). Provide a

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recommendation to the Financial Condition Committee on what, if any, changes should be made to this NAIC guideline.—*Essential*

6. Investment of Insurers Model Act Revisions Working Group will study the need to modify the Investments of Insurers Model Act (#280 and #283) by gathering input from all states regarding the use of the existing models and their effectiveness in addressing the issues that exist within insurers' portfolios, particularly during this most recent economic downturn. At the conclusion of such study, provide a recommendation to the Financial Condition Committee, including a request for model law development/change, if the recommendation is for the NAIC to devote its resources to such an effort.—*Essential*
7. The NAIC/AICPA Working Group will:
 - Continually review the Annual Financial Reporting Model Regulation (#205) and its corresponding implementation guide; revise as appropriate.—*Essential*
 - Address financial solvency issues by working with the AICPA and responding to the AICPA exposure drafts. This charge is ongoing.—*Essential*
 - Monitor the federal Sarbanes-Oxley Act, as well as rules and regulations promulgated by the U.S. Securities and Exchange Commission, the Public Company Accounting Oversight Board and other financial services regulatory entities.—*Essential*
 - Review annually the premium threshold amount included in Section 16 of the Annual Financial Reporting Model Regulation (#205), with the general intent that those insurers subject to the Section 16 requirements would capture at least approximately 90% of industry premium and/or in response to any future regulatory or market developments.— *Essential*
8. The National Treatment and Coordination Working Group will:
 - Increase utilization and implementation of the *Company Licensing Best Practices Handbook* by regulators.—*Essential*
 - Continue to reduce state-specific requirements, including the need for hardcopies, for the forms and supplemental information involved in Uniform Certificate of Authority Application (UCAA) and to streamline the application process.—*Essential*
 - Continue to enhance all electronic tools relating to UCAA to increase user-friendliness, accuracy and utility, and to increase its usage by the industry and regulators.—*Essential*
 - Address the future work items identified in the completion of the *Company Licensing Best Practices Handbook* project.—*Important*
 - In collaboration with the Speed to Market (EX) Task Force, encourage synergies between corporate changes/amendments and rate and form filing review and approval to improve efficiency.—*Important*
9. The Rating Agency Working Group will conduct a comprehensive evaluation of the reliance on nationally recognized statistical rating organization (NRSRO) ratings by the NAIC, the insurance industry and the insurance marketplace. The Working Group will assess and gather information on (a) The problems inherent in reliance on ratings, including the filing exempt process and RBC; (b) The reasons for recent rating shortcomings, including, but not limited to, structured security and municipal ratings; (c) The current and potential future impact of ratings on state insurance financial solvency regulation; and (d) The effect of the use of NRSRO ratings on public confidence and public perception of the quality of insurance regulatory oversight. The Working Group will draft and present a final report documenting the findings and any recommendations for corrective action available to the NAIC and its members, as well as possible regulatory recommendations to the federal government.—*Important*

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10. The Restructuring Mechanisms for Troubled Companies Subgroup will undertake a study of solvent schemes of arrangement (solvent run-offs) and Part VII portfolio transfers (a transfer leaving no recourse to original contractual obligor/insurer) and any other similar alternative mechanisms to handle troubled insurers (other than receivership proceedings) to gain an understanding of (a) how these mechanisms are utilized and implemented; (b) the potential affect on claims of domestic companies, including the consideration of preferential treatment within current laws; (c) how alien insurers (including off-shore reinsurers) who have utilized these mechanisms might affect the solvency of domestic companies; and (c) best practices for state insurance departments to consider if utilizing similar mechanisms in the United States and/or interacting with aliens who have implemented these mechanisms.—*Important*

New Objectives and Goals (representing new NAIC programs and initiatives)

11. Separate Accounting Risk Charge Working Group will study the need to develop new regulatory guidance requiring the establishment of risk charges for the risk assumed by the general account in support of individual separate account products guaranteed by the general account. At the conclusion of such study, provide a recommendation to the Financial Condition (E) Committee, including a request for Model Law Development/Change if the recommendation is for the NAIC to devote its resources to such an effort.—*Important*

Sponsors for 2010 Charges (Except as noted, I support all charges)

Al Gross
Virginia

Susan E. Voss
Iowa

Joe Torti
Rhode Island

Staff Support: Todd Sells/Dan Daveline

12. Accounting Practices and Procedures Task Force

The Emerging Accounting Issues Working Group will:

- Provide authoritative guidance on current statutory accounting issues, generally relating to application, interpretation and clarification of existing statutory accounting principles, by conducting meetings at NAIC national meeting sites when necessary.—*Essential*
- Evaluate individual statutory accounting issues based on its established two-meeting timeline and report its findings to the Accounting Practices and Procedures Task Force.—*Essential*

The Statutory Accounting Principles Working Group will:

- Maintain codified statutory accounting principles by providing periodic updates to the guidance that address new statutory issues and new GAAP pronouncements as they develop.—*Essential*
- At the discretion of the chair, comment on exposed GAAP pronouncements affecting financial accounting and reporting.—*Essential*
- Report its findings relative to these developing issues to the Accounting Practices and Procedures Task Force.—*Essential*
- Accumulate and summarize information from regulators, the industry, auditors and others, on implementation issues related to transitioning to International Financial Reporting Standards (IFRS) for statutory reporting, as well as some of the more significant issues that would need to be considered in implementing such a change.—*Important*

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- Upon notice that a security has been placed under regulatory review, the chair of Statutory Accounting Principles Working Group, or his or her representative, will be deemed a member of the Invested Asset (E) Working Group of the Valuation of Securities (E) Task Force. The chair, or his or her representative, is charged with contributing the perspective and expertise of the regulatory group to the development of NAIC regulatory guidance for the security under review.—*Essential*

The Blanks Working Group will:

- Consider improvements and revisions to the various annual/quarterly statement blanks and to conform these blanks to changes made in other areas of the NAIC to promote uniformity in reporting of financial information by insurers; to develop reporting formats for other entities subject to the jurisdiction of state insurance departments; to conform the various NAIC blanks and instructions to adopted NAIC policy; and to oversee the development of additional reporting formats within the existing annual statements as needs are identified.—*Essential*
- Continue to monitor state filing checklists to maintain current filing requirements.—*Essential*
- Continue to monitor the quality of financial data filed by insurance companies and recommend improved or additional languages for the *Annual Statement Instructions* to improve the quality of these filings.—*Essential*
- Continue to monitor and review all proposals necessary for the implementation of statutory accounting guidance to ensure proper implementation of any action taken by the Accounting Practices and Procedures Task Force affecting annual statements and/or instructions.—*Essential*
- Continue to coordinate with other task forces of the NAIC to ensure proper implementation of reporting and instructions changes as proposed by these task forces.—*Essential*
- Upon notice that a security has been placed under regulatory review, the chair of Blanks Working Group, or his or her representative, will be deemed a member of the Invested Asset (E) Working Group of the Valuation of Securities (E) Task Force. The chair, or his or her representative, is charged with contributing the perspective and expertise of the regulatory group to the development of NAIC regulatory guidance for the security under review.—*Essential*

The Property and Casualty Reinsurance Study Group will:

- Evaluate, on an ongoing basis, all issues and questions related to the accounting for or annual statement reporting of reinsurance transactions that might affect SSAP No. 62, SSAP No. 75 or other portions of the *Accounting Practices and Procedures Manual*, and make appropriate recommendations to the Accounting Practices and Procedures Task Force.—*Essential*
- Monitor, on an ongoing basis, the development of “alternative risk transfer mechanisms” and consider whether broader annual statement disclosure might be appropriate.—*Essential*

13. The Capital Adequacy Task Force will:

- Evaluate refinements to the existing NAIC risk-based capital formulas implemented in 2009. Forward final version of the structure of the 2010 life, P&C and health RBC formulas to Financial Condition (E) Committee by June 2010.—*Essential*
- Consider proposals for structural changes to the RBC formulas (including proposals related to a principle-based RBC approach) submitted by the working groups/subgroups. Proposed structural changes to the 2011 formulas that are received by the 2010 Fall National Meeting will be considered for adoption by the Task Force, and adopted changes will be forwarded to Financial Condition (E) Committee by March 2011.—*Essential*
- Review the effectiveness of the NAIC’s RBC policies and procedures as they affect the accuracy, audit ability, timeliness of reporting access to RBC results, and comparability between the RBC formulas. Report on data quality problems in the 2009 RBC filings at the summer and fall meetings.—*Essential*

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- Monitor changes in accounting and reporting requirements resulting from the adoption and continuing maintenance of the revised *Accounting Practices and Procedures Manual* to ensure that model laws, publications, formulas, analysis tools, etc., supported by the Task Force continue to meet regulatory objectives.—*Essential*
- Evaluate emerging “risk” issues for referral to the risk-based capital working groups/subgroups for certain issues involving more than one RBC formula. Monitor emerging and existing risks relative to their consistent or divergent treatment in the three RBC formulas.—*Essential*
- Conduct a regulatory review of the 2007, 2008 and 2009 RBC filings and associated company records in order to assess the impact resulting from implementation of the principle-based changes to the life RBC formula. Monitor implementation and impact of the adopted changes, as well as provide responses to the Principles-Based Reserving (EX) Working Group, regarding how the proposed expansion to the principle-based approach affects all of the RBC formulas. Also develop and review disclosure-documentation and governance protocols to be used by regulators and companies.—*Essential*
- Upon notice that a security has been placed under regulatory review, the chair of Capital Adequacy Task Force, or his or her representative, will be deemed a member of the Invested Asset (E) Working Group of the Valuation of Securities (E) Task Force. The chair, or his or her representative, is charged with contributing the perspective and expertise of the regulatory group to the development of NAIC regulatory guidance for the security under review.—*Essential*

14. The Examination Oversight Task Force will:

- Provide ongoing maintenance and enhancements to the Form A Database, monitor the usage and encourage state participation.—*Essential*
- Provide input and comments to the International Association of Insurance Supervisors (IAIS) or other related groups on issues regarding international risk-management concepts; coordinate such comments with the International Solvency (EX) Working Group.—*Important*
- Recommend salary rate adjustments for examiners.—*Essential*
- Provide ongoing maintenance and enhancements to the NAIC Lead State Summary Report tool and encourage coordination with solvency matters.—*Essential*

The Analyst Team System Oversight Working Group will:

- Monitor the work performed by the Analyst Team and the progress of any changes made to the Analyst Team Project.—*Essential*

The IT Examination Working Group will:

- Monitor state usage of automated examination tools (ACL and TeamMate), technology changes and emerging issues in order to re-evaluate examination processes and keep states abreast of the latest tools, techniques and training.—*Essential*
- Enhance current training opportunities for auditing tools and techniques: IT Examination, Introductory ACL, Advanced ACL and TeamMate. Continue offering on-site training programs that are available to states upon request.—*Essential*
- Continually review and revise, as needed, the “Examination of Computer-Based Operations” and “Exhibit C—Evaluation of Controls in Information Systems” sections of the Financial Condition Examiners Handbook.—*Essential*

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- Develop and maintain tools that will be part of a more complete IT examination process.—*Important*

The Financial Analysis Research and Development Working Group will:

- Provide ongoing maintenance and enhancements to the automated financial solvency tools developed to assist in monitoring the financial condition of insurance companies. Prioritize analysis and examination efforts to ensure the tools remain reliable and accurate.—*Essential*
- Review current financial analysis solvency tools for life insurance companies for consideration of risk with reserve liabilities as affected by principles-based reserving standards; make appropriate enhancements as necessary.—*Important*

The Financial Analysis Handbook Working Group will:

- Provide ongoing maintenance and enhancements to the Financial Analysis Handbook and related applications for changes to the NAIC annual/quarterly statement blanks, as well as coordinate and analyze input received from other state regulators.—*Essential*
- Continue to incorporate the assessment of risk and risk management into the financial analysis oversight role.—*Essential*
- Review current guidance in the Financial Analysis Handbook regarding the analysis of reserve liabilities for life insurance companies and make appropriate revisions based on the finalized principles-based reserving standards.—*Important*
- Develop enhancements that encourage coordination of analysis activities within holding company groups.—*Essential*

The Financial Examiners Coordination Working Group will:

- Develop enhancements that encourage coordination of examination activities with regard to holding company groups.—*Essential*
- Provide ongoing maintenance and enhancements to the Examination Tracking System (ETS). The Working Group also will provide reports to the Examination Oversight Task Force regarding usage of ETS, including examination and coordination statistics.—*Essential*

The Financial Examiners Handbook Technical Group will:

- Continue incorporating the assessment of risk and risk management into the financial solvency oversight role.—*Essential*
- Continually review the *Financial Condition Examiners Handbook* and revise, as appropriate.—*Essential*
- Review annually the examination procedures included within the *Financial Condition Examiners Handbook* for updates in response to revisions to the *Accounting Practices and Procedures Manual*.—*Essential*
- Continually review the Annual Financial Reporting Model Regulation (#205) and revise the *Financial Condition Examiners Handbook*, as appropriate.—*Essential*
- Monitor the implementation of the revised risk-assessment process by receiving feedback, conducting training courses and performing ongoing maintenance—as well as developing additional guidance and exhibits within the *Financial Condition Examiners Handbook* as needed to assist examiners in completing financial condition examinations.—*Important*

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- Review current guidance in the *Financial Condition Examiners Handbook* regarding the examination of reserve liabilities for life insurance companies and recommend appropriate revisions based on the finalized principles-based reserving standards.—*Important*
- Upon notice that a security has been placed under regulatory review, the Chair of Financial Examiners Handbook (E) Working Group or his or her representative will be deemed a member of the Invested Asset (E) Working Group of the Valuation of Securities (E) Task Force. The Chair or his or her representative is charged with contributing the perspective and expertise of the regulatory group to the development of NAIC regulatory guidance for the security under review.—*Essential*

15. The Receivership and Insolvency Task Force will:

- Monitor progress of Insurer Receivership Model Act (#555), Property and Casualty Guaranty Association Model Act (#540), Life & Health Insurance Guaranty Association Model Act (#520), adoption by the states (and/or components of the model), provide assistance with the model as requested and perform additional work as directed by the Financial Condition (E) Committee.—*Essential*
- Promote receivership best practices through (a) technical assistance with NAIC training programs, accreditation standards and the judicial training project; (b) updates to the *Receiver's Handbook for Insurance Company Insolvencies* and the uniform data standards, when needed; (c) maintenance and enhancement of existing receivership technology applications, including the Global Receivership Information Database (GRID) and ClaimNet; (d) in coordination with stakeholders.—*Essential*
- Identify and recommend possible solutions to address timing and collection concerns with reinsurance recoverables held by insurers in receivership. —*Essential*

16. The Reinsurance Task Force will:

- Monitor and coordinate activities and areas of interest that overlap to some extent with the charges of other NAIC groups, specifically the International Insurance Relations (G) Committee.—*Essential*
- Provide a forum for the consideration of reinsurance-related issues of public policy.—*Essential*
- Promote and facilitate the implementation of the adopted reinsurance regulatory modernization framework.—*Essential*
- Monitor the activities of the Property and Casualty Reinsurance (E) Study Group for matters that should be considered by the Task Force.—*Important*
- Monitor the development of international reinsurance standards.—*Important*

17. The Risk Retention Group Task Force will:

- Monitor and evaluate the work of other NAIC committees, task forces and working groups related to risk-retention groups and other types of captive insurers. Specifically, if any of these changes affect the NAIC Financial Regulation and Accreditation Standards program, assess whether and/or how the changes should apply to risk-retention groups.—*Important*

18. The Valuation of Securities Task Force will:

- Consider and determine proposals to amend the *Purposes and Procedures Manual*.—*Essential*

2010 CHARGES

- Provide interpretations of the instructions contained in the *Purposes and Procedures Manual*, as the Task Force deems necessary and appropriate.—*Essential*
- Provide assistance to state insurance regulators on issues involving investments made by the insurance industry.—*Essential*
- Review insurers' existing and/or anticipated investments and determine the appropriate credit assessment, valuation or other procedures that should be applied in such analysis. Coordinate the process by which statutory accounting, annual statement instructions, blanks reporting, asset and interest maintenance reserving, risk-based capital and other applicable guidance is formulated.—*Essential*
- As necessary, consider improvements to the process by which risks in invested assets are evaluated, communicated and monitored, and how the annual statement investment schedules could be made to better reflect risks embedded in securities.—*Essential*
- Monitor changes in accounting and reporting requirements resulting from continuing maintenance of the *Accounting Practices and Procedures Manual* to ensure that the *Purposes and Procedures Manual* continues to reflect regulatory objectives.—*Essential*
- Review and monitor ongoing operations of the SVO. From time to time, the Task Force may review any instruction, procedure or methodology in the *Purposes and Procedures Manual* to ensure it continues to reflect regulatory objectives. In this review and monitoring function, the Task Force shall coordinate administrative issues with the Internal Administration (EX1) Subcommittee and other issues with the appropriate NAIC committee.—*Essential*
- Develop, adopt, monitor and revise, as necessary, an annual agenda for the SVO Research Unit.—*Essential*
- Conclude the study begun in 2006 of the derivatives marketplace, to determine whether any changes to the current regulatory regime is appropriate.—*Essential*

The Invested Asset Working Group will:

- From time to time, the Valuation of Securities Task Force may determine that the technical nature of some matter before it would be best advanced by convening the Invested Asset Working Group and transferring to it a specific regulatory assignment or assignments. The assignment or assignments thus transferred to the Invested Asset Working Group by the Valuation of Securities Task Force shall be within that charge of the Task Force related to development of a regulatory framework for new or evolving investments or the consideration of refinements for an existing regulatory framework applicable to an existing class of securities. The phrase "regulatory framework" refers collectively to and means the following regulatory mechanisms or processes: statutory accounting guidance; annual statement instructions; blanks reporting instructions; asset valuation reserves; interest maintenance reserves; risk-based capital charges; valuation procedures for invested assets; credit assessment procedures for invested assets; or any other aspect of the NAIC financial solvency framework within the scope of the charge of the Task Force. The Invested Asset Working Group is charged with the review of matters in the priority established by the Task Force.—*Essential*
- The Invested Asset Working Group is charged with considering improvements to the process by which risks in new invested assets are evaluated, communicated and monitored, and how the annual statement investment schedules could be made more transparent to better reflect non-credit risks, such as various structural risks embedded in new and existing securities.—*Essential*

Draft: 9/29/09

Financial Analysis (E) Working Group
Washington, D.C.
September 23, 2009

The Financial Analysis (E) Working Group of the Financial Condition (E) Committee met in Washington, D.C., Sept. 23, 2009. The following Working Group members participated: Roger Peterson, Chair (WI); Kim Hudson (CA); Kathy Belfi (CT); Dave Lonchar (DE); Al Willis (FL); Jim Hanson (IL); Bob Dynan (MA); Jacqueline Gardner (MN); Fredrick Heese (MO); Russell Jones (NJ); Larry Levine (NY); Dale Bruggeman (OH); Steve Johnson (PA); Doug Slape (TX); and David Smith (VA). Also participating were Linda Sizemore (DE); and Danny Saenz (TX).

The Financial Analysis (E) Working Group met in executive session pursuant to paragraph 3 of the NAIC Policy Statement on Open Meetings (“Specific companies, entities or individuals”).

During the meeting, the Working Group heard presentations on nationally significant insurers and groups that were exhibiting characteristics of being potentially troubled.

Having no further business, the Financial Analysis (E) Working Group adjourned.

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Draft: 9/16/09

Investment of Insurers Model Act Revisions (E) Working Group
Conference Call
September 9, 2009

The Investment of Insurers Model Act Revisions (E) Working Group of the Financial Condition (E) Committee met via conference call Sept. 9, 2009. The following Working Group members participated: Dale Bruggeman, Chair (OH); Matti Peltonen, Vice Chair (NY); Tomoko Stock (CA); Kathy Belfi (CT); Stewart Guerin (LA); Neal Miller (MD); Chris Van Ess (OK); Jim Odiorne (WA); and Jerry DeArmond (WI).

1. Comment Letters on Exposed Document

Mr. Bruggeman indicated the Working Group received two comments letters as a result of its 90-day exposure of a document prepared by NAIC Securities Valuation Office (SVO) staff. That exposure document summarized the SVO views regarding changes in the investment marketplace since the NAIC investment model laws were last updated and also provided the Working Group with some preliminary recommended changes.

Mr. Bruggeman summarized the comment letter from State Farm (Attachment Three-A), which is opposed to any filing of mortgages to the SVO. He noted that such a filing was a recommendation to the Working Group from the SVO staff, which would likely not impact any change to the model acts, but rather would be a recommendation to another NAIC group. The Working Group noted the comment for future discussion.

Carl Wilkerson (American Council of Life Insurers—ACLI) provided a summary of the ACLI's comments (Attachment Three-B). The ACLI expressed their support for the Working Group's request for input on the document, despite the fact that they believe that the current NAIC models are functioning as designed. The ACLI had no specific recommendations on the exposed document, but indicated they would like to provide input in a dynamic interactive dialog either in a face-to-face meeting or series of meetings, or conference calls, as opposed to a static letter. The ACLI encouraged the NAIC to consider actions that resulted in a more widespread enactment of the NAIC model investment laws. The ACLI expressed a desire for the NAIC to be more engaged in the federal legislative dialogue regarding derivative instruments.

Mr. Bruggeman noted that Ohio was one of the states that had not yet adopted the NAICs defined limits version and noted that what he believed what was important was the NAIC maintain some type of requirements in the area of diversification, be it in the form of defined limits, defined standards or a combination of the two.

2. Charge to Industry and Next Steps

Mr. Bruggeman noted that it might be easier for a face-to-face meeting, but asked that regulators think about what would work best for them, considering all of the current budgetary constraints related to travel. He asked NAIC staff to consider potential dates for some type of call or meeting in early to late October.

3. Survey to States

Mr. Bruggeman provided an overview of a survey drafted by NAIC staff to chief financial regulators. He asked for comments from Working Group members and interested parties on the draft survey. Ms. Belfi suggested comment fields be added after each of the subquestions within survey question three, since she believed her state would add comments on some of those subquestions. Ms. Stock asked about the length of the full text. Dan Daveline (NAIC) responded that the survey would be done using an automated tool, which allows a fairly significant amount of text within each comment field. He stated that if space was so limited that it became problematic, the survey tool generally provides a mechanism for documents to be attached to the survey response. Mr. Bruggeman noted that because there were not a lot of comments, the Working Group should consider moving forward with the survey as drafted. He suggested the NAIC staff begin putting the survey into the automated form, with the intent of finalizing and distributed to states on Sept. 28th. Ms. Stock suggested the states be allowed three weeks to complete the survey.

A motion was made by Ms. Belfi to charge NAIC staff with distributing the survey to states as modified during the call and with any additional changes to be incorporated if received before Sept. 25. The motion was seconded by Ms. Stock and unanimously adopted.

Having no further business, the Investment of Insurers Model Act Revisions (E) Working Group adjourned.

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State Farm®
Providing Insurance and Financial Services
Home Office, Bloomington, Illinois 61710



Corporate Headquarters

One State Farm Plaza
Bloomington, Illinois 61710-0001

August 3, 2009

Mr. Dan Daveline
NAIC
2301 McGee Street
Kansas City, MO 64108

VIA EMAIL

Re: Investment of Insurers Model Act Revision Working Group Exposure – “Changes in the Financial Markets Since Original Passage of the Investment of Insurers Model Act”

Dear Mr. Daveline:

State Farm Insurance Companies appreciates the opportunity to comment on the proposed revisions to the Investment of Insurers Model Act. We would like to provide commentary regarding the proposed recommendation to require mandatory SVO filings for Schedule B mortgages.

Requiring SVO evaluation of commercial mortgages would not only create a large volume of new filings to the SVO, it could also be very difficult and costly for insurers to provide the required information. In many cases, the same type of documentation used to evaluate other security types would not be available or could be very difficult to obtain, especially for smaller commercial mortgages. This additional expense and effort might discourage insurers from investing in these smaller mortgage loans.

Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Julie M. Kirby".

Julie M. Kirby, CPA, CPCU, CLU, ChFC, FLMI
Finance Director
State Farm Insurance Companies

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Carl B. Wilkerson
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August 10, 2009

Investments of Insurers Model Act Revision (E) Working
National Association of Insurance Commissioners [C/O Dan Daveline]
444 North Capitol Street NW,
Suite 701
Washington, DC 20001

By email submission

The American Council of Life Insurers (ACLI) respectfully offers its preliminary input on the efficacy of the NAIC Investments of Insurers Model Acts (Defined Limits and Defined Standards). ACLI is a national trade association with 340 members that account for 93 percent of the industry's total assets, 93 percent of life insurance premiums, and 95 percent of annuity considerations. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance, and other retirement and financial protection products.

The NAIC formed the Investments of Insurers Model Act Revision (E) Working Group to consider whether the Model Acts (Defined Limits and Defined Standards) should be revised. In furtherance of this objective, the Working Group solicited information, opinions, and perspective on how financial instruments, capital markets and the investment climate have changed from that envisioned in the NAIC Model Acts.¹

We greatly appreciate the NAIC's solicitation of input on these significant issues. In addition to this worthwhile inquiry, there are a number of significant ongoing state and federal developments concerning financial institutions' investments, including:

- Recently approved [Amendments](#) to the NAIC Derivatives Instruments Model Regulation²;
- The NAIC [Survey](#) of State Insurance Departments Concerning Effectiveness of Model Investment Laws;³

¹ The NAIC issued a [charge](#) to the industry on these matters. According to the charge, This is perceived to be a useful way to identify instruments that may not be adequately captured by the Model Acts and to identify pressures and structural aspects of the investment process today that should be reflected in, or inform the provisions of and any revisions to, the Model Acts. The Working Group has asked industry to assist it in determining whether changes should be made to the Model Acts and if so what areas should be changed. Industry is asked to identify areas where the Model Acts no longer reflect market or best regulatory practice, where the Model Acts have proven to be deficient or where they can be improved.

² The NAIC Financial Condition (E) Committee and its VOS Task Force strongly advocated the adoption of the proposed amendments to the model law by a two-thirds or more majority of NAIC members and urged all members to implement this amended regulation into their respective state regulation. It is the belief of these financial regulators that this regulation is a necessary component of financial solvency regulation as derivative instruments will continue to spread through portfolios of regulated entities.

- Senate [Bill No. 961](#) (Authorizing the Regulation of Swaps Act)⁴;
- H. R. [Bill No. 977](#) (Derivatives Markets Transparency and Accountability Act of 2009);⁵ and
- Department of the Treasury Over-the-Counter Derivatives [Regulatory Reform](#)⁶

³ The NAIC plans to conduct a survey of all state insurance departments to ascertain whether the existing NAIC Investments of Insurers Model Acts provide sufficient regulatory tools to govern life insurers use of derivatives, including credit default swaps. Based on the states' input, the NAIC may revise the model acts accordingly. The NAIC Valuation of Securities Office has also prepared an extensive [analysis](#) of areas in the model laws that merit careful analysis and scrutiny for change.

⁴ This bill:

- Amends the Gramm-Leach-Bliley Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Commodity Futures Modernization Act of 2000, the Legal Certainty for Bank Products Act of 2000, and the Commodity Exchange Act to repeal prohibitions against regulation of credit default swaps and other swap agreements, whether traded on an exchange or over-the-counter, including commodity, equity, foreign currency, and interest rate swaps.
- Authorizes the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and specified other federal financial regulators to: (i) exercise oversight over any swap agreement entered into, purchased, or sold by any financial institution, entity, or person (for its own account or for the account of others), and any swap agreement, that is subject to the regulator's jurisdiction; and (ii) promulgate, interpret, and enforce regulations, issue orders of general applicability, and impose disclosure, reporting, or recordkeeping requirements relating to any such swap agreement; Grants the SEC sole oversight authority over: (i) any exchange or clearing agency; and (ii) any swap agreement traded on or cleared through such exchange or clearing agency;
- Grants the CFTC sole oversight authority over: (i) any trading facility or registered entity; and (ii) any swap agreement executed on, traded on, or cleared through such trading facility or registered entity.

⁵ Among other things, this bill:

- Directs the CFTC to (i) define and classify index traders and swap dealers for purposes of data reporting requirements; and (ii) set routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, derivatives transaction execution facilities, foreign boards of trade, and electronic trading facilities with respect to significant price discovery contracts.
- Requires the CFTC, to the extent information is available, to disaggregate and make public monthly: (i) the number of positions and total notional value of index funds and other passive, long-only and short-only positions in all markets; and (ii) data on speculative positions relative to bona fide physical hedgers in those markets.
- Subjects persons involved in derivative and swap transactions, as well as large traders in over-the-counter contracts, to reporting and recordkeeping requirements.
- Directs the CFTC to assess whether certain derivative, swap, and similar agreements, contracts, or transactions that are fungible with agreements, contracts, or transactions traded on or subject to the rules of any board of trade or electronic trading facility with respect to a significant price discovery contract have the potential to (i) disrupt the liquidity or price discovery function on a registered entity; (ii) cause a severe market disturbance in the underlying cash or futures market; or (iii) prevent or otherwise impair the price of a contract listed for trading on a registered entity from reflecting the forces of supply and demand in any market. Authorizes the CFTC, upon a positive finding, to impose position limits.
- Authorizes the CFTC to: (i) suspend trading of credit default swaps; and (ii) initiate and conduct criminal litigation relating to a violation of the Commodity Exchange Act if the Attorney General has declined to do so.

⁶ According to the Treasury Department plan:

- Regulators must have the following authority to ensure that participants do not engage in practices that put the financial system at risk:
 - The Commodity Exchange Act (CEA) and the securities laws should be amended to require clearing of all standardized OTC derivatives through regulated central counterparties (CCP):
 - CCPs must impose robust margin requirements and other necessary risk controls and ensure that customized OTC derivatives are not used solely as a means to avoid using a CCP.

Collectively, these legislative and regulatory actions are formidable. It is critically important, therefore, to maintain an overall awareness of the multiple state and federal initiatives that could affect management of life insurers' assets and liabilities. Through the deliberative and thorough approach being taken by the NAIC, conflicts or redundancies in life insurers' asset management can be averted. Moreover, suggestions for enhancement can be considered in an open and healthy administrative atmosphere.

Statement of Position

ACLI supports the NAIC's reasonable inquiry into the efficacy of the Model Acts. We note that the Model Acts reflected significant constructive NAIC and industry interaction over a five year period prior to the ultimate adoption of the Model Acts and also reflect alternative approaches to imposing qualitative and quantitative limits on insurer investments. The Model Acts when adopted have generally functioned as intended, allowing life insurers to reasonably and responsibly manage assets fulfilling long-term obligations to contract owners.

As a preliminary matter, we do not believe that the recent turmoil in the economy is in any way related to deficiencies in scope or quality of the Model Acts. Because of the many urgent and coextensive regulatory and legislative initiatives on financial service institutions' investments on which our subject matter committees have been focused, we will need additional time to thoroughly respond to the requests in the industry charge on the Model Acts.

The Working Group charge also asks the industry to discuss how investment decisions are made, how investment risk is managed and or mitigated, especially when new "financially engineered"

-
- All OTC derivatives dealers and all other firms who create large exposures to counterparties should be subject to a robust regime of prudential supervision and regulation, which will include:
 - Conservative capital requirements
 - Business conduct standards
 - Reporting requirements
 - Initial margin requirements with respect to bilateral credit exposures on both standardized and customized contracts
 - To ensure regulators have comprehensive and timely information about the positions of each and every participant in all OTC derivatives markets, a new framework should:
 - Amend the CEA and securities laws to authorize the CFTC and the SEC to impose:
 - Recordkeeping and reporting requirements (including audit trails).
 - Requirements for all trades not cleared by CCPs to be reported to a regulated trade repository.
 - CCPs and trade repositories must make aggregate data on open positions and trading volumes available to the public. CCPs and trade repositories must make data on individual counterparty's trades and positions available to federal regulators.
 - The movement of standardized trades onto regulated exchanges and regulated transparent electronic trade execution systems.
 - The development of a system for the timely reporting of trades and prompt dissemination of prices and other trade information.
 - Encourage regulated institutions to make greater use of regulated exchange-traded derivatives.
 - To prevent market manipulation, fraud, and other market abuses, the Commodity Exchange Act (CEA) and securities laws should be amended to ensure that the CFTC and the SEC have:
 - Clear and unimpeded authority for market regulators to police fraud, market manipulation, and other market abuses.
 - Authority to set position limits on OTC derivatives that perform or affect a significant price discovery function with respect to futures markets.
 - A complete picture of market information from CCPs, trade repositories, and market participants to provide to market regulators.

investment products enter the marketplace. These subjects are detailed and complex. We believe that it would be most constructive to address these questions in a dynamic interactive format rather than in a static comment letter discussion. We can undertake to assemble a panel of knowledgeable industry experts to address these questions with the Working Group.

The Working Group charge to the industry also invites input on any other issue that is deemed necessary to ensure that the Working Group will be able to make a comprehensive assessment of the adequacy of the Model Acts and form an appropriate recommendation to the Financial Conditions (E) Committee. We have two immediate suggestions in response to this charge. First, we note that a relative minority of states have adopted either of the Models Acts in full since their adoption in 2001. More widespread adoption of model laws governing insurers' investments would enhance regulatory uniformity and help life insurers manage assets in fulfillment of their long-term commitments to contract owners more efficiently and effectively. We encourage, therefore, the NAIC to consider actions that may be appropriate to achieve more widespread enactment of model laws regarding insurer investments.

Second, while we support federal regulation of derivatives markets and marketplace professionals, we strongly support the authority of state insurance departments to regulate life insurers' uses of derivative instruments to manage the risks of assets and liabilities. We anticipate that Congress will accelerate its consideration of derivatives regulation, and believe it is important to properly convey the scope and rigor of state insurance laws and regulations governing life insurers' use of derivative instruments. It would be invaluable for the NAIC and state insurance departments to become engaged in this federal legislative dialog to assure that life insurers' currently existing state regulation over the use of derivative instruments is properly understood and communicated to Congress.

Conclusion

We commend the NAIC for inviting input on its careful evaluation of the Model Laws. We hope to be able to provide more detailed feedback in response to the questions posed in the industry charge after our members' financial and investment experts have an opportunity to thoroughly evaluate the efficacy of the Model Laws. It is important that laws governing investments of insurers allow life insurers to manage assets in a responsible and effective manner reflecting the unique nature of their long-term obligations to contract owners. In addition, it is critically important to be continually aware of the many other regulatory and legislative initiatives that are currently under study so that conflict and redundancies can be avoided, and life insurers can operate efficiently and safely to continue to fulfill their important obligations.

We greatly appreciate your attention to our views.

Sincerely,



Carl B. Wilkerson

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Draft: 9/25/09

NAIC/AICPA (E) Working Group
Washington, DC
September 22, 2009

The NAIC/AICPA (E) Working Group of the Financial Condition (E) Committee met in Washington, DC, Sept. 22, 2009. The following Working Group members participated: Doug Stolte, Chair (VA); Al Bottalico (CA); Jim Armstrong (IA); Jim Hanson (IL); Judy Weaver (MI); Fred Heese (MO); Jim Nixon (NE); Thomas Burke (NH); Bill Harrington (OH); Russell Latham (OR); Steve Johnson (PA); and Jake Garn (UT). Also participating were: Dave DelBiondo (PA); and David Smith (VA).

1. Status Report of Recent AICPA Activities/Actions

Ed Metzger (KPMG) reported on current projects of the American Institute of Certified Public Accountants (AICPA). The AICPA report discussed a new Statement on Auditing Standards regarding the objectives and conduct of the audit, as well as a new Statement on Auditing Standards regarding compliance audits. In addition, the report addressed the development of Statement of Position 09-1 regarding eXtensible business reporting language (XBRL) and several projects of the Financial Accounting Standards Board.

2. Survey Results Regarding Implementation of the Model Audit Rule Revisions

Bruce Jenson (NAIC) discussed the updated results of a survey regarding the states' progress toward adopting the revised requirements for the Annual Financial Reporting Model Regulation (#205), commonly known as the Model Audit Rule. Based on the results of the survey, 31 states—Alabama, Arizona, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Virginia, West Virginia, Wisconsin and Wyoming—have adopted the revised requirements. In addition, four other states—Arkansas, California, Nevada and Tennessee—have publicly exposed the proposed revisions to their statutes or regulations that incorporate the new requirements. Of the remaining jurisdictions, 15 plan on adopting the revisions prior to year-end, with the other state planning to complete adoption within the first few months of 2010. NAIC staff will continue to track the states' progress toward adopting the requirements, and the results will be discussed at the next national meeting.

3. Discussion of Access to External Audit Workpapers

The Working Group recently received a referral from the Risk Assessment Implementation Subgroup regarding access to external audit workpapers when performing risk-focused examinations. The referral was the result of a recent survey of chief financial examiners regarding the implementation of risk-focused examinations. Most survey respondents indicated that external audit workpapers were useful in completing the risk-focused exam process; however, the timing of gaining access to workpapers was noted as a significant issue complicating the use of external audit work. As a result of the survey responses, the Working Group was asked to work with the CPA firms to determine whether the timing for the release of external audit workpapers to examiners could be improved and whether it might be possible for examiners and auditors to work concurrently in performing walkthroughs and reviewing controls of the insurer.

Mr. DelBiondo stated that his state has had some success in working concurrently with the external auditors and recommended that further discussions between regulators and CPA firms take place in this area. Deborah Whitmore (Ernst & Young) stated that the CPA firms were willing to discuss the issues further with the regulators but that they would like more information regarding the situations that led to this request. Ms. Whitmore stated that each of the six CPA firms represented at the meeting have a policy in place that allows the release of external audit workpapers prior to report finalization, as long as the work has been subject to the firms' review processes.

Mr. Stolte asked NAIC staff to gather additional information regarding the situations that led to the request, so that the information can be provided to the CPA firms. Mr. Stolte stated that the issue will be discussed in further detail during the Working Group's next meeting.

4. Discussion of Model Audit Rule Interpretation Issues

Mr. Stolte stated that several interested parties requested that the Working Group discuss its expectations for insurers in the event that not all states adopt the revisions to the Model Audit Rule prior to Jan. 1, 2010. As discussed during the survey update, it appears that the states are on track to adopt the revisions prior to their effective date. Therefore, the Working Group will defer further discussion on this topic until its next meeting, when the results of the states' adoption process should be nearing completion.

Mr. Stolte stated that another issue brought to the attention of the Working Group is the impact that Statement of Standards in Attestation Engagements (SSAE) No. 15 could have on compliance with the Model Audit Rule. SSAE No. 15 provides guidance for auditors in attesting to the effectiveness of a non-public company's internal controls. Interested parties have asked whether such an attestation could be utilized in complying with the Model Audit Rule requirement to file Management's Report of Internal Control over Financial Reporting. After briefly discussing the guidance within SSAE No. 15, the Working Group concluded that insurers receiving an attestation of internal controls in accordance with this guidance should be able to utilize the attestation in complying with the Model Audit Rule requirements. However, the Working Group could not come to agreement on whether the filing of an SSAE No. 15 report, along with an addendum as required for SOX Section 404 report filers, would be acceptable without changing the language within the Model Audit Rule. Therefore, NAIC staff was asked to get an interpretation from legal staff on this issue and report the findings to the Working Group at its next meeting.

Mr. Stolte stated that the Working Group continues to receive a number of questions regarding the "group of insurers" concept included within the Model Audit Rule and its Implementation Guide. Many of the questions focus on how to determine which controls should be reviewed when preparing to issue the Management's Report of Internal Control over Financial Reporting for a group of insurers. The Working Group concluded at its previous meeting that, due to the requirement to issue an assertion on the effectiveness of internal control over statutory financial reporting (which is performed on a legal entity basis), each control deemed significant to an individual legal entity within the group should be subject to review and reporting requirements. In an attempt to clarify the guidance in the Implementation Guide on this issue, revisions to the guidance were distributed and discussed. On a motion from Mr. Johnson, seconded by Mr. Latham, the Working Group agreed to expose the proposed revisions to the Implementation Guide for a 30-day comment period.

Another interpretation question received by the Working Group is how to report a material weakness identified for one entity within a group of insurers that is not considered a material weakness for the group overall. Members agreed that a material weakness for one of the legal entities within the group is required to be reported, even if the material weakness does not apply to the entire group. The options for reporting the material weakness would be to explain the issue in Management's Report of Internal Control over Financial Reporting for the entire group, or to issue a separate report for the individual entity that experienced the material weakness. Keith Bell (Travelers) indicated that the interested parties could assist in drafting some suggested guidance in this area.

Mr. Stolte stated that another question received from interested parties relates to bookkeeping services. The new Model Audit Rule requirements include bookkeeping as a prohibited service that cannot be provided by the external auditor to an audit client. However, the regulation does not provide interpretive guidance as to what constitutes bookkeeping services. Questions have been received about whether annual statement preparation or audited statutory financial statement preparation would constitute bookkeeping services. Members of the Working Group agreed that the production of annual statements would be considered a bookkeeping service, but that drafting the audited statutory financial statements would not be considered a bookkeeping service as long as proper controls are in place. NAIC staff was asked to draft guidance for inclusion in the Implementation Guide to clarify this interpretation.

Mr. Stolte stated that the Working Group received a proposal from interested parties regarding potential changes to frequently asked question (FAQ) #5 in the Implementation Guide. Ed Wilkins (Deloitte & Touche) stated that the changes were proposed to conform the Model Audit Rule guidance on audit partner rotation to that of the U.S. Securities and Exchange Commission (SEC). Mr. Smith asked whether the proposed changes would conflict with guidance in the Model Audit Rule. NAIC staff was asked to get an interpretation from legal staff on this issue and report the results to the Working Group at its next meeting. On a motion from Mr. Johnson, seconded by Mr. Bottalico, the Working Group agreed to expose the proposed revisions to the Implementation Guide for a 30-day comment period.

Mr. Stolte stated that interested parties have requested the creation of a new FAQ listing that could be provided by the Working Group to answer common Model Audit Rule questions that have already been interpreted. Although the answers to these questions might not rise to the level of guidance to be included in the Implementation Guide, they might be helpful to insurers seeking additional information. The Working Group agreed that such a listing could be useful to the industry. As such, NAIC staff was asked to draft a document that provides answers to common questions that have been interpreted by the Working Group, but not incorporated into the Implementation Guide.

Mr. Bell requested that, in addition to providing an FAQ document, the insurance industry could benefit from the creation of a subgroup to answer additional interpretation questions as they arise. Mr. Stolte expressed his agreement with the proposal to create such a subgroup. On a motion from Mr. Johnson, seconded by Mr. Harrington, the MAR Interpretation Subgroup was created to address industry questions arising from the implementation of the new Model Audit Rule requirements.

5. Any Other Matters

Mr. Stolte stated that the SEC recently proposed rule No. 33-9052 regarding board risk management and executive compensation. As one of the charges of the Working Group is to monitor rules and regulations promulgated by the SEC, the Working Group plans to track the SEC's progress in adopting this rule, as it might be appropriate to consider its impact to insurance regulation. Mr. Stolte asked NAIC staff to continue monitoring the progress of the SEC in this area, so that the Working Group can discuss the issue in more detail after the rule has been finalized.

Having no further business, the NAIC/AICPA (E) Working Group adjourned.

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Draft: 9/2/09

National Treatment and Coordination (E) Working Group
Conference Call
August 26, 2009

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call Aug. 26, 2009. The following Working Group members participated: Jill Jacobi, Co-Chair (CA); Cindy Donovan, Co-Chair (IN); Ray Akers (CO); Kathy Belfi (CT); Mary Mostoller (FL); Stewart Guerin (LA); Anne Morgan (NC); Will Smith (PA); Eric Showgren (UT); Raquel Pino-Moreno (VA); Gayle Pasero (WA); and Linda Johnson (WY). Also participating were: Gloria Glover (AK); Cary Cook (AZ); Emma Hirschhorn (CA); Louis Quan (CA); Nancy Ferguson (IA); Carrie Colborn (IN); David Browning (MS); Lin Riippi (NV); Steve Johnson (PA); and Jeff Hunt (TX).

1. 2010 Charges

Ms. Jacobi recited the Working Group's 2009 charges and asked the group to confirm that the charges would remain the same for 2010. The Working Group confirmed the current charges for 2010.

2. Receive July 8 Minutes

Ms. Donovan mentioned the last paragraph on Page 2 should reference that the next conference call was scheduled for Aug. 26, not Aug. 22. Ms. Jacobi noted that the first paragraph mentions a new location for the UCAA link due to a recent update of the NAIC Web site. Upon a motion by Ms. Pasero and a second by Mr. Showgren, the Working Group voted unanimously to receive the July 8 minutes of the Working Group (Attachment Five-A).

3. Receive Issues Subgroup July 22 Summary

Ms. Donovan indicated that the content of the July 22 summary of the Issues Subgroup is a detailed discussion of the corporate amendment withdrawal/surrendering of a certificate of authority. It was determined by the Subgroup that all changes and updates discussed would be incorporated and distributed to the Subgroup members for additional comments prior to including with the materials for the Working Group call today. Upon a motion by Ms. Donovan and a second by Mr. Guerin, the Working Group voted unanimously to receive the summary of the Issues Subgroup (Attachment Five-B).

4. Discuss Survey Results for Change of Address, Form 14

Ms. Jacobi said that 21 states responded to the attached survey regarding Form 14, which is used for change of company address and various company contact address changes. The states were asked whether the form was required or accepted and to provide details regarding statute or regulation supporting their request for information. The results indicated that more states accept the form instead of require it. Ms. Donovan suggested resending the survey to those states that have not yet responded, before reaching any conclusions from these results. Hearing no objections, the Working Group tabled this agenda item for the next scheduled conference call.

5. Discuss Corporate Amendment Withdrawal Form.

NAIC staff confirmed that the draft form distributed prior to this call contains all comments received to date. Ms. Morgan added that North Carolina is considering a withdrawal form and would like to incorporate this uniform form. She suggested that item #7, "Is there any business in force or any outstanding claims...", be a stronger statement by asking for a signature of an actuary. Ms. Donovan expressed concern that an actuary could attest to the statement as it is currently written, which includes contingent liabilities or lawsuits. Ms. Morgan stated that North Carolina has encountered instances where a company has misrepresented their outstanding claims. Ms. Donovan asked if the attestation and certification of this form would suffice. Ms. Morgan thought that someone in the company with the expertise should be attesting to the amount of outstanding claims. Ms. Jacobi stated that the actuarial opinion states that the actuary is relying on the information that is provided by the company. Mr. Hunt asked if what is being requested is a certification from an actuary that no more outstanding claims at the point of surrendering their license. Generally a company would not have any reserves left after they surrender their license, but you cannot say with 100% accuracy that there will not be any remaining claims, depending on the line of business. Ms. Morgan will look into this further and e-mail NAIC staff for distribution on exactly what North Carolina is looking for in this

statement. Ms. Jacobi mentioned that the certification and attestation for the withdrawal form does require the officers to certify the information under penalty of perjury.

Ms. Donovan asked if all of the states allow for an assistant secretary and vice president to sign the form, in lieu of the president and secretary. Indiana allows for an assistant secretary and vice president to attest. Ms. Jacobi mentioned that the asterisk allows for state-specific information. Ms. Riippi commented on item #1, for the affidavit of a lost certificate of authority, which must be signed by the president of the company or corporate officer. The majority of the states require the affidavit be signed by a corporate officer, not specifically stating which officer. Ms. Glover asked if this affidavit was a state-specific form or a statement written by the company. The footnote could reference to use the state form, if available, for the affidavit. Ms. Jacobi suggested considered developing a uniform form for an affidavit of lost certificate of authority for corporate amendment applications. Mr. Showgren suggested a short survey to the states requesting their requirements for an affidavit of lost certificate of authority. Ms. Pasero made a motion and was second by Mr. Showgren to send a survey to the states regarding their requirements for an affidavit of lost certificate of authority. Pending responses from the survey, an e-vote will be sent to the Working Group to refer developing a draft uniform affidavit to the Subgroup.

6. Other Matters

Nancy Stepanski (Westmont Associates) gave a brief update on the Essent pilot project. Essent Guaranty's application is pending in the majority of the states for one month. The following jurisdictions have approved the application: Illinois, District of Columbia, South Dakota and North Dakota. It is currently on the agenda for the admission committee in South Carolina and Georgia.

Hugh Alexander (Alexander Law Firm) said the states of Michigan, Massachusetts and New York have worked together to resolve their issues. He said the final orders approving the merger will take place next week, and the UCAA merger application will be filed in mid-September. Through a survey sent to all of the states, a majority of them will be in a good position to address the issues of corporate approval of the filing issues of the surviving company in an orderly fashion so the merger would occur Dec. 31.

Jane Conard (NAIC staff) asked for confirmation from the Working Group for the electronic application business rules by not allowing the company to add or delete a state once the application has been submitted. The Working Group agreed that this should not be allowed in the electronic application. Upon a motion by Mr. Showgren and a second by Ms. Johnson, the NAIC programmer will safeguard the state selection so that no changes can be made once an application is submitted. Ms. Jacobi asked if this change would only be implemented for the electronic application or if the instructions should also reference that a state cannot be added or deleted from the application once it has been submitted. NAIC staff responded that, at this point, the change will be to the electronic form only.

Ms. Donovan stated that Questionnaire, Form 8, for the expansion application and the primary application, questions #31 through #34 are intended for redomestication application only. She further explained that the redomestication application is part of the primary application, which is not available in electronic format. NAIC staff requested removing questions #31 through #34 in the edit application screen, but they will remain in the printed form (for consistency purposes) with the hardcopy form. NAIC staff suggested defaulting to "not applicable" and not allow user to enter an answer. Ms. Donovan suggested that the application be pre-populated with a "not applicable" response and indicate that this question is for a redomestication application. Mr. Showgren suggested adding "applies to redomestication filings only" next to the field where the applicant would answer the question or after each question. Ms. Jacobi asked if NAIC staff could draft a mock-up and send it to via email prior to the Working Group making a decision via e-vote.

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

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Draft: 7/14/09

National Treatment and Coordination (E) Working Group
Kansas City, MO
July 8, 2009

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call July 8, 2009. The following Working Group members participated: Jill Jacobi, Co-Chair (CA); Cindy Donovan, Co-Chair (IN); Kathy Belfi (CT); Libby Thompson (FL); Stewart Guerin (LA); Anne Morgan (NC); Russell Latham (OR); Robert Brackbill (PA); Jake Garn (UT); Raquel Pino-Moreno (VA); Gayle Pasero (WA); and Linda Johnson (WY). Also participating were: Gloria Glover (AK); Cary Cook (AZ); Nancy Ferguson (IA); Mike Boutwell (LA); Lin Riippi (NV); and Steve Johnson (PA).

1. Credit Report Survey

Ms. Donovan noted that four states had not responded to the credit report survey. NAIC staff added that the updated chart had been posted to the UCAA Web site and all vendors had been notified of the update to the Biographical Affidavit guidelines. Ms. Jacobi recommended that the states be contacted regarding the updates with a brief explanation regarding the changes to the guidelines. The co-chairs will draft a brief explanation for NAIC staff to forward to the states. Ms. Donovan mentioned that the NAIC home page had been updated and the UCAA link was no longer located on the home page. To navigate to the UCAA home page, select the "Industry Licensing and Filing" link.

2. Issues Subgroup June 24 Conference Call

Ms. Donovan said the drafting of a corporate amendment application for a foreign company surrendering its Certificate of Authority is moving along and the Subgroup would like to review the draft on its July 22 conference call before presenting it to the Working Group for consideration. The Subgroup has drafted a survey for the address change/contact change notification, Form 14, and would like to discuss in detail as the next agenda item. Upon a motion by Mr. Guerin and second by Mr. Latham, the Working Group voted unanimously to receive the June 24 summary of the Issues Subgroup (Attachment Five-A1).

3. Form 14, Change of Address/Contact Notification Survey

Ms. Donovan summarized the content of the survey, which includes a brief explanation for the purpose of the survey, a history of the form and why it was originally developed. She mentioned that the fourth line in the spreadsheet does not display the entire sentence, and in order to view the sentence, the cells need to be merged. The Subgroup discussed separating Form 14 from the corporate amendments and developing instructions for Form 14 and how the form should be used. Ms. Ferguson asked if Form 12, Uniform Consent to Service of Process, was part of the questionnaire, because Iowa requires a Form 12 with the filing. Ms. Donovan explained that Form 12 was part of a corporate amendment filing and its intent was for the changes that are typically not reported in the annual statement. Ms. Jacobi asked if the survey should ask for requirements or if it should specify what the state requires, allows or does not address in each state. Ms. Glover added that the survey should ask what each state will accept, as opposed to what is required. Alaska does not have a requirement for the type of form used, only that the company notify the state of an address change. Ms. Jacobi agreed that asking each state what is required might help with further editing of Form 14. Ms. Riippi stated that Nevada only tracks statutory and mailing addresses for renewal for the company's certificate of authority. If there are categories on Form 14 that none of the states are requiring, then they could be eliminated from the form. Ms. Glover stated that this survey is asking two different questions: 1) which addresses are the states monitoring and want information on; and 2) which forms do the states require in order to change that information. Ms. Jacobi suggested adding "R" for required and "A" for accept as an answer for each column. Ms. Donovan suggested changing question #1 to read, "For changes to the following types of addresses, please indicate for each column what your Department R-requires; A-accepts, or N/A-for any address not maintained by your state. Ms. Jacobi noted that #3v did not appear on her printed form indicating applicable code or regulation. Ms. Pasero suggested changing #3k to read, "If Yes," instead of "If so, please explain why." In question #4, the second word "is" should be removed to read, "Is your state using the UCAA process." Upon a motion by Ms. Pasero and second by Mr. Guerin, the Working Group voted unanimously to distribute the survey, with the referenced revisions. The survey will be distributed July 9, with a requested completion date of July 24.

4. Rate and Form Survey Results

Ms. Jacobi summarized the attached survey results titled, “What are your rate and form filing requirements pertaining to company mergers, name changes or other changes.” Some states require the refiling of all forms; some states allow a list of previously reviewed forms with the form number indicated; some require a certification or approval of the corporate change be provided or an endorsement with the name change instead of the full form. In addition to the survey is a list of comments. One of the issues is timing; i.e., most of the time, companies want to have a national rollout of products with the new name. The question is whether the form filing and the corporate name change can be done simultaneously or whether the corporate change must be approved before the forms can be filed, thereby creating delays in rolling out the product. The industry’s comments included the absence of electronic submissions, inadequate form instructions and non-acceptance of facsimile signature by some states. Ms. Jacobi asked if the comments were referring to the secretary of state. Nancy Stepanski (Westmont Associates) agreed that it could be referencing the secretary of state and not SERFF, because SERFF utilizes all the state forms — and not all states require insurance companies to be registered with the secretary of state. Ms. Donovan suggested contacting the Operational Efficiencies Working Group (OEWG) for clarification of the comments and survey results before proceeding with a survey. The co-chairs will have another joint conference call with the chairs of the OEWG.

5. Potential Expansion Application Pilot Project

Mr. Johnson summarized the necessity of financial mortgage guarantee insurance companies, by reducing the risk of the financial institutions for people buying houses with less than 20% down. By reducing the financial institution’s risk, this will allow for more mortgage loans. The mortgage guarantee industry is the backbone now and in the future, and it is going to continue to allow people to buy homes with less than 20% down — which is the majority of home sales in this country — and is going to need to be stabilized to have the economic recovery that is needed. A start-up company has approached Pennsylvania offering an alternative with new capital and management expertise. There is a need in this marketplace for new capital in the mortgage guarantee industry. A mortgage guarantee company cannot be effective unless it has a license in all 50 states. It is difficult to underwrite mortgages on a state-by-state basis, especially under a bundle basis from a financial institution; companies do not want to sift through which mortgages are from which state — they want it to be based on underwriting criteria and not by specific geographic location. This start-up company is worthy of the pilot program and requests a regulator-only call so the company can introduce their plan. Ms. Jacobi suggested a regulator-to-regulator call at 2 p.m. CT / 3 p.m ET July 15.

The Issues Subgroup scheduled its next conference call for July 22. The Working Group will meet via conference call Aug 26.

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

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Draft: 7/1/09

Issues (E) Subgroup
Conference Call
June 24, 2009

The Issues (E) Subgroup of the National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call June 24, 2009. The following Subgroup members participated: Cindy Donovan, Chair (IN); Gloria Glover (AK); Jill Jacobi (CA); Maura Welch (CT); Mary Mostoller (FL); and Godwin Ohaechesi (TX). Also participating was: Jeff Hunt (TX); and Gayle Pasero (WA).

1. Discuss the Development of a Survey Requesting State Requirements for Change of Address/Contact Notification.

Ms. Donovan summarized the draft survey provided in an Excel format from the Word document draft previously discussed during the National Treatment and Coordination (E) Working Group meeting on June 3. The Word document was quite lengthy and repeated several questions. In the past, responses have been greater when the survey was more condensed. The two issues regarding this survey include statutory changes and other types of address changes. The Excel spreadsheet attached the two types of address changes separately. Ms. Jacobi agreed that the spreadsheet was an easier format to read. She suggested that the instructions to provide statutory, regulation or department procedure references specify the request “for each column” be included. The survey should include a brief explanation of the content and why it is being requested.

Ms. Donovan suggested an introductory paragraph explaining that when Form 14 was first developed it encompassed various state requirements, and those requirements may not apply to every state. Ms. Glover added that the introduction should explain what the survey is trying to accomplish. Ms. Pasero asked if the survey should include a question asking which state is responding to the survey. Ms. Donovan made a note to add a question to identify the state and who is responding for the state.

Ms. Jacobi asked if question “w” was in reference to Form 14 or a corporate amendment statutory address change. Ms. Donovan suggested breaking it out for both Forms. Ms. Jacobi suggested asking if the state was using Form 14, and if not, why not. A second question should ask if the corporate amendment application was used for statutory address changes, and if not, why not. She also suggested a brief description of what each Form was intended for—general address changes or statutory changes/amendments to the certificate of authority.

Ms. Pasero suggested for question “j” to indicate “yes” or “no” as the response when asking if articles of incorporation are required to be submitted with the address change.

Ms. Mostoller added that the e-mail, fax, or phone number should also be included as a change type, and perhaps the instructions should be updated for Form 14 now that more states are moving toward electronic notifications/communication between the Department and industry. NAIC staff indicated that most inquiries regarding Form 14 are in reference to which Form to use, if by-laws and articles should also be included, and if all states use this Form or if they can update the Department via e-mail or letter. Ms. Donovan confirmed that some states will accept notification via company letterhead or e-mail if the address change is not a statutory address change, and the instructions should be updated in the manual and on the NAIC Web site. Ms. Donovan suggested making the Form 14 instructions a separate category like the primary and expansion applications. NAIC staff suggested drafting instructions and updating after the results are received from the survey. Ms. Glover suggested waiting to draft the instructions until after the survey results are reviewed.

Upon a motion by Ms. Jacobi, seconded by Ms. Glover, the Subgroup voted unanimously to review the updated survey before distributing. The survey will be reviewed by the Working Group during the next scheduled conference call on July 8 and distributed to the states on July 9.

2. Drafting the UCAA Corporate Amendment Application for a Foreign Company Surrendering its Certificate of Authority

Ms. Donovan summarized the updated Foreign Insurance Company Withdrawal/Complete Surrender of Certificate of Authority (C of A) application, which incorporated suggestions made by the Working Group. Modifications were made regarding fees; premium taxes due and payable; making resolution of the board of directors a separate document; and surrendering the original C of A and any other state-specific items. The purpose of this application is strictly for a foreign company withdrawal regarding a complete surrender of their C of A. Mr. Hunt questioned the purpose of section i, bullet ii. If the purpose of the application is to surrender its certificate of authority if the section before that (h) mentioned that no

business is in force, and bullet ii references if life insurance, annuity contracts and/or health insurance policies remain in force, there should not be any more exposure to the insurance company. Ms. Donovan agreed that bullet ii should be removed.

Mr. Hunt added that bullet iii refers to assumption reinsurance, which is generally a prior approval process before a company can request to surrender their C of A. She asked if bullet iii should include showing evidence that this has been done, or if it should be in conjunction with the withdrawal application. Texas requires an assumption be done prior to filing a withdrawal application, and California requires the assumption to be done simultaneously with the withdrawal. Ms. Donovan asked if the foreign state would still need to go through the approval process if a company was withdrawing from several states and the domiciliary state reviewed the reinsurance assumption. Mr. Hunt indicated that Texas would still review the assumption for the protection of its policyholders in Texas, where the domiciliary state would do the same. Ms. Jacobi suggested making a reference that some states may review the assumption reinsurance transaction prior to the withdrawal and others would do it simultaneously. Ms. Donovan suggested creating a chart of information to post on the NAIC Web site with the various state requirements. Mr. Hunt also mentioned that a company would need to withdraw in all foreign states before they could surrender their certificate in their domestic state. Their domiciliary state would need to be notified prior to surrendering from a foreign state similar to the prior approval for an expansion application. Ms. Donovan suggested revising the wording on bullet iii to include prior to or in conjunction with the withdrawal application. Ms. Pasero suggested listing the states on the Form that require prior approval for assumption reinsurance if there are not too many.

Ms. Glover asked if bullet i was a prior notification to policyholders that a company is no longer conducting business. Mr. Hunt mentioned that this pertains more toward an exit plan or runoff and not a withdrawal. Ms. Jacobi mentioned that this may be a requirement of some states for a notice of withdrawal and may not be limited to life companies as the bullet indicates. Ms. Donovan suggested reviewing the survey results for state requirements to see if this was regarding foreign company withdrawal and not domestic state withdrawal.

Ms. Jacobi asked for clarification regarding the requirement for question “e,”—should it reference a post office address or mailing address. Mr. Hunt added that a service of process might be sent to a different address other than the company mailing address. Ms. Donovan suggested changing the requirement to a mailing address to which the commissioner may mail a copy of any service of process against the withdrawing company.

Ms. Glover asked if the requirement for question “h” should include the word “and,” because it seems to reference the requirements of letter “i,” and they should be separate. Mr. Hunt added that a statement indicating that no business is in force and that there are no outstanding claim liabilities, contingent liabilities, or pending lawsuits or regulatory actions would prohibit a state from cancelling a license.

Mr. Hunt asked what type of report of fees should be included in item number two—a receipt of payment or acknowledgement of payment. He will look at the wording in Texas’ requirements and help reword this item.

The Subgroup suggested reviewing the revised draft one more time before presenting to the Working Group. The Subgroup will meet again via conference call on July 22.

Having no further business, the Issues (E) Subgroup adjourned.

Draft: 8/5/09

Issues (E) Subgroup
Conference Call
July 22, 2009

The Issues (E) Subgroup of the National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met via conference call July 22, 2009. The following Subgroup members participated: Cindy Donovan, Chair (IN); Gloria Glover (AK); Jill Jacobi (CA); Joan Nakano (CT); Dave Lonchar (DE); Mary Mostoller (FL); and Jeff Hunt (TX). Also participating were: Cary Cook (AZ); Carrie Colborn (IN); Raquel Pino-Moreno (VA); and Gayle Pasero (WA).

1. Discuss Additional Drafting of the UCAA Corporate Amendment Application for Foreign Company Complete Withdrawal or Surrendering its Certificate of Authority.

Ms. Donovan summarized the updated Foreign Insurance Company Withdrawal/Complete Surrender of its Certificate of Authority (C of A) application, which incorporated suggestions made by the Subgroup from a prior conference call.

Ms. Jacobi pointed out in Item 1(h) that some states, namely California, allow for a discharge of liabilities by reinsurance assumption; therefore, it might be helpful to add such a reference to 1h. She added that some states, Texas might be one of them, where the discharge would happen before the application to withdraw, and other states where the discharge would occur simultaneously with the application. Item 1(h) implies that there must be a statement indicating that there are no outstanding liabilities, which not all states require. Mr. Hunt indicated that Texas would evaluate the discharge and the withdrawal application as two separate transactions, even though they work conjunctively. Ms. Jacobi suggested adding language to that effect to Item 1(h). It is more common that there is no liability on the books or if there is run-off that must be discharged at the time of the withdrawal application. Ms. Jacobi suggested that Item 1(h) should read, "A statement indicating no business is in force and there are no outstanding claim liabilities or pending liabilities will be discharged by assumptive reinsurance arrangement (see attached reinsurance agreement)." This wording will give flexibility to the industry, in case they must file everything at once for timing purposes.

Ms. Jacobi asked for clarification on the withdrawal form for the Applicant Officer's Certification and Attestation where it states, "One of the Two officers (listed below) of the Applicant must read the following very carefully." She wondered whether that should be the same officers listed under Item 3. Ms. Donovan pointed out that Item 1(j) of the guidelines requires a statement to be signed by the president or vice-president and the secretary or assistant secretary of the corporation. This statement contradicts the Officer's Certification and Attestation. Ms. Jacobi suggested changing the "I" statements to "we" statements and requiring more than one signature, plus a witness. She also suggested that the instructional sentence be changed to "The Officers (listed below) of the Applicant must read the following very carefully."

Ms. Glover pointed out that the end of the second sentence referencing applying for licensure should be changed to withdraw/surrender of its certificate of authority. Susan Lee (BCS Insurance Group) asked whether it was necessary to have two officers' signatures and a witness. Mr. Hunt added that it might be that one officer holds two titles within the company; therefore, the signature of a witness would have more function.

Ms. Glover said that if the company were completing this form for each state they are applying to withdraw from, then there should be a place at the top to indicate that state. Ms. Jacobi suggested adding that in between Item 2 and Item 3, because Item 3 asks for the foreign state's date of issuance of the original certificate of authority. Mr. Glover suggested adding that to the top of the form beneath the heading, "This statement is seeking the complete withdraw/surrender of its Certificate of Authority from ____." Beneath the Statement of Withdraw, the word "Expansion" should be removed before the word "Application" to read "(Foreign Insurance Company Withdrawal/Complete Surrender of Certificate of Authority Application)."

Ms. Glover said Item 5 would be easier for the company to complete by rephrasing it as a question. It should read: "Have all assessments by guaranty associations or statutorily mandated insurance pools admitted to the state been paid? Yes or No. If 'No,' please explain in an attachment to this statement." Ms. Glover also suggested that the verbiage "that are rightfully assessed against the insurer" should be stricken from the question, because this is a judgment call and the company should not be deciding if it was rightfully assessed — and, besides, regulators would want to know of any assessment, "rightfully assessed" or otherwise.

Ms. Glover suggested that Item 6 also read as a question: “Is there any business in force or any outstanding claim liabilities, contingent liabilities or lawsuits currently existing in this state? If ‘Yes,’ please explain in an attachment to this statement.” The statement, “regulatory actions that would prohibit a state cancelling a license” is a judgment call that the insurer should not be making.

Ms. Glover suggested that Item 7 be reworded as: “Has business in the state been transferred to another insurer in order to surrender the certificate of authority? Yes or No. If ‘Yes,’ attach a copy of the reinsurance agreement.”

Ms. Glover suggested that Item 8 be worded as: “This ____ (company name) is seeking to surrender its authority to transact business in this state and return for cancellation its certificate of authority for the following reasons.” Ms. Jacobi suggested moving Item 8 to the top of the page, because it addresses the purpose of the form. She added that if the beginning of the sentence was worded as “(company name) _____ surrenders its certificate of authority,” then it could be moved to Item 1 and the previous Item 1 (name of company withdrawing) could be removed. The asterisk indicates the affidavit of loss for the certificate of authority and is referencing the instructions. Ms. Jacobi suggested adding a footnote to this form referencing the affidavit of loss. Ms. Donovan suggested moving this statement between Item 3 and Item 4 and rewording it as, “This ____ (company name) is seeking to surrender its authority to transact business in this state and to return for cancellation its certificate of authority for the following reasons.”

Ms. Glover suggested adding a separate question after Item 6 to address regulatory actions (which was removed from question #6): “Are there any regulatory actions in process, pending or in effect against the company in any U.S. regulatory jurisdiction? Yes or No. If ‘Yes,’ please explain in an attachment to this statement.” Ms. Jacobi added that, with the way this question is worded, insurers could end up having to provide a lot of information that regulators can already access through the NAIC databases. Ms. Glover said she originally thought that the insurer would not have a lot of information to provide — and wondered whether there should be a limit on the time frame for reporting regulatory actions and/or a dollar-amount threshold, in order to limit the amount of information that would be provided by insurers. XXX responded that this question actually relates to current actions, not previous actions, so that might limit the amount of information provided — as any pending action would not be public record. Ms. Glover said she is most interested in enforcement action. Ms. Jacobi asked whether this would include unpaid penalties, because if the question is written too broadly, this would be a lot of information. Ms. Glover said she is looking for as much information as possible from other jurisdictions.

Ms. Donovan suggested revising the document and redistributing it to the Subgroup for additional input before presenting to the Working Group. The revised form will be distributed July 28, with a comment deadline of Aug. 10.

Having no further business, the Issues (E) Subgroup adjourned.

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Draft: 10/1/09

Restructuring Mechanisms for Troubled Companies (E) Subgroup
Washington, DC
September 22, 2009

The Restructuring Mechanisms for Troubled Companies (E) Subgroup of the Financial Condition (E) Committee met in Washington, DC, Sept. 22, 2009. The following Subgroup members participated: Belinda Miller, Interim Chair (FL); Kathy Belfi (CT); Al Bottalico (CA); Linda Sizemore (DE); Jim Armstrong (IA); Pat Hughes (IL); Frankie Bliss (NY); Steve Johnson (PA); Jack Broccoli (RI); and Doug Stolte (VA).

1. Discussion of Newly Added Text within the Draft White Paper

Ms. Miller summarized that the Subgroup would be discussing the addition of text to the white paper, *Alternative Mechanisms for Troubled Companies*, in order to bring the project to a close. She indicated that there are still participants working on sections that are due Oct. 15, which will be discussed and exposed at a later date. She stated that, if the Subgroup is amenable, a conference call would be held prior to the Winter National Meeting to cover the newly written sections. To date, she said there are four significant additions that have been integrated into the document.

a. Run-off of Troubled Insurers (Part III.A.) and Sample Outlines for Run-off Plans (VII.C.)

These new sections were submitted by the Illinois Office of the Special Deputy Receiver. Mr. Hughes summarized the additions and stated that the intent was the cover best practices. He said the additions enhance the description of the supervised run-off plan and provided an example of the position of operations from Illinois statute and cross-referenced the Illinois Voidable Preference Statute (215 ILCS 5/204), which he believes is critical to a successful plan. He stated that one of the potential disadvantages is that policyholders and consumers might receive less than fair value for their claims. Equitable treatment of policyholders is the ultimate goal of the alternative mechanisms. Lastly, Mr. Hughes provided an enhanced version of the sample run-off plan outline, which highlights consumer and regulatory concerns.

David Vacca (NAIC) asked whether Mr. Hughes was expecting any additions to supplement the run-off plan outline or is Illinois comfortable with it as it stands. Mr. Hughes stated that unless the Chair or someone sees a particular item that requires change it is final.

b. Benefits, Risks, Controls for U.S. Claimants and Policyholders' from a Non-U.S. Restructures

Patrick Cantilo (Cantilo & Bennett, LLP) summarized this newly added text, stating that the goal was to inventory the issues of which the U.S. insured/policyholder of a non-U.S. insurer might be concerned with in the event of a restructuring in a non-U.S. jurisdiction. He indicated that the goal is to build case studies and illustrations on how this could work. He began by inventorying policyholders concerns with the idea that a sophisticated insured who opted for insurance on the front-end, and might be concerned about the possibility of restructuring, could seek to identify how his/her interest could be treated in the non-U.S. jurisdiction. Other considerations include: 1) In the event the insurer has to restructure, how likely is it to occur; and 2) What concerns might the policyholder have with that jurisdiction. This should be distinguished from what a "right" is when a U.S. branch of a non-U.S. insurer has restructured (governed by U.S. law and is unlikely to give rise to these same types of issues). Also, when a non-U.S. insurer is restructured for reasons other than possible, eminent or actual insolvency — and where the restructuring is part of the transaction — it does not give rise to the same issues. Whether it is a financial challenge in the company's restructured, the way in which the interested policyholder will vary substantially in many jurisdictions. He said that the issues he's addressed as key considerations are: right to payment, continuation of coverage, claim priorities, guaranty association coverage, right to vote, the process of cram down, the policyholder's voice in replacement of coverage, transparency, accountability, availability of regulator protections, and the standing of insurers and policyholders in the process. He said he found it hard to limit the list and yet make it sufficiently comprehensive to cover all the major interests. He said he believes there are actually two real interests: 1) the right to payment; and 2) the placement of coverage — and all the other things are ancillary to the right to payment. He stated that, although supervising insurance outside of the United States varies, from foreign concepts to the more similar European system, it is his hope that this white paper would be a continuous work in progress; i.e., this white paper could include a constantly updated inventory on addressing these issues, as the global economy (and corresponding regulatory regimes) continue to evolve.

Mr. Vacca asked whether the outline for when a non-US insurer restructures should parallel the section for when a non-U.S. reinsurer restructures, or whether it include too much duplicative text. Mr. Cantilo indicated that the interest of the reinsured is the same as the interest of the insured; the actual substantive solution in each jurisdiction might differ, depending on whether it is a difference of priority between the insurers and reinsurers. For example, the way the Hungarian regulatory body treats reinsureds is different than in the United States; however, the analytical framework is the same — i.e., the reinsureds would have all the same interests as the insurer. Mr. Vacca asked if the reinsurer section should focus more on how it is different from his drafted section, instead of trying to mimic the same outline. Mr. Cantilo stated that the two sections might be consolidated with each paragraph addressing the insurer and reinsurer. Mr. Vacca stated he would notify the Solvency Modernization Initiative (EX) Task Force regarding the desire to keep this section as a work in progress.

c. Rhode Island Statute and Regulation for Voluntary Restructuring of Solvent Insurers (III. C.)

Mr. Broccoli summarized the content of this new section. Ms. Miller asked if Rhode Island had a case study they could provide on this topic. Mr. Broccoli indicated that Rhode Island has not yet used the statute.

d. New York Regulation 141

Ms. Bliss and James Veach (Mound Cotton Wollan & Greengrass) summarized this new section. Mr. Vacca added that, because the outline was adjusted, not all of New York's changes were incorporated. Ms. Bliss stated that she would assist with some additional edits to this section.

Ms. Miller asked if there were any comments. Hearing none, she indicated that the entire paper would be exposed with a specified comment period, and a conference call would be held in November to discuss any comments received. Ideally, she said, a final paper will be submitted to Financial Condition Committee for consideration at the Winter National Meeting.

Having no further business, the Restructuring Mechanisms for Troubled Companies (E) Subgroup adjourned.

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