

CLIENT ALERT

# NAIC Report: 2022 Spring National Meeting

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The 2022 Spring National Meeting of the National Association of Insurance Commissioners (the “Spring National Meeting”) was held from April 4-8 in a hybrid format, with attendees participating virtually or in person in Kansas City, Missouri.

In remarks at the Spring National Meeting opening session, NAIC President and Idaho Insurance Director Dean L. Cameron spoke generally of the need for non-partisan collaboration to meet the challenges facing the NAIC and its members—such as the pandemic, global unrest and economic concerns—and maintain the NAIC’s credibility as a thought leader in insurance. Highlights from the Spring National Meeting include:

- The Financial Condition (E) Committee is keenly focused on its new project surrounding private equity ownership of insurers, as well as certain statutory accounting and securities valuation initiatives discussed at the Spring National Meeting.
- The new Innovation, Cybersecurity and Technology (H) Committee held its inaugural meeting, during which it stressed the need for collaboration to broadly address issues relating to innovation, technology and cybersecurity (“ITC”). Key initiatives to promote this collaboration will include a new “ITC-Hub” to centralize ITC-related resources and information, and a collaborative forum dedicated to algorithmic bias in AI, machine learning and predictive models.

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- The Executive (EX) Committee adopted the Long-Term Care Insurance Multistate Rate Review Framework, a cornerstone of the NAIC's efforts to stabilize the long-term care insurance market.
- The Financial Stability (E) Task Force and Macroprudential (E) Working Group jointly adopted a new risk assessment process to allow insurance regulators to monitor risks on an industry-wide basis using information from public sources, which could potentially lead to additional oversight of individual companies.
- The NAIC adopted a revised Insurance Climate Risk Disclosure Survey to enhance public reporting of insurers' climate-related risks in accordance with the standards of the Task Force on Climate-Related Financial Disclosure.
- The Executive and Plenary ratified the appointment of Superintendent Beth Dwyer (RI) to serve as NAIC members' representative on FSOC. Superintendent Dwyer succeeds recently retired Superintendent Eric Cioppa (ME), who had served as FSOC representative since September 2018.

The report below further summarizes key activities at the Spring National Meeting, and certain interim conference calls and other developments leading up to the Spring National Meeting.

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### Glossary

“2020 HCA Amendments” means the amendments to the *Insurance Holding Company System Model Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) that were adopted by the Executive and Plenary in December 2020, which implement the filing requirements for the GCC and LST.

“AI” means artificial intelligence.

“AI Principles” means the Artificial Intelligence (AI) Guiding Principles adopted by the NAIC at its 2020 Summer National Meeting.

“Certified Reinsurer” means a reinsurer that is domiciled in a “Qualified Jurisdiction” (meaning a non-U.S. jurisdiction listed on the NAIC list of “Qualified Jurisdictions” established pursuant to the NAIC Process for Evaluating Qualified and Reciprocal Jurisdictions) that is eligible to qualify for reduced reinsurance collateral pursuant to the 2019 amendments to the Credit for Reinsurance Models.

“Credit for Reinsurance Models” means the *Credit for Reinsurance Model Law* (#785) and the *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.

“Fall National Meeting” means the NAIC 2021 Fall National Meeting.

“FIO” means the Federal Insurance Office of the United States Department of the Treasury.

“FSB” means the Financial Stability Board.

“FSOC” means the U.S. Department of the Treasury’s Financial Stability Oversight Council.

“GCC” means the group capital calculation that was developed by the Group Capital Calculation (E) Working Group and adopted by the NAIC in December 2020.

“Holistic Framework” means the framework developed by the IAIS to assess and mitigate systemic risk in the global insurance sector.

“IAIS” means the International Association of Insurance Supervisors.

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“ICS” means the Insurance Capital Standard being developed by the IAIS to apply to internationally active insurance groups.

“ITC” means innovation, technology and cybersecurity.

“LST” means Liquidity Stress Test.

“LTCI” means long-term care insurance.

“NYDFS” means the New York Department of Financial Services.

“P&P Manual” means the Purposes and Procedures Manual of the NAIC Investment Analysis Office.

“RBC” means risk-based capital.

“Reciprocal Jurisdiction Reinsurer” means a reinsurer that is domiciled in a “Reciprocal Jurisdiction” (meaning a non-U.S. jurisdiction listed on the NAIC list of “Reciprocal Jurisdictions” established pursuant to the NAIC Process for Evaluating Qualified and Reciprocal Jurisdictions) that is eligible to qualify for zero reinsurance collateral pursuant to the 2019 amendments to the Credit for Reinsurance Models.

“SEC” means the U.S. Securities and Exchange Commission.

“SSAP” means Statement of Statutory Accounting Principles.

“SVO” means the NAIC’s Securities Valuation Office.

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### 1. Topics of General Interest

#### A. New Initiatives of the Innovation, Cybersecurity and Technology (H) Committee Announced at Inaugural Meeting

The NAIC's new Innovation, Cybersecurity and Technology (H) Committee held its inaugural meeting at the Spring National Meeting, following the NAIC's vote to form the group at the Fall National Meeting as we reported [here](#).

The (H) Committee voted to form a new Innovation in Technology and Regulation (H) Working Group. The Working Group is intended to provide forums and resources for discussing innovation and technology related to the insurance industry "ecosystem" as a whole (from producers to insurers to regulators), including to facilitate state insurance regulators' understanding of innovation in the industry. The Working Group will also monitor and consider appropriate coordination between the (H) Committee and other innovation-related work under way across the NAIC letter committees, task forces and working groups.

The (H) Committee's full charges can be viewed [here](#), and include coordinating with other NAIC committees and task forces, as appropriate, on topics including ITC, data privacy and the use of big data and AI in the business of insurance. To this end, the (H) Committee announced that it will develop an "ITC-Hub," which will serve as a portal where users can access ITC-related resources, and identify workstreams and projects underway at the NAIC related to these topics.

Notable (H) Committee developments are described below.

##### i. Privacy Protections Work Plan

The Privacy Protections (D) Working Group adopted a work plan that includes two workstreams: (i) considering, and recommending as needed, potential changes to modernize the *NAIC Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Regulation* (#672) following a section-by-section review of the models, and (ii) drafting a white paper addressing data ownership and use rights. The work plan provides deadlines throughout 2022 and 2023 for drafting and exposure of revisions to the models and the white paper, with the goal of completing work by the 2023 Fall National Meeting. Following the Spring National Meeting, this working group will now report to the (H) Committee.

##### ii. Collaboration Planned to Address Algorithmic Bias in AI

The (H) Committee announced that it will undertake an "algorithmic bias project," describing this as a time-sensitive topic requiring collaboration across NAIC groups. The project will provide a forum for relevant NAIC groups to collaborate to develop a common understanding of the issue and consider appropriate tools for identifying algorithmic bias in certain AI and machine learning models that could potentially unfairly discriminate among consumers of insurance. Leadership of

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relevant working groups will meet shortly after the Spring National Meeting to discuss the scope of work, as well as anticipated timing and deliverables.

Relatedly, Superintendent Adrienne Harris (NY) will lead a group of subject matter experts as part of the Big Data and Artificial Intelligence (H) Working Group's workstream tasked with assessing and suggesting regulatory strategies, tools and resources for overseeing and eliminating unintended bias from the insurance industry's use of AI and machine learning, and identifying best practices where possible.

### iii. AI/Machine Learning Survey Work to Continue Through 2022

The Big Data and Artificial Intelligence (H) Working Group continues to analyze results of its survey on the use of AI and machine learning in private passenger auto insurance, which was performed under the market conduct examination authority of nine select states. The Working Group expects to receive a full report on the analysis at the 2022 Fall National Meeting.

The Working Group will use its experience conducting the private passenger auto survey in upcoming surveys on AI and machine learning in homeowners and life insurance, which the Working Group expects to issue in June and August 2022, respectively.

### iv. Appropriate Evaluation of Third-Party Vendors Under Consideration

A small group of subject matter experts led by Big Data and Artificial Intelligence (H) Working Group Co-Vice Chair Doug Ommen (IA) is considering the activities of third-party data and model vendors in order to make recommendations to the Working Group and (H) Committee about how the insurance industry's use of third-party data and model vendors should be regulated and monitored. This effort will focus on identifying relevant entities, their practices and how they are licensed by states, as well as developing examination standards or questions that state insurance regulators can employ regarding this topic. This along with the other work of the Big Data and Artificial Intelligence (H) Working Group will ultimately inform efforts to propose a regulatory framework for implementing the NAIC's AI Principles by the 2023 Fall National Meeting.

## B. Climate Risk and Resilience

### i. Revised Climate Risk Survey Adopted

At the Spring National Meeting, the Executive and Plenary adopted a revised version of the NAIC's Insurance Climate Risk Disclosure Survey (the "Climate Risk Survey") in response to a 2021 recommendation from FSOC to enhance public reporting requirements for climate-related risks. The Climate Risk Survey is a tool for state insurance regulators to request from insurers on an annual basis a non-confidential disclosure of the insurers' assessment and management of their climate-related risks. The revisions are intended to align with standards set out by the Climate Task Force on



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Climate-Related Financial Disclosures (“TCFD”), an initiative launched by the FSB in 2015, which have become the global standard of climate-related financial disclosure. As revised, the Climate Risk Survey implements the four TCFD focus areas of governance, strategy, risk management, and metrics and targets. The survey also includes insurance-specific guidance following each survey question that is intended to assist insurers in developing comprehensive climate-related disclosures that meet regulator expectations.

The new Climate Risk Survey will replace the current eight-question survey that 14 states and the District of Columbia have been requesting from insurers since 2010. The new survey will be required for insurers that write more than \$100 million in any of the 14 states and the District of Columbia. The NAIC emphasized that each state has the discretion to offer flexibility as insurers prepare to transition to the new survey.

### ii. Federal and International Climate Matters

The Climate Task Force is also monitoring the SEC’s proposed new rules released in March 2022, as we reported on [here](#), which would require registrants to include certain climate-related disclosures in their registration statements and periodic reports. Similar to the NAIC’s Climate Risk Disclosure Survey, the SEC rules were intended to further incorporate the TCFD framework with an additional focus on greenhouse gas emissions. The rules are currently open for a public comment period ending in May 2022.

Climate risk was also a focus of the International Insurance Relations (G) Committee at the Spring National Meeting, as discussed in section V. below.

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

The five Workstreams of the NAIC’s Special (EX) Committee on Race and Insurance provided updates during the Spring National Meeting. Workstream One focuses on diversity and inclusion within the insurance industry and is working to outline proposed recommendations. Workstream Two focuses on diversity and inclusion within the regulator community and plans to communicate with regulators regarding best practices in this regard. Workstream Three is charged with examining practices or barriers in property and casualty lines that potentially disadvantage people of color and/or historically underrepresented groups. It has been focused on issues related to proxy discrimination and disparate treatment in algorithms and models (see section I.A.3, above, related to the new algorithmic bias project). Workstream Four focuses on life insurance and annuities, in particular insurance access and affordability issues, including the marketing and distribution of and access to life insurance products in minority communities and the role that financial literacy plays. Workstream Five focuses on health insurance, specifically identifying race-related barriers to the acquisition and use of health insurance and the role health insurance plays in health outcomes. In December 2021, Workstream Five adopted a Principles for Data Collection document with recommendations for state insurance departments and insurance companies.

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### D. Long-Term Care Insurance Actuarial Framework Adopted

The NAIC Executive (EX) Committee adopted the LTCI Multistate Actuarial Rate Review Framework (the “LTCI Framework”) at the Spring National Meeting. The LTCI Framework was a cornerstone project of the Long-Term Care Insurance (EX) Task Force’s charge to address the challenges of historically underpriced LTCI policies. The LTCI Framework was informed by a pilot program conducted by a Task Force rate review team, and aims to create a voluntary and efficient multi-state actuarial review process that will encourage insurers to submit their LTCI products for multi-state review and provide insurance departments confidence in the multistate actuarial review, so they will utilize the recommendations when conducting their own state-level review of LTCI rate filings. The LTCI Task Force plans to implement the process set out in the LTCI MSA Framework by September 2022, with the goal to achieve a consistent national approach to reviewing LTCI rates that results in actuarially appropriate rate increases being granted by the states in a timely manner.

## 2. Financial Condition (E) Committee Matters

### A. (E) Committee Priorities

At the Spring National Meeting, Commissioner Scott A. White (VA), Chair of the Financial Condition (E) Committee, stated that the Committee is focused on the impact of the ongoing low interest rate environment on insurers, and in particular the incentives such environment has created for life insurers to adopt “riskier strategies,” which Commissioner White said may include investing in certain asset-backed securities and selling business to private equity investors. This area of focus has led the (E) Committee to pursue several interrelated initiatives, on which it received updates at the Spring National Meeting.

#### i. The Bond Project

The Statutory Accounting Principles (E) Working Group (“SAPWG”) continues to progress the NAIC’s principles-based bond project, which aims to clarify what should be considered and reported as a bond on Schedule D-1 (Long-Term Bonds) of an insurance company’s statutory financial statement. As part of this project, SAPWG has drafted and continues to refine a principles-based bond definition (the “Bond Definition”), which was initially exposed for comment in May 2021.

After a proposal exposed at the Fall National Meeting to describe asset-backed securities in the Bond Definition as requiring “substantive” credit enhancement rather than “sufficient” credit enhancement (as described in more detail [here](#)) received support from interested parties, on March 2, 2022, SAPWG exposed an updated Bond Definition reflecting this and other updates. The March 2 exposure draft also deleted the “stapling” restriction that would have precluded entities from reporting as a bond certain investments requiring investors to simultaneously hold both debt and equity interests. SAPWG also exposed a draft issue paper detailing past discussions and concepts in drafting the Bond Definition,

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including the distinction between an issuer credit obligation and an asset-backed security (a “key factor with principle-based bond concepts”) and examples applying the Bond Definition to sample investment types. Comments on both items are due May 6, 2022, and SAPWG anticipates that it will consider potential SSAP revisions after reviewing comments received. Such revisions are not expected to be effective until January 1, 2024 at the earliest.

At the Spring National Meeting, SAPWG also discussed comments received on a discussion document exposed at the Fall National Meeting that explored options to improve transparency and granularity in reporting, a key aspect of the bond project. For example, the document discussed recommendations to move away from general categories and establish more specific reporting lines, grouped by investment type and distinguished as either issuer credit obligations or asset-backed securities, on Schedule D-1: Long Term Bonds on insurance companies’ statutory financial statements (“Schedule D-1”). It also recommended to create a new sub-schedule to Schedule D-1 to capture bond investments with certain characteristics. Julie Gann of the NAIC described anticipated changes as “significant,” and emphasized the NAIC’s goal of “early and loud” communications with industry on this topic, noting that all aspects remain open for continued discussion. SAPWG directed NAIC staff to work with industry to develop a more detailed illustration of the proposed reporting proposal for exposure in May 2022.

### ii. New Working Group to Review RBC Charges for Certain Investments

The NAIC’s new RBC Investment Risk and Evaluation (E) Working Group met on March 22, 2022 in lieu of the Spring National Meeting. According to Commissioner White, the Working Group was formed in response to concerns from regulators that the existing RBC framework has contributed to “higher yield seeking behavior” by insurers, and accordingly to consider increased RBC charges for certain investments. Specifically, it was discussed at a January 12, 2022 joint meeting of the Working Group and (E) Committee that the (E) Committee and its working groups have considered the industry’s shift away from corporate debt holdings toward structured securities and other asset-backed securities, particularly collateralized loan obligations (“CLOs”).

The Working Group is charged with performing a comprehensive review of the RBC investment framework for all business types, including by (i) identifying uses of RBC outside the purpose of the *RBC for Insurers Model Act* (#312), (ii) assessing the impact and effectiveness of potential changes in contributing to the identification of weakly capitalized companies (i.e., those companies at action level), and (iii) documenting modifications made over time to the RBC formulas. During a February 2022 meeting, Working Group Chair Philip Barlow (DC) expressed a goal for the Working Group to ultimately produce a holistic methodology for identifying investment risks and classifying assets for RBC purposes.

At its March meeting, the Working Group adopted a working agenda and will begin by addressing projects intended to review the RBC treatment of asset-backed securities, including CLOs and similar securities, and to consider appropriate RBC treatment of residual interest securities. The Working Group will meet during public calls after the Spring National Meeting to further refine its path forward.

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### iii. Valuation of Securities

The Valuation of Securities (E) Task Force (“VOSTF”) discussed several initiatives at the Spring National Meeting related to the SVO’s credit quality assessment of securities owned by insurance companies.

- *Proposed New Reporting Requirements to Assess Rating Agency Designations.* At the [Fall National Meeting](#), VOSTF discussed a need to review the SVO’s reliance on rating agency designations in assessing investment risk. As a step toward introducing alternative ways to measure a security’s risk, at the Spring National Meeting the SVO recommended requiring insurers to report various analytical measures about each security, such as current market yield, interest rate sensitivity, spread relative to risk-free securities and average remaining life. Where market yield and spread differ from similarly rated securities, the risk of the security may be inconsistent with the credit rating assigned to it. VOSTF exposed this proposal for comment until May 20, 2022, after which it plans to make a referral to the Blanks (E) Working Group to add the additional data fields to the annual statement instructions. Given that this would be a “fairly large update” and require insurers to update their reporting systems, the new instructions would not take effect until year-end 2023 reporting. VOSTF also plans to coordinate with SAPWG and any overlapping reporting updates resulting from the bond project.
- *Proposed Amendment to P&P Manual Definition of Principal Protected Securities (“PPS”).* The SVO has received proposals for securities that have many of the same exposure risks as PPS but do not technically fit within the current definition (so-called “synthetic PPS”). The SVO would like to amend the definition to account for such alternate structures. Interested parties agreed in principle with amending the PPS definition but requested that the proposed language be thoroughly discussed to avoid unintended consequences. VOSTF directed staff to work with industry and then expose proposed language for a 30-day comment period.

### iv. Private Equity Ownership of Insurers

Following the Fall National Meeting, the Macroprudential (E) Working Group (“MWG”) exposed a “List of Regulatory Considerations Applicable (But not Exclusive) to Private Equity (PE) Owned Insurers” (the “PE List”), which it unanimously adopted at an interim meeting on February 1, 2022. The MWG developed the PE List in response to the NAIC Capital Markets Bureau’s observation of a trend of insurer acquisitions, particularly life insurers, by private equity firms, as discussed [here](#).

The PE List’s considerations pertain to the ability of state insurance regulators to effectively monitor the solvency of a legal entity insurer and to assess risks faced by the insurer’s holding company system, particularly in the acquisition context. In this respect, the MWG wants to ensure that the Form A process provides insurance regulators with sufficient information to understand the deal structure and the transaction agreements in order to protect the insurer’s policyholders

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(e.g., making sure the insurer's assets are not being used to support an affiliated investment management company). Potential regulatory changes include developing additional disclosures to learn more about a potential owner's goals with respect to the insurer acquisition and understanding the potential owner's business operations. The MWG is also evaluating how to provide training to states that have less experience reviewing insurer acquisitions with complex holding company structures. This could involve creating additional guidance for regulators, having inexperienced states seek assistance from more experienced states, and encouraging states to use external resources for complex transactions at the Form A applicant's expense.

The PE List consists of 13 regulatory considerations related to these themes, including the following:

- (i) Regulators may not be able to accurately assess risks posed to an insurance company if contracts are structured to avoid regulatory disclosures and requirements (e.g., an affiliate agreement where the insurer is not a party to the agreement).
- (ii) Conflict of interest considerations should be considered even if a private equity owner's interest in an insurer's voting securities is less than ten percent. A party can exert a controlling influence over an insurer through a variety of ways, including: (A) board and management representation; or (B) certain contractual provisions, such as non-customary minority shareholder rights or investment management agreements with costly termination provisions or which give the investment manager too much control over the insurer's investment guidelines. The material terms of an investment management agreement may also not be at arm's length based on the amount and types of fees the insurer pays to the investment manager.
- (iii) The owners of an insurance company may be focused on short-term results which do not align with the long-term liabilities associated with life insurance policies (e.g., if an insurer pays investment management fees to an affiliate that are not fair and reasonable, such fees may effectively represent a type of unauthorized dividend).
- (iv) If a private equity owner lacks experience in the insurance sector, the insurer's operational and governance practices may be negatively impacted.
- (v) The use of capital maintenance agreements should be considered when a regulator evaluates a potential owner's ability to provide capital support to the insurer.
- (vi) It may be difficult to identify underlying affiliated investments or collateral within structured security investments.
- (vii) An insurer's use of offshore reinsurance arrangements may reduce its reserves or increase investment risk.

Prior to the Spring National Meeting, the MWG updated the PE List to reflect a meeting with other NAIC working groups, at which they established a baseline of activities already underway at the NAIC related to the list's first six considerations.

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The revised list indicates which of these considerations will be referred to other NAIC groups for further review or action. The updated PE List also includes sample stipulations that were added to the NAIC Financial Analysis Handbook in 2013 in response to Form A applications submitted by private equity owners (e.g., requiring quarterly RBC reports rather than annual reports, requiring the filing of additional information regarding the corporate structure and controlling individuals, etc.). Although this comprehensive list of stipulations and conditions in the Form A context has been available to insurance regulators in the Handbook for years, the PE List notes that “regulators are considering the need for any additional stipulations, if there are some stipulations that should be required instead of used subjectively, and use of some stipulations beyond the Form A acquisition process (e.g., for insurers acquired in the past).”

In terms of next steps, the MWG will soon meet with the other NAIC working groups again to determine which of the seven remaining considerations require additional review. The further revised PE List will then be exposed for a brief comment period.

Private equity ownership of insurers is also an emerging topic of interest internationally, as discussed in section V.B., below. In addition, NYDFS weighed in on the topic of investments in insurers, and emphasized its authority to review acquisitions of any controlling interest in a New York domestic insurer, in a Circular Letter released on April 19, 2022, as discussed [here](#).

### v. Reporting on Investment Transactions with Related Parties

In December 2021, SAPWG exposed revisions to *SSAP No. 25—Affiliates and Other Related Parties* and *SSAP No. 43R—Loan-backed and Structured Securities* (Ref # 2021-21) that would incorporate new reporting requirements for investment transactions with non-affiliated related parties (i.e., related parties that do not meet the definition of “affiliate”), and to make reporting of affiliate transactions within existing reporting lines in investment schedules consistent with the definition of an “affiliate” under the *Insurance Holding Company System Regulatory Act* (#440). The proposal included that additional reporting elements be captured through reporting codes on year-end investment schedules, and that this would apply in various circumstances, including investments involving relationships with related parties in roles such as sponsor, originator, manager or servicer. It was not meant to change what is reported as affiliated or unaffiliated, but rather to capture information about non-affiliated related party investments.

In comments discussed at the Spring National Meeting, interested parties agreed that capturing this information through codes on investment schedules can be useful to regulators, but stressed the need to distinguish between investments that present direct credit exposure to an affiliate, and investments that are only managed by affiliates for which there is no underlying credit exposure to the insurer’s affiliate or related party. Interested parties urged that the latter should not be reported as affiliated in investment schedules. It was discussed that there appear to be inconsistent interpretations of the existing reporting requirement, and that in contrast to interested parties’ viewpoint that actual credit exposure must exist to

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report an investment on the affiliate reporting line, the “regulator viewpoint” is that “all affiliated transactions” should be reported.

It was indicated that this can be the subject of continued discussion, and SAPWG voted to re-expose the proposal to reflect certain suggestions received from interested parties.

### B. Adoption of the NAIC Macroprudential Risk Assessment

The Macroprudential Risk Assessment was jointly adopted by the Financial Stability (E) Task Force and the MWG at the Spring National Meeting. The goal of this new process is to allow insurance regulators to identify and monitor the industry’s exposure to risk factors that could impact U.S. financial stability, consistent with an “activities-based” approach to systemic risk.

Pursuant to the Macroprudential Risk Assessment, insurance regulators and NAIC staff will conduct a quantitative assessment of industry risk factors on a biannual basis, across several categories (e.g., macroeconomic, capitalization and credit), using information from NAIC Annual Statement data and other public sources. Regulators will also perform a qualitative assessment of information obtained from various sources, including industry news and federal and international resources, in order to “identify emerging risk exposures, market conditions and industry activities that have the potential to impact the macroprudential risk assessment.” The results of both assessments will be aggregated to create a baseline assessment of the industry’s exposure to different macroprudential risks, and the information will be tracked over time.

Insurance regulators will be able to use a regulator-only dashboard to identify any interplay between the industry’s exposure to macroprudential risks and risks posed to individual companies, which could lead to additional oversight of certain insurers. A public report will also be issued that will summarize regulators’ views on industry risk exposures and corresponding supervisory efforts. Interested parties will have an opportunity to comment on the public report. Macroprudential risks may also be presented to the Financial Stability (E) Task Force for general policy consideration and potentially shared with federal and international regulators for broader surveillance purposes.

### C. Developments on Issues Related to Corporate Division and Insurance Business Transfer Transactions

Meeting in late March in lieu of the Spring National Meeting, the Restructuring Mechanisms (E) Working Group continued discussing comments received last fall on the draft white paper on state restructuring statutes and restructuring transactions (i.e., corporate division (“CD”) and insurance business transfer (“IBT”) transactions), on which we previously reported [here](#). The discussion focused on select topics from the comments received, including whether and to what extent there is an appetite to make LTCl ineligible for restructuring transactions, proposed transactions that involve workers’ compensation policies, and how restructuring statutes may interact with state laws that limit novations without policyholder consent. The Working Group will propose revised language on these and other topics in the next draft of the



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white paper, and has requested additional feedback, including specific language to address the comments received and discussed, by April 29, 2022.

One subject of discussion at the Working Group has been around ensuring that policyholders of a company involved in a restructuring transaction retain any guaranty fund coverage that they had prior to the transaction. The Working Group made a Model Law Development Request to the Receivership and Insolvency (E) Task Force, with the support of the National Conference of Insurance Guaranty Funds, to pursue revisions to the *Property and Casualty Insurance Guaranty Association Model Act (#540)* to ensure that policyholders do not lose guaranty fund coverage as a result of CD and IBT transactions. The Working Group noted that such revisions are necessary to ensure that policyholders in all states retain their coverage, regardless of how few states may adopt CD or IBT laws. At the Spring National Meeting, the Receivership and Insolvency (E) Task Force voted to expose the Model Law Development Request for a 30-day comment period ending May 6, 2022.

On a parallel track, the Restructuring Mechanisms (E) Subgroup is progressing its charges to develop best practices for considering the approval of proposed restructuring transactions from a financial perspective and monitoring companies after a transaction is completed.

### D. Modifying the GCC Reporting Template and Instructions to Reflect the 2021 Trial Implementation Results

Last fall, the Group Capital Calculation (E) Working Group exposed a memorandum from NAIC staff, dated November 8, 2021, which summarized the NAIC's proposed material changes to the GCC template and instructions based on the results and feedback from the GCC 2021 trial implementation (e.g., removing the stress scenario, lowering the capital charge applied to an insurer domiciled in a non-risk sensitive foreign jurisdiction from 100% of the insurer's carrying value to 50%, etc.). For more detailed information regarding these changes, see our [Fall National Meeting report](#). The proposed modifications to the GCC template and instructions were discussed at a February interim meeting of the Working Group, and are expected to be adopted at the Working Group's next meeting on May 2, 2022. These changes would become effective for GCC filings submitted in 2023, using year-end 2022 data.

### E. Reinsurance (E) Task Force Update

The Reinsurance (E) Task Force met on March 22, 2022 by conference call in lieu of the Spring National Meeting.

#### i. ReFAWG Report

The Task Force heard an update from the Reinsurance Financial Analysis (E) Working Group ("ReFAWG"), which facilitates multi-state recognition of a reinsurer's Certified or Reciprocal Jurisdiction Reinsurer status (referred to as "passporting"). Since December, ReFAWG approved two Certified Reinsurers and nine Reciprocal Jurisdiction Reinsurers, and plans to meet again this year as more passporting applications are received. The report noted that the



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ReFAWG passporting process has been effective, and the Task Force voted to expose minor revisions to the ReFAWG checklists for reinsurers seeking Reciprocal Jurisdiction Reinsurer status to include further documentation requests for assessing an applicant's prompt payment of reinsurance claims.

### ii. Mutual Recognition of Jurisdictions (E) Working Group

The Task Force also received a status report from the Mutual Recognition of Jurisdictions (E) Working Group, which is charged with developing processes for (i) evaluating jurisdictions that meet the NAIC requirements for recognizing and accepting the GCC and (ii) evaluating Qualified and Reciprocal Jurisdictions. Since meeting last fall, the Working Group has focused on the annual review of the status of existing Qualified and Reciprocal Jurisdictions and plans to set up a meeting to review South Korea for consideration as a new Reciprocal Jurisdiction.

### iii. State Reinsurance Legislation Update

The Task Force was provided with two status reports from the NAIC on the states' implementation of certain NAIC model laws and regulations. First, states are in the process of adopting the 2019 Revisions to the Credit for Reinsurance Models, which they must do prior to September 1, 2022 or face potential federal preemption of state insurance laws by the Covered Agreements. The NAIC reported that as of March 11, 2022, 48 jurisdictions had adopted the *Credit for Reinsurance Model Law* (#785) and 34 jurisdictions had adopted the *Credit for Reinsurance Model Regulation* (#786). The NAIC has reached out to those states that have not yet adopted the revised Credit for Reinsurance Models and been advised that all are close to reaching the September deadline. The NAIC urged those states to adopt the Credit for Reinsurance Models by July 1, 2022 to give FIO time to conduct its preemption analysis in advance of September.

Second, as of March 31, 2022, 17 states had adopted *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787), which is set to become an accreditation standard on September 1, 2022. States may meet requirements of the regulation through administrative practices, such as actuarial guidelines.

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

### A. NAIC Prepares for Resurgence of DOL Fiduciary Rule and Campaigns for Broader Adoption of Annuity Suitability Model

It was reported at the Life Insurance and Annuities (A) Committee meeting that the NAIC believes the U.S. Department of Labor (the "DOL") will soon offer further guidance and rule-making regarding fiduciary investment advice to ERISA plans and IRAs (the "Fiduciary Rule"). The NAIC anticipates that, through the Fiduciary Rule, the DOL will revisit the current definition of "fiduciary" in connection with investment advice to ERISA plans and IRAs and certain related prohibited transaction exemptions.

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Although the NAIC has previously submitted comment letters and met with DOL officials on the Fiduciary Rule, it has never taken a formal position and is now seeking feedback on the Fiduciary Rule from regulators, stakeholders and interested parties. The ACLI and Insured Retirement Institute encouraged the states to make their voices heard about the progress made in the regulatory environment since the DOL's last involvement, including the NAIC's adoption of its Annuity Suitability Model Regulation and the SEC's Regulation Best Interest. On the other hand, consumer representatives in attendance warned of gaps in the regulatory framework resulting in inadequate protections for investors.

### B. Liquidity Stress Testing Implementation

In late February 2022, the 2021 LST Framework was jointly adopted by the Financial Stability (E) Task Force and the MWG at an interim meeting. For more detailed information regarding this new regulatory tool, see our [Fall National Meeting report](#). With respect to states that have already adopted the 2020 HCA Amendments, the 2021 LST Framework will be utilized for filings that large life insurers must submit by June 30, 2022. State insurance regulators will aggregate the LST results so the information can be shared publicly, and the MWG will modify the LST Framework, as necessary, on an annual basis.

### C. Life Insurance and Annuities (A) Committee Adopts Accelerated Underwriting Educational Paper

The Life Insurance and Annuities (A) Committee adopted an educational paper that explains the concept of accelerated underwriting in life insurance as compared to traditional underwriting, discusses potential issues with the use of accelerated underwriting and makes high-level recommendations to aid regulators when reviewing such programs. The paper was narrowly focused on making basic recommendations because the (A) Committee intends to develop additional deliverables with more specific guidance for regulators in the upcoming year.

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

### A. Revisions to Non-admitted Insurance Model Act

Although the Surplus Lines (C) Task Force did not meet during the Spring National Meeting, Task Force Chair Commissioner James J. Donelon (LA) reported to the Property and Casualty Insurance (C) Committee that an interim meeting will likely occur in the coming weeks, during which the Task Force will receive an update from the *Nonadmitted Insurance Model Act* (#870) drafting group. The drafting group has been working to modernize the model act in order to better align with the federal Non-admitted and Reinsurance Reform Act. It is expected that the drafting group will provide a summary of the draft changes to the model act during the upcoming interim meeting and the Task Force will then likely expose the draft.

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### B. Pet Insurance Model Act Not Yet Adopted by NAIC

The Pet Insurance Model Act, which provides a comprehensive legal framework in which pet insurance may be sold and outlines various disclosure requirements, was formerly adopted by the (C) Committee on November 10, 2021. However, the Pet Insurance Model Act was removed from the Executive and Plenary agenda during the Fall National Meeting for further development of its “Insurance Producer Training” section. The (C) Committee expects that after a series of small changes are made to this section, the Pet Insurance Model Act will be exposed during an upcoming Pet Insurance (C) Working Group meeting before it is re-introduced to the (C) Committee.

### C. NAIC Developing White Paper on Parametric Insurance Products

The (C) Committee indicated that it plans to develop an outline of a white paper on parametric insurance products, which insure a policyholder against the occurrence of a specific event by paying a set amount based on the magnitude of the event, instead of the magnitude of the loss. These products are designed to close coverage gaps for specific weather-related events. The white paper is scheduled for completion by the end of 2022.

## 5. International Matters

### A. IAIS Focuses on Climate Risk

Commissioner Gary Anderson (MA), Chair of the International Insurance Relations (G) Committee, noted that while insurer culture was a central focus of the (G) Committee meeting at the Fall National Meeting, the topic of addressing climate risk in the global insurance sector took center stage in Kansas City.

In September 2021, the IAIS launched its Climate Risk Steering Group (“CRSG”), which is responsible for coordinating the IAIS’ work on climate risk. Dr. Yue (Nina) Chen, Executive Deputy Superintendent of the NYDFS Climate Risk Division, serves as the CRSG’s Vice Chair. During 2022-2023, the CRSG will oversee three workstreams: (i) review of potential climate risk-related gaps within the IAIS standard-setting materials; (ii) develop best practices for climate scenario analysis in the insurance industry; and (iii) integrate climate-related financial risks, such as the impact of climate risk on an insurer’s investments and underwriting activities, into the 2022 GME.

### B. International Sector Also Focused on Private Equity Ownership of Insurers

The IAIS’s Global Insurance Market Report (“GIMAR”) is an annual report on the outcomes of the Global Monitoring Exercise (“GME”), which is designed to “detect the build-up of systemic risk in the global insurance sector,” as discussed further below in section V.C. In the latest GIMAR released on November 30, 2021, private equity ownership of insurance companies was one of the three macroprudential themes identified as supervisory priorities, along with credit risk and

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cyber risk. The 2021 report states that private equity owned insurers may “pose unique risks, such as increased exposures to private placements and private label asset-backed securities – notably [CLOs].” At the same time, private equity ownership “may also bring synergies, such as the investment expertise that PE-owned firms provide.”

During a Q&A session at the Spring National Meeting, Romain Paserot, IAIS Deputy Secretary General and Head of Capital and Solvency, noted that while private equity ownership of insurers mostly impacts the U.S. market as opposed to the global insurance market, he has seen this topic discussed in other parts of the world. The IAIS continues to evaluate this topic as it reviews feedback from the 2021 GIMAR to assess whether private equity ownership requires a global supervisory response. The NAIC’s 2022 International Insurance Forum in mid-May is expected to include a panel discussion on this topic.

### C. Other IAIS Updates

The (G) Committee heard updates on certain of the IAIS’s key projects and priorities, including the comparability of the ICS and aggregation method. The IAIS continues to develop comparability criteria to determine whether the aggregation method that forms part of the GCC will produce comparable outcomes to the ICS. The IAIS intends to release the draft criteria for public consultation before the end of June. In addition, the IAIS’s Executive Committee recently approved an ICS data collection package that will be launched in late April.

## 6. Briefly Noted

### A. Insurer Investments in Cryptocurrency

In 2021, SAPWG released an [interpretation](#) stating that directly held cryptocurrencies do not meet the definition of admitted asset and are therefore considered to be a nonadmitted asset for statutory accounting purposes. In materials for the Spring National Meeting, SAPWG expressed support for a proposal by the Blanks (E) Working Group to add a new general interrogatory to the annual/quarterly blanks to provide regulators “additional information on when cryptocurrencies are directly held or permitted for the remittance of premiums, and to better understand if any how cryptocurrencies are being utilized by insurance companies.” This proposal asks “Does the reporting entity directly hold cryptocurrencies” and directs the reporting entity to “Answer ‘YES’ if the company directly owns cryptocurrencies. Answer ‘NO’ if the company does not directly own cryptocurrencies or only holds cryptocurrencies indirectly through funds (ETFs, Mutual Funds, etc.)” The blanks proposal has been exposed for comment until April 25, 2022.

### B. Continued Development of Mortgage Guaranty Insurance Capital Model

At the Spring National Meeting, the Mortgage Guaranty Insurance (E) Working Group received an extension from the Financial Condition (E) Committee on its charge to update the *Mortgage Guaranty Insurance Model Act* (Model #630). The Working Group previously engaged Milliman to develop a new capital standard for mortgage guaranty insurers and in

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2019 exposed a draft capital model. The Working Group has just received data for year-end 2021 and will need to analyze the data before completing its charge, which it believes it can complete by the 2023 Spring National Meeting.

### C. NAIC Plans to Recommend, But Not Require, State Adoption of Receivership-Related Model Law Amendments

In [summer 2021](#), the NAIC adopted amendments to the *Insurance Holding Company System Model Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) imposing new requirements related to affiliated transactions for insurers deemed to be in hazardous financial condition (the “2021 HCA Amendments”). At the Spring National Meeting, the Financial Regulation Standards and Accreditation (F) Committee voted to expose the 2021 HCA Amendments for a 30-day comment period as “acceptable for accreditation” but not required to be adopted by the states in order to maintain accreditation. However, the NAIC “strongly encourages” states to adopt the 2021 HCA Amendments based on the goal of improving efficiencies in receivership and reducing costs to a receivership estate, and recommends that states adopt the 2021 HCA Amendments at the same time they adopt the 2020 HCA Amendments to incorporate the LST and GCC.

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