

CLIENT ALERT

# NAIC Report: 2021 Spring National Meeting

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The 2021 Spring National Meeting of the National Association of Insurance Commissioners (the “[Spring National Meeting](#)”) was held from April 7-9 and 12-14, 2021. The Spring National Meeting marked the NAIC’s fourth national meeting held in a virtual format.

In his inaugural National Meeting as NAIC President, Florida Insurance Commissioner David Altmaier opened the Spring National Meeting by reflecting on the past 150 years of accomplishments of the NAIC, discussing actions that the organization has taken to navigate unprecedented challenges faced by the insurance industry for more than a century and its ongoing commitment to consumer protection. He noted that with issues the insurance markets face today in light of the ongoing pandemic, the past can help to inform both the present and the NAIC’s plans for the future.

At the Spring National Meeting, the NAIC unveiled a new logo to be showcased on the organization’s website and documents, with interlocking “Cs” to reflect the NAIC’s underlying values of commitment to community, emphasis on collaboration and focus on consumer protection.

This report summarizes some of the key activities at the Spring National Meeting and, as indicated, NAIC interim meetings and conference calls and other developments leading up to and following the meeting, that may be of interest to our clients in the insurance industry.

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### GLOSSARY

Definitions used in this report include:

“Accreditation Committee” means the NAIC’s Financial Regulation Standards and Accreditation (F) Committee.

“Covered Agreements” means the U.S./E.U. Covered Agreement and the U.S./U.K. Covered Agreement, both as defined below.

“Credit for Reinsurance Model Law” means the NAIC Credit for Reinsurance Model Act (#785).

“Credit for Reinsurance Model Regulation” means the NAIC Credit for Reinsurance Model Regulation (#786).

“Executive and Plenary” means all of the U.S. state insurance commissioners in plenary session along with the NAIC’s Executive (EX) Committee.

“IAIG” means an internationally active insurance group.

“IAIS” means the International Association of Insurance Supervisors.

“ICS” means the Insurance Capital Standard being developed by the IAIS to apply to IAIGs.

“NAIC” means the National Association of Insurance Commissioners.

“NAIC Climate Risk Disclosure Survey” means the survey adopted by the NAIC in 2010, designed to be an insurer reporting mechanism, which asks insurers to provide a description of how they incorporate climate risks into their mitigation, risk-management and investment plans.

“Qualified Jurisdiction” means a non-U.S. jurisdiction listed on the NAIC list of “Qualified Jurisdictions” established pursuant to the NAIC Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions. A Qualified Jurisdiction-domiciled reinsurer that satisfies financial, rating and other standards may qualify as a “certified reinsurer,” and depending on its rating, may be approved by state regulators to post reduced or zero collateral under state credit for reinsurance laws.

“Reciprocal Jurisdiction” means a jurisdiction in which an eligible reinsurer is required to be domiciled in order to qualify for zero reinsurance collateral pursuant to the 2019 amendments to the NAIC Credit for Reinsurance Model Law and Model Regulation.

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“U.S./E.U. Covered Agreement” means the Bilateral Agreement Between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on September 22, 2017.

“U.S./U.K. Covered Agreement” means the Bilateral Agreement Between the United States and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on December 11, 2018.

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## NAIC Report: 2021 Spring National Meeting

### 1. Topics of General Interest

#### A. A Reflection of 150 Years of the NAIC: Past Reflections and Looking Forward to 2021

At the Opening Session of the Spring National Meeting, NAIC President and Florida Insurance Commissioner David Altmaier reflected on the evolution of the NAIC over the past century and a half. Noting that it is “difficult to encapsulate 150 years of accomplishments into one speech,” Commissioner Altmaier provided examples of challenges faced by the NAIC in decades past. Commissioner Altmaier explained that, as a result of collaboration and coordination efforts among state regulators in the face of these challenges, the NAIC has adapted, improved and come out as a stronger system.

In his Opening Session remarks, Commissioner Altmaier indicated that the following areas will remain the primary focus of the NAIC in 2021: the COVID-19 pandemic, natural catastrophes and climate risk, race and insurance, big data and consumer data privacy and long-term care insurance (“LTCI”).

#### B. Developments Relating to the Group Capital Calculation and the Holding Company Act

##### a. 2021 Trial Implementation Data Collection

The Group Capital Calculation (E) Working Group (the “GCC Working Group”) met on March 10, 2021, in lieu of the Spring National Meeting, to discuss data collection for the trial implementation of the group capital calculation (“GCC”) template that the NAIC adopted last December (the “2021 Trial Implementation”). Volunteer insurance groups will submit year-end 2020 data to their lead state regulators using the GCC template. The 2021 Trial Implementation will allow insurance regulators to work with a broad spectrum of insurance groups, and it will create data that can be used for future adjustments to the GCC template and instructions. By way of background, the NAIC designed the GCC to give regulators a view of the interconnectedness, business activities, and underlying capital for an insurance group, using a “bottom up” aggregation method that requires an accounting of available capital/financial resources and the required regulatory capital of corporate group members (further detail can be found in our 2020 Fall National Meeting report [here](#)).

At the March meeting, members of the GCC Working Group noted that they will only be able to accept approximately 30 volunteers due to limited resources. As of the GCC Working Group’s interim meeting on April 27, 2021, there were 24 volunteers from 12 lead states. The insurance groups selected for the 2021 Trial Implementation must submit their data by July 31, 2021 and the GCC Working Group’s goal is to complete its review of the data in October.

##### b. NAIC Development of an Accreditation Standard

In February, the GCC Working Group submitted a memorandum to the Financial Condition (E) Committee containing recommendations for the accreditation standard that should apply to the amendments to the NAIC’s Model Insurance Holding Company System Regulatory Act (Model #440) (the “Holding Company Act”) and Model Insurance Holding

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Company System Model Regulation (Model #450) (the “Holding Company Regulation”) adopted last December. As described in our 2020 Fall National Meeting report [here](#), these amendments require the ultimate controlling person of every insurer subject to holding company registration to file an annual GCC with its lead state regulator, among other things.

The GCC Working Group recommended that an accreditation standard for these amendments become effective on November 7, 2022 under an expedited adoption timeline, for those states that are group-wide supervisors of an insurance group with operations in the E.U. or U.K. November 7, 2022 marks the end of the 60-month implementation period contemplated under the Covered Agreements, and enforcement of the accreditation standard would begin on January 1, 2023. The GCC Working Group noted in the memorandum that it would also support bifurcating the effective date of the accreditation standard to allow those states that are not group-wide supervisors of an insurance group with operations in the E.U. or U.K. to be subject to a later effective date that would be in line with the NAIC’s standard accreditation timeline, resulting in an effective date of January 1, 2026.

At an interim meeting on March 8, 2021, the Financial Condition (E) Committee voted to accept the GCC Working Group’s recommendations related to the accreditation standard. At the Spring National Meeting, the Accreditation Committee agreed to expose the amendments for consideration as accreditation standards, however, after significant debate, the Accreditation Committee did not waive the standard procedure to expedite such adoption. Instead, the Accreditation Committee exposed the amendments for 30 days with the expectation that the normal timeline for adoption of accreditation standards, which includes a one-year comment period after the initial 30-day comment period, would be followed, but strongly encouraged states that would be impacted by the Covered Agreements to adopt the GCC amendments by November 7, 2022.

c. New Statutory Accounting Requirements and Disclosures for Persons that Have Disclaimed Control over an Insurer

At a meeting on March 15, 2021, in lieu of meeting at the Spring National Meeting, the Statutory Accounting Principles (E) Working Group adopted a modification to SSAP No. 25 – Affiliates and Other Related Parties (“SSAP 25”), which sets forth certain accounting standards applicable to transactions between an insurer and its “related parties.” These revisions revise the definition of a “related party” to include any direct or indirect owner of 10% or more of the insurer, “regardless of any disclaimer of control or disclaimer of affiliation.” As a result, persons that have disclaimed control over a domestic insurer will now be considered “related parties” of that insurer for purposes of SSAP 25.

The adopted revisions to SSAP 25 also require disclosures in the insurer’s Schedule Y of “all owners [of the insurer] with greater than 10% ownership of the reporting entity,” albeit with a note that the intent of the disclosure “is to capture information related to active ownership and [not] passive fund owners.” As well, for each such owner, the insurer will be

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required to disclose that owner's ultimate controlling person and provide a listing of other U.S. insurance groups or entities that such ultimate controlling person controls.

### C. Innovation and Technology

#### a. Adoption of Revisions to Model Unfair Trade Practices Act

On April 14, 2021 as part of the Spring National Meeting, the joint meeting of the Executive and Plenary adopted amendments to anti-rebating language in the NAIC's Model Unfair Trade Practices Act (Model #880). As we previously reported in our 2020 Fall National Meeting report [here](#), without compromising the rebating laws' original intent of protecting insurer solvency, these amendments to the model act are intended to permit the offer or provision of value-added products or services at no (or reduced) cost when such products are not specified in the policy. Despite New York and Nevada expressing concerns that the amended language presented ambiguities that could leave room for consumer discrimination, the amendments were adopted as presented. The next step is for individual states to adopt these amendments into their own insurance laws.

#### b. Formation of Working Group to Examine E-Commerce Laws

As we previously reported in our 2020 Fall National Meeting report [here](#), the Innovation and Technology (EX) Task Force had requested information from interested parties about which COVID-19 regulatory relief or accommodations related to innovation and technology should be continued, made permanent or prioritized moving forward. Respondents identified electronic commerce as top priority, including, for example, electronic signatures, electronic delivery and changing default procedures for electronic exchange of information from "opt in" to "opt out."

As a result, the Task Force voted at the Spring National Meeting to form a working group to examine e-commerce laws and regulations, to survey states about exceptions to the federal Uniform Electronic Transactions Act, and to consider the appropriate resulting work product, such as a white paper, model bulletin or draft regulatory guidance. Task Force Chair, Commissioner Jon Godfread of North Dakota, stated that it is important to continue discussing these initiatives so as to not lose the positive developments that came out of the pandemic.

#### c. Market Regulation and Consumer Affairs (D) Committee Focused on Improper Marketing of Health Insurance and Antifraud Initiatives

The Market Regulation and Consumer Affairs (D) Committee met on April 13, 2021 as part of the Spring National Meeting, and discussed issues of importance relating to the role of regulators in regulating improper marketing of health insurance, identifying areas of fraud (including actors and schemes) and the implications of improper marketing with respect to internet sales. The Committee plans to create a new working group in order to (i) facilitate discussion about the marketing of health insurance plans that are improper and to provide knowledge and guidance in this area; and (ii) to modify existing



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model laws or regulations to address the use of lead generators and to update marketing rules to modernize regulation of these activities.

d. Exposure of Interpretive Guidance that Cryptocurrencies Are Not Cash for Statutory Accounting Purposes; NAIC Seeks More Data

The Statutory Accounting Principles (E) Working Group met on March 15, 2021, in lieu of meeting at the Spring National Meeting and discussed that it has received a number of inquiries from interested parties as to whether cryptocurrencies, such as Bitcoin, constitute cash for purposes of SSAP No. 2R – Cash, Cash Equivalents, Drafts, and Short-Term Investments (“SSAP 2R”). In response, the Working Group has exposed interpretive guidance that cryptocurrencies do not meet the definitions of cash equivalents, drafts or short-term investments for purposes of SSAP 2R because they may not be deposited or exchanged with most U.S. banks and financial institutions. However, in making this exposure, the Working Group commented that NAIC staff is aware that “this treatment is evolving and that in the future banks may accept cryptocurrencies in the same manner as true government-backed currencies.” The Working Group also requested input from interested parties concerning the extent to which insurance companies hold cryptocurrencies, which cryptocurrencies they have acquired, and whether insurance companies are interested in acquiring cryptocurrencies in the future. We expect more guidance to come from the NAIC in the future concerning permissibility of cryptocurrencies of investments for the insurance sector.

D. International Developments – Key Projects and Activities at the IAIS

At the Spring National Meeting, Gary Anderson, Massachusetts Commissioner of Insurance and Chair of the International Insurance Relations (G) Committee, summarized certain of the IAIS’s key projects that were discussed at the IAIS’s committee meetings last month.

1. *ICS and Comparability of the Aggregation Method.* During the committee meetings, IAIS received an update on the aggregation method (“AM”) that will be used as part of the GCC, which leverages the legal entity approach inherent in the state-based insurance regulatory scheme. IAIS is collecting data from interested jurisdictions in order to determine whether the AM will produce comparable (*i.e.*, substantially the same) outcomes to the ICS. Last November, the IAIS released for public consultation high-level principles that will inform the comparability criteria, and the process was completed in January 2021. The IAIS is preparing a thematic survey of the comments it received, which will soon be released to the public. The development of specific comparability criteria will be an important exercise for the IAIS during 2021, and it expects to conduct a public consultation on the proposed criteria in the fourth quarter of 2021.

2. *Scalar Methodologies.* In order to compare measures of group capital adequacy between international jurisdictions and the U.S. states, scalars are used to translate capital requirements for entities from foreign jurisdictions into comparable requirements for entities in U.S. jurisdictions. The NAIC has been seeking assistance from the American

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Academy of Actuaries (the “Academy”) on this topic since scalars will be used in the GCC and the AM. After a year-long assessment of scalar methodologies, Steve Jackson, Ph.D., Assistant Director for Research at the Academy, gave a presentation to the International Insurance Relations (G) Committee at the Spring National Meeting on their findings. Importantly, he noted that the Academy is not making any recommendations in favor of or against any particular methodology.

### E. Initiatives of the Special (EX) Committee on Race and Insurance

At the April 12, 2021 meeting of the Special (EX) Committee on Race and Insurance at the Spring National Meeting, a draft of the Committee’s proposed 2021 charges for its five work streams was introduced. The charges include identifying best practices among state insurance departments on diversity, equity, and inclusion efforts, questions over third-party data, and steps to eliminate barriers to health coverage for communities of color and other groups. The revised charges were exposed for public comment until May 14, 2021.

### F. Climate Risk and Resilience Updates

#### a. Updates from Climate Risk and Resiliency Task Force

The Climate and Resiliency (EX) Task Force met virtually on April 9, 2021 as part of the Spring National Meeting. The Task Force’s Climate Disclosure Workstream recommended that the Task Force maintain its current reporting framework for the 2021 reporting year, and that states recommend companies with over one hundred million dollars in premium volume to participate in the Task Force’s climate disclosure survey, in order to capture a larger percentage of the market. Commissioner Ricardo Lara of California accepted the recommendation for the Task Force to maintain its current reporting framework, while continuing to work to expand and evolve the NAIC Climate Risk Disclosure Survey.

Commissioner Andrew R. Stolfi of Oregon reported an increase in federal and international interest in climate disclosure. At the federal level, the Securities Exchange Commission (the “SEC”) has begun to review the extent to which public companies follow its 2010 guidance on climate-related disclosure requirements. Additionally, in March 2020, the SEC released a solicitation seeking feedback on developing a framework for climate change disclosures. The SEC is expected to develop rules that would require companies to disclose additional information regarding their contributions to climate change and potential financial climate risks. Furthermore, the SEC announced an increased focus on climate risk in its financial exam beginning this year.

#### i. New York Focuses on Climate Change

On March 25, 2021, Superintendent Linda Lacewell of the New York Department of Financial Services (“NYDFS”) announced proposed detailed guidance setting out NYDFS’s expectations for how New York domestic insurers manage the financial risks from climate change (the “Proposed Guidance”). NYDFS hosted a public webinar on April 8, 2021 to

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provide an overview of the Proposed Guidance. The Proposed Guidance builds on a circular letter issued by NYDFS in September 2020, which directed all insurers doing business in New York (foreign and domestic) to start considering the financial risks from climate change and integrating them into their governance frameworks, risk management processes, and business strategies. The Proposed Guidance, which was addressed to New York domestic insurers only, provides more detailed directives and states certain actions that insurers should take to meet the NYDFS's expectations on managing climate risks. The NYDFS intends to monitor compliance with these expectations as part of its supervisory activities, and intends to develop a timeframe by which insurers should have "fully embedded" the approach set forth in the Proposed Guidance. The Proposed Guidance was exposed for a 90-day public comment period, which will expire on June 23, 2021.

### b. Reinsurance Update

While the Reinsurance (E) Task Force did not meet at the Spring National Meeting, the Task Force continues to work with NAIC staff to track state adoption of the 2019 amendments to the NAIC Credit for Reinsurance Model Law and the Credit for Reinsurance Model Regulation that incorporate applicable requirements of the Covered Agreements. The amendments will become an NAIC accreditation standard as of September 1, 2022. As of April 2, 2021, 25 jurisdictions had adopted the amended Model Law and eight jurisdictions had adopted the amended Model Regulation, with action under consideration in additional jurisdictions.

The Task Force recently agreed to rename its Qualified Jurisdiction (E) Working Group as the "Mutual Recognition of Jurisdictions (E) Working Group" in order to correspond with the concept of mutually recognized jurisdictions apparent in the NAIC Insurance Holding Company System Model Act (#440) and Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450), as discussed above. The Financial Condition (E) Committee approved the group's charges, as developed by the GCC Working Group, which include the development of a process for evaluating jurisdictions that meet the NAIC requirements for recognizing and accepting the GCC. The amended Holding Company Regulation creates a framework for the non-U.S. jurisdictions that will be considered to "recognize and accept" the GCC, as described in our 2020 Fall National Meeting report [here](#), and the NAIC will publish a list of such jurisdictions. To this end, the Reinsurance (E) Task Force also exposed revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions.

## 2. Topics of Interest to the Life Insurance Industry

### A. Long-Term Care Insurance (EX) Task Force Update

As noted in Commissioner Altmaier's speech in the Opening Session, LTCI continues to be an NAIC priority for 2021. At its meeting on April 9, 2021, the Long-Term Care Insurance (EX) Task Force announced that it would be seeking public comment on a proposal to help states join together to provide faster and more consistent reviews of insurers' requests for

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increases in LTCI premiums. The Task Force is charged with creating a consistent national approach to LTCI rate change reviews that “results in actuarially appropriate increases being granted by states in a timely manner.” The Task Force’s subsidy study is still under review and will be open to public comment soon.

In connection with the Task Force’s charge to develop a consistent national approach for reviewing LTCI rates, the Task Force sought to retain an outside legal consultant to assist the NAIC on matters relating to restructuring LTCI policies since regulators have expressed various concerns over the prospect of an LTCI insurer seeking to separate blocks of business. This proposed project was referred to the Restructuring Mechanisms (E) Working Group, which is charged with evaluating and preparing a white paper addressing issues posed by state restructuring statutes, and in 2021 the Long-Term Care Insurance Restructuring (E) Subgroup was formed to identify and assess potential legal and regulatory issues arising from a corporate transaction that would seek to legally separate certain LTCI policies from the general account of the issuing insurer.

### B. Work Paused on Development of Liquidity Stress Test in Order to Collect Liquidity Risk Data

In 2020, the Financial Stability (E) Task Force and its Liquidity Assessment (E) Subgroup paused work on developing the Liquidity Stress Test (“LST”) requirements, in order to collect liquidity risk data to assess how the life insurance industry is handling the pandemic and related economic stresses. The Task Force also created the mechanism for consistent regulatory authority and confidentiality provisions for the LST framework by finalizing proposed revisions to the Holding Company Act. During an interim meeting on March 8, 2021, the Financial Condition (E) Committee adopted the recommendation from the Financial Stability (E) Task Force to include the LST changes to the Holding Company Act as an accreditation requirement. Similar to the GCC amendments, the (E) Committee recommended that the Accreditation Committee waive its normal procedure for adoption of accreditation standards and expeditiously consider adoption of the LST amendments as an accreditation standard, with an effective date of November 7, 2022, concurrent with the GCC amendments to the Holding Company Act. At the Spring National Meeting, however, the Accreditation Committee did not waive its standard procedures and exposed the LST amendments as additions to the accreditation standards for a 30-day public comment period, to be followed by the standard one-year comment period and the effective date would be January 1, 2026.

## 3. Topics of Interest to the P/C Insurance Industry

### A. Adoptions by the Executive and Plenary

- a. **White Paper on Predictive Models:** On April 14, 2021, the Executive and Plenary voted to adopt the Regulatory Review of Predictive Models White Paper (the “White Paper”) put forth by the Property and Casualty Insurance (C) Committee. The White Paper, as discussed in greater detail in our 2020 Fall National Meeting report [here](#), discusses best practices for an insurance regulator when reviewing

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predictive models and analytics justifying an insurer's rate filing. The term "predictive model," when applied to insurance, refers to a model chosen to estimate the probability or expected value of an outcome (such as the frequency of a loss, the severity of loss, or the loss cost), given a set amount of input data.

- b. ***Real Property Lender-Placed Insurance Model Act:*** The Executive and Plenary also adopted the Real Property Lender-Placed Insurance Model Act, which was drafted to address abuses in the lender-placed insurance placed on real property mortgage loans, as addressed in further detail in our 2020 Fall National Meeting report [here](#).

### 4. Briefly Noted

- A. Receivership Law (E) Working Group Exposes Holding Company Act and Holding Company Regulation Amendments to Ensure Continued Provision of Services by Affiliates if an Insurer is Placed into Supervision, Conservatorship or Receivership

The Receivership Law (E) Working Group met via conference call on February 4, 2021 and March 4, 2021, and exposed revisions to the Holding Company Act and the Holding Company Regulation related to ensuring the continuation of essential services by affiliates, if an insurer were to be placed into supervision, conservatorship or receivership. The proposed revisions to the Holding Company Act include adding a new subsection to Section 5A(1), which would allow an insurance commissioner to require an insurer that has been deemed to be in a hazardous financial condition to secure from an affiliated person a deposit for the protection of the insurer for the duration of the affiliate contract. The Working Group received pushback on this language, so the drafting group was tasked at the March meeting to modify the language in order to reflect the concept of allowing the insurer to choose between a bond and a deposit. The revised draft was exposed for a public comment period that ended on April 9, 2021.

Further, the Holding Company Act proposal includes a new subsection in Section 5A(1), which states that the insurer's premiums collected by or held by an affiliate remain the insurer's exclusive property, and the insurer's right of offset is subject to the relevant state's receivership act. Finally, the Holding Company Act includes Section 5A(6) as a new provision which provides that any affiliate that is party to an affiliate services or management agreement must be subject to the jurisdiction of any proceedings against the insurer, and the authority of any supervisor, conservator or liquidator for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement to perform services that are an integral part of the insurer's operations or essential to the insurer's ability to fulfil its obligations under insurance policies.

The proposed amendments to the Holding Company Regulation also set forth requirements if the insurer is placed in supervision, conservatorship or receivership (e.g., the affiliated person must make available all employees essential to the

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operations of the insurer for the immediate continued performance of the essential services; the affiliate must provide the essential services for a minimum period of time after termination of the affiliate agreement; and, if portions of the insurer's policies are eligible for coverage by a guaranty association, the affiliate's commitments will extend to such guaranty association). The Working Group has a meeting scheduled for May 4, 2021 to discuss comments received on the exposure draft and to consider adoption of the proposed revisions.

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