

CLIENT ALERT

NAIC Report: 2023 Summer National Meeting

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The 2023 Summer National Meeting of the National Association of Insurance Commissioners (the “Summer National Meeting”) was held from August 12–16, 2023 in Seattle, Washington with attendees participating virtually or in person.

The National Association of Insurance Commissioners (“NAIC”) President and Director of the Missouri Department of Commerce and Insurance Chlora Lindley-Myers opened the conference by highlighting the importance of anticipating and planning for climate and catastrophe events such as extreme weather and natural disasters of all types to reduce negative impacts on consumers. Host Commissioner Mike Kreidler of Washington also focused his remarks on the importance of “protecting the planet” and addressing the challenges that extreme weather events and natural disasters pose for the industry.

Other highlights from the Summer National Meeting include:

- Negative IMR Accounting Treatment: After discussions and consideration of comments from interested parties following the Spring National Meeting, the Statutory Accounting Principles (E) Working Group adopted a new statutory accounting interpretation permitting qualifying insurers to treat a net negative interest maintenance reserve (“IMR”) balance as an admitted asset, subject to certain limitations and minimum RBC requirements.
- Residual Tranches: Following significant discussion by the Risk-Based Capital Investment Risk and Evaluation (E) Working Group on development of an interim RBC factor for residual tranches of structured securities and its June

NAIC Report: 2023 Summer National Meeting

2023 adoption of a compromise proposal, interim factors of 30% for year-end 2023 and 45% for year-end 2024 were adopted by the Plenary Session.

- Framework for Investment Regulation: The Financial Condition (E) Committee exposed for public comment a document with recommendations to enhance the regulatory framework for insurance company investments, with particular attention to the role of the SVO.
- Investment Management Agreements: A drafting group of regulators is being formed to develop enhanced NAIC handbook guidance for insurance regulators reviewing affiliated investment management agreements.
- Mortgage Guaranty Model: The NAIC adopted amendments to the *Mortgage Guaranty Insurance Model Act (#630)*, which had been in process since 2013 in response to the 2008 financial crisis.
- Nonadmitted Insurers Model Act: The NAIC adopted amendments to the *Nonadmitted Insurance Model Act (#870)* to reflect the federal Nonadmitted and Reinsurance Reform Act of 2010 and other developments in the time since the model was last revised.

This report summarizes key activities at the Summer National Meeting, certain interim conference calls and other developments leading up to the Summer National Meeting, which may be of interest to our clients in the insurance industry.

NAIC Report: 2023 Summer National Meeting

TABLE OF CONTENTS

I. Financial Condition Regulation	8
A. Insurance Company Investments	8
1. Financial Condition (E) Committee Proposes “Holistic Review” of Insurer Investment Regulation	8
2. Valuation of Securities	9
3. RBC Matters	11
4. Statutory Accounting	13
B. Revisions to the Insurance Holding Company Systems Accreditation Standard	15
C. Update on NAIC Handbook Revisions Related to Reviewing Affiliate Services Agreements	15
D. Receivership and Insolvency	16
II. Macroprudential Risk and Insurance Industry	16
A. Updates on the Private Equity Considerations Work Plan.....	16
B. Other Macroprudential Initiatives	21
1. FSOC Proposes Changes to the SIFI Designation Process	21
2. Brief Update on the LST Framework.....	22
III. Innovation, Cybersecurity, Technology, and Privacy Developments	22
A. Draft Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers.....	22
B. Home AI/ML Survey Summary Results	22
C. Insurance Consumer Privacy Model Law (#674) Updates	23
IV. Reinsurance Matters.....	24

NAIC Report: 2023 Summer National Meeting

- A. Update on Reinsurance Collateral Reduction Applications24
- B. Qualified and Reciprocal Jurisdictions24
- C. Ongoing Reinsurance-Related Projects at the NAIC24
- V. Other Topics of General Interest26
 - A. NAIC Adopts Revisions to Mortgage Guaranty Insurance Model Act26
 - B. NAIC Adopts Revisions to Nonadmitted Insurance Model Act (#870).....26
 - C. Topics of Interest to the Life Insurance Industry26
 - D. Topics of Interest to the Property and Casualty Insurance Industry27
 - 1. Wildfires in Hawaii27
 - 2. Cannabis Insurance White Paper27
- VI. International Matters28
 - A. Comparability Assessment of Group Capital Standards Will Soon Get Underway28
 - B. Other IAIS Updates28
- VII. Other Updates29
 - A. Insurance Business Transfers and Corporate Divisions29
 - B. Adoption of the Market Regulation Certification Program.....29

NAIC Report: 2023 Summer National Meeting

GLOSSARY

“ACLI” means the American Council of Life Insurers.

“AG 53” means *Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves*.

“AI Bulletin” means the *Draft Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers*.

“Analytic Framework” means the Analytic Framework for Financial Stability Risk Identification, Assessment, and Response.

“Auto Survey” means the private passenger auto artificial intelligence/machine learning survey.

“AUWG” means the Accelerated Underwriting (A) Working Group.

“CERP” means Cybersecurity Event Response Plan.

“CLO” means collateralized loan obligations.

“Considerations” means the “Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers.”

“CRPs” means credit rating providers.

“Dodd-Frank” means the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

“DOL” means the U.S. Department of Labor.

“(E) Committee” means the Financial Condition (E) Committee.

“(E) Committee Memo” means the “Framework for Regulation of Insurer Investments – A Holistic Review.”

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

“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.

NAIC Report: 2023 Summer National Meeting

“GME” means the 2023 Global Monitoring Exercise.

“(H) Committee” means the Innovation, Cybersecurity, and Technology (H) Committee.

“Home AI/ML Survey” means the 2022–2023 Home Artificial Intelligence/Machine Learning Survey.

“IAIG” means an internationally active insurance group.

“IAIS” means the International Association of Insurance Supervisors.

“IBT/CD” means insurance business transfer and corporate division.

“ICS” means Insurance Capital Standard, which is the consolidated group-wide capital standard the IAIS is developing for IAIGs.

“IMA” means investment management agreement.

“IMR” means interest maintenance reserve.

“LATF” means the Life Actuarial (A) Task Force.

“Life RBC Manual Instructions” means *the NAIC Life and Fraternal Risk-Based Capital Forecasting and Instructions*.

“LST” means the Liquidity Stress Test, an annual filing by a life insurance company that satisfies the test’s scope criteria pursuant to the relevant state’s insurance holding company laws.

“MRC Program” means the Market Regulation Certification Program.

“MRJ Working Group” means the Mutual Recognition of Jurisdictions (E) Working Group (formerly the Qualified Jurisdictions (E) Working Group).

“MWG” means the Macroprudential (E) Working Group.

“NAIC” means the National Association of Insurance Commissioners.

“NRRRA” means the Nonadmitted and Reinsurance Reform Act of 2010.

“P&C RBC Manual Instructions” means the *NAIC Property and Casualty Risk-Based Capital Forecasting and Instructions*.

“PE” means private equity.

NAIC Report: 2023 Summer National Meeting

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

“Proposed Guidance” means the interpretive guidance related to a new process for designating non-bank SIFIs.

“PRT” means pension risk transfer.

“QUSFI List” means the *List of Qualified U.S. Financial Institutions*.

“RBC” means risk-based capital.

“RBCIRE WG” means the Risk-Based Capital Investment Risk and Evaluation € Working Group.

“ReFAWG” means the Reinsurance Financial Analysis (E) Working Group.

“RFSWG” means the Risk-Focused Surveillance (E) Working Group.

“SAWPG” means the Statutory Accounting principles (E) Working Group.

“SIFI” means a systematically important financial institution designated by FSOC.

“Summer National Meeting” means the 2023 Summer National Meeting of the NAIC Commissioners.

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

“VOSTF” means the Valuation of Securities (E) Task Force.

NAIC Report: 2023 Summer National Meeting

I. Financial Condition Regulation

A. Insurance Company Investments

1. *Financial Condition (E) Committee Proposes “Holistic Review” of Insurer Investment Regulation*

The NAIC has identified oversight of insurer investments and solvency as a key priority area for 2023. Over the past several years, concerns about potential risks to insurers arising from investments in complex assets has led to proposals from different NAIC working groups under the umbrella of the Financial Condition (E) Committee (the “(E) Committee”) to change how certain investments are assessed and reported, along with corresponding RBC treatment. At the Summer National Meeting, discussions around these various initiatives coalesced at the parent committee level with the (E) Committee exposing for public comment a document titled “Framework for Regulation of Insurer Investments – A Holistic Review” (the “(E) Committee Memo”).

The (E) Committee Memo, available [here](#), was drafted by an ad hoc group of regulators apparently in response to criticisms by interested parties of recent SVO initiatives (which are discussed in the following section). The document expresses support for the SVO’s concerns and initiatives surrounding insurer investments and seeks to “highlight areas that regulators have identified where the insurance regulatory framework for investments could be enhanced.” The document proposes “a modernization of the role and capabilities of the SVO in a way that correlates with the observed shift towards more complex and asset-intensive business strategies.”

The “Proposed Regulatory Enhancements” in the (E) Committee Memo include:

- Reduce/eliminate “blind reliance” on credit rating providers (“CRPs”) but retain overall utilization of CRPs
- Retain ability within the SVO to perform individualized credit assessment as a “backstop”
- Enhance SVO’s portfolio risk analysis capabilities and increase staffing
- Enhance SVO’s structured asset modeling capabilities
- Build out a broad policy advisory function at the SVO with external consultants
- Consider establishing a broad investment working group under the (E) Committee to coordinate various workstreams
- Rename the SVO and VOSTF to better reflect the responsibilities of the group beyond securities valuation

NAIC Report: 2023 Summer National Meeting

The (E) Committee Memo also “provides high-level guidelines for considering consistency of capital across assets” with respect to specific (E) Committee workstreams, which are noted in the relevant sections that follow.

At the (E) Committee meeting, regulators expressed support for the document and noted that it is not intended to pause any current workstreams but rather provide a “future vision” for an investment regulation framework. Commissioner Amy L. Beard (IN) stated that the (E) Committee Memo is intended to take a “measured,” “non-prescriptive approach,” that recognizes the subject matter expertise of the SVO. The (E) Committee voted to expose it for a 45-day comment period ending on October 2, 2023.

2. *Valuation of Securities*

a. NAIC Designations

Discussions continued at the Summer National Meeting regarding an amendment to the definition of “NAIC Designation” in the P&P Manual, which VOSTF has been working on since 2022. NAIC Designations are used as an indication of risk in a number of NAIC processes, including credit quality assessment of investments by the SVO, assignment of RBC factors, statutory accounting valuation, state investment regulations that incorporate NAIC guidance and determining eligibility of reinsurance collateral. NAIC Designations currently are either (i) assigned by the SVO, with respect to securities required to be filed with the SVO for assessment, or (ii) directly translated from a CRP rating, for securities that are “filing exempt.” VOSTF’s goal with the proposed amendment is to clearly articulate what an NAIC Designation is in a single definition that applies to all of these processes. The concept is currently separately defined in different parts of the P&P Manual.

The proposal previously exposed for comment stated that

An NAIC Designation shall reflect the likelihood of timely and full payment of principal and scheduled periodic interest, as appropriate and the probability of principal and interest payment default. It will also reflect consideration of potential “tail risks” (e.g., the probability that a security’s payment default will be more than three standard deviations from the mean is greater than what is shown by a normal distribution).

The proposal also provided guidance on the use of the “Subscript S Symbol,” which the SVO is directed to assign as part of an NAIC Designation to securities that reflect “other non-payment risks,” such as where governing agreements permit irregular or conditional payments.

Interested parties were concerned that the proposal expands the scope of the SVO’s authority with respect to NAIC Designations by referring to risks or factors, such as “tail risks,” volatility/interest rate, prepayment, extension and liquidity risk, that were not previously assessed as part of the NAIC Designation process. Commenters noted that the proposal

NAIC Report: 2023 Summer National Meeting

could be interpreted as granting the SVO authority to apply the Subscript S concept to CRP ratings (i.e., to filing exempt securities) and thus effectively mean that investments that the SVO deems to present “other non-payment risks” are no longer filing exempt.

In response to the comments, VOSTF will continue to work with interested parties on the proposed amendment, focusing on “consistent treatment of asset classes” and eliminating “unintended confusion” over the definition of NAIC Designation and the Subscript S symbol. With respect to the Subscript S symbol, VOSTF Chair Carrie Mears (IA) noted that the SVO may consider more informal channels to share concerns with regulators regarding particular investments rather than the formal Subscript S designation.

b. Rating Agency Matters

As noted in Section II.A below, one of the Considerations of the NAIC’s private equity-related initiative focuses on “the level of reliance on rating agency ratings and their appropriateness for regulatory purposes (e.g., accuracy, consistency, comparability, applicability, interchangeability and transparency).” The (E) Committee Memo further notes that, with respect to “filing exempt” securities, “[t]here is currently a ‘blind’ reliance on the CRP rating, with no mechanism for overall due diligence around CRP usage, nor an ability to challenge an individual rating for not conforming to regulator expectations of how it was determined.”

VOSTF has attempted to address this concern with a proposed amendment to the P&P Manual that was exposed for comment on May 15, 2023 and would provide a process for the SVO to challenge a CRP rating for a filing-exempt investment. The process would include steps such as: (i) a means for the SVO to identify to insurers a rating of concern; (ii) notice to allow the insurer to appeal or provide additional information before any action is taken; (iii) a formal review process by the SVO, in consultation with applicable insurance regulators; (iv) a means to revoke filing exemption eligibility based on a materiality threshold; and (v) a means to re-instate the filing exemption should changing conditions or ratings warrant.

At the Summer National Meeting, VOSTF discussed comments that were received from many interested parties expressing concerns that the proposal lacks transparency, would result in inconsistent treatment of insurers and securities, and would introduce uncertainty into the markets for broad classes of assets. In addition, the NAIC received a letter from certain Republican members of the U.S. House of Representatives stating that the proposal would inappropriately expand the NAIC’s discretion, create market disruption and undermine a competitive market amongst CRPs.

In response to the concerns, the NAIC and SVO staff emphasized that the proposed procedures would provide due process to insurers while ensuring that they are holding sufficient capital based on their investment risk, leaving policyholders better protected. VOSTF indicated that it would continue to review the comments and rework the proposal. Chair Mears said that all suggestions would be considered “in good faith” and that increasing transparency in the proposal

NAIC Report: 2023 Summer National Meeting

will be a priority. VOSTF will consider means to publicly report on impacted securities while maintaining insurer confidentiality, as well as potentially engaging a third party expert to periodically review SVO's work (which is also contemplated by the (E) Committee Memo).

In addition, VOSTF shared that it will begin scheduling meetings with CRP providers to broadly discuss the role of CRP ratings in NAIC processes based on a list of questions for CRPs that VOSTF published [here](#) on July 26, 2023.

c. CLO Modeling Update

The ad hoc group that is tasked with developing the technical methodology by which the SVO will model CLO investments (beginning with year-end 2024 financial reporting) has met several times and has agreed on an approach with respect to the implementation of certain assumptions in the modeling framework (reflected in a memo attached available on the ad hoc group's [webpage](#)).

3. RBC Matters

a. Residual Tranches

At the 2022 Fall National Meeting, RBCIRE WG received a referral from VOSTF to develop an “interim solution” to address RBC charges for residual tranches of structured securities. The residual tranche refers to the “lowest” tranche of an asset-backed security (e.g., CLOs and mortgage-backed securities) that has equity-like characteristics, meaning it has the highest potential yield but also absorbs the first losses. This initial referral from VOSTF proposed using three new NAIC Designation Categories (e.g., 6.A, 6.B, and 6.C), with potential interim RBC factors of 30%, 75%, and 100% respectively. RBCIRE WG received largely critical comments on this proposal from interested parties: some commenters supported the use of a single interim RBC factor for residuals, while others argued that residual tranches do not present a sufficiently material risk to justify any interim solution.

After receiving these comments, at the Spring National Meeting RBCIRE WG directed NAIC staff to prepare for exposure (i) a sensitivity test intended to allow regulators to determine whether any companies have material risk from their residual tranches, and (ii) an updated proposal for residual tranche RBC charges using a single factor rather than the three-factor approach initially presented by VOSTF. RBCIRE WG subsequently adopted the single-factor structural change on April 20, 2023. At that time it left open the ultimate determination of an appropriate factor, but exposed for comment a single factor of 45%. Discussion on this topic continued at interim meetings and on June 14, 2023, RBCIRE WG adopted a “compromise proposal” presented by Jamie Walker (TX) under which, for the Life RBC formula:

NAIC Report: 2023 Summer National Meeting

1. For year-end 2023, the RBC factor for residual tranches will be set at 30%, consistent with current RBC treatment, with an additional 15% factor used for sensitivity testing purposes.
2. For year-end 2024, the RBC factor for residual tranches will rise to 45%, subject to a commitment by RBCIRE WG to consider increasing or decreasing this factor if it receives information from the sensitivity test or otherwise (e.g., from industry) supporting a different charge.
3. Any action by RBCIRE WG to modify the 45% charge for year-end 2024 must be taken by June 30, 2024.

The adopted proposal also contemplates a 0% sensitivity test factor for 2024, subject to adjustment based on any changes to the 45% RBC factor. Executive and Plenary adopted the proposal at the Summer National Meeting and it will be effective for year-end 2024 RBC filings.

b. Broader Efforts on Structured Securities

Although the adoption of the interim factor for residual tranches concludes one part of the NAIC's work in this area, a long-term solution for residual tranches is still in the works and other workstreams continue to progress. For example, as described in Section I.A.2.c above, VOSTF continues to develop a modeling methodology for CLOs. The (E) Committee Memo highlights key considerations for these workstreams going forward, including that (i) "changes in RBC factors should consider market impacts and consistency across asset classes in determining when and how to implement such changes" and (ii) RBCIRE WG should "consider and address areas where inconsistencies in treatment across asset classes incentivize a particular legal form," which may lead to "capital arbitrage."

Additionally, at the Summer National Meeting, RBCIRE heard a presentation from Steve Smith of the American Academy of Actuaries as part of the Academy's continuing work with the NAIC on determining appropriate RBC factors for structured securities. The Academy presentation proposed a flowchart approach for determining whether a particular asset class requires modeling, as well as several "candidate-principles" for discussion by regulators. This presentation is currently available [here](#) in the RBCIRE WG materials.

Parallel to these efforts to address RBC charges for residual tranches and structured securities more broadly, during its session at the Summer National Meeting SAPWG exposed proposed revisions to SSAP No. 48 – *Joint Ventures, Partnerships and Limited Liability Companies*, which would clarify that investment structures within the scope of this SSAP that represent residual interests or predominantly hold residual interests should be reported on the dedicated residual reporting line on Schedule BA. These revisions stem from concerns expressed by regulators after review of 2022 year-end financial data that current reporting guidance underrepresents the scope of insurers' residual tranche holdings. Comments on this exposure are requested by September 12th as SAPWG hopes to implement revisions to SSAP No. 48 in time for year-end reporting to maximize effectiveness of the residual tranche sensitivity test already adopted by RBCIRE WG.

NAIC Report: 2023 Summer National Meeting

c. ACLI Proposal to Align C-0 Charge for Securities Lending and Repurchase Agreements Programs

The Life Risk-Based Capital (E) Working Group agreed to expose for a 45-day comment period a proposal by the American Council of Life Insurers (“ACLI”) to align C-0 charges for securities lending programs and repurchase agreement transactions. The ACLI noted that closer alignment between the capital charges of both would incentivize the diversification of insurers’ sources of short-term funding, which would in turn reduce exposure to primary dealers, encourage stable funding from alternative sources (including state-sponsored funds, asset managers and money market funds) and improve insurers’ ability to sustain funding through stressed market environments and avoid asset fire sales.

4. *Statutory Accounting*

a. Accounting Treatment for Negative IMR

At the 2022 Fall National Meeting, SAPWG exposed for comment a new agenda item (#2022-19) to address industry concerns with current statutory accounting guidance requiring the nonadmittance of a net negative IMR balance. SAPWG has received industry presentations on IMR in regulator-only sessions and an additional comment letter from ACLI (which brought the issue to SAPWG’s attention). During its session at the Spring National Meeting, SAPWG discussed various “safeguards” that could be implemented if admitting a net negative IMR balance, and ultimately directed NAIC staff to prepare guidance for SAPWG’s consideration that would allow the admission of a net negative IMR balance within certain limits.

On April 10, 2023, SAPWG exposed its first iteration of INT 23-01T as a limited-time, optional interpretation of statutory accounting principles that would allow admittance of net negative IMR in a company’s general account up to 5% of adjusted capital and surplus, subject to certain restrictions as well as reporting and disclosure requirements. Comments on this interpretation were submitted by a number of interested parties, and considered by SAPWG during its subsequent meeting on June 28, 2023. That meeting ended with direction by SAPWG to NAIC staff to prepare for exposure a revised version of the INT 23-01T.

The revised exposure of INT 23-01T, permits insurers to admit net negative IMR subject to certain restrictions:

1. An otherwise qualifying insurer may admit net negative IMR up to 10% of its capital and surplus, following adjustments to exclude various “soft assets” (any net positive goodwill, electronic data processing equipment and operating system software, net deferred tax assets, and the admitted net negative IMR balance itself).
2. To qualify, an insurer must have an RBC ratio of 300% authorized control level after an adjustment to total adjusted capital (TAC) to exclude those “soft assets” listed above.

NAIC Report: 2023 Summer National Meeting

3. To include losses from derivatives that were reported at fair value prior to derivative termination in admitted net negative IMR, the insurer must have documented, historical evidence of having followed the same process for interest-rate hedging derivatives terminated in a gain position (i.e., unrealized gains were added to IMR and amortized).

In addition to these restrictions, INT 23-01T contains certain affirmation, reporting and disclosure requirements and provides a process for allocating net negative IMR between general and separate accounts. These requirements, along with further background on the NAIC's process, are described in further detail in our Client Alert available [here](#).

At the Summer National Meeting, SAPWG adopted INT 23-01T with only minor editorial revisions (suggested by ACLI during the comment period), meaning that this interim solution will now be in place for insurers' year-end reporting. As currently written, INT 23-01T will be effective until December 31, 2025 and will automatically expire on January 1, 2026, but SAPWG retains discretion to adjust the effective date depending on ongoing development of a long-term solution. A disclosure memo is being prepared by NAIC staff for the Blanks (E) Working Group to post on its website for year-end 2023, and SAPWG is sponsoring a blanks proposal to incorporate the disclosure and attestation requirements of INT 23-011T into the notes and general interrogatories for year-end 2024. Additionally, at ACLI's suggestion SAPWG directed the formation of an ad hoc technical working group to consider the IMR issue going forward and assist in developing a long-term solution.

b. Bond Project

SAPWG's work on implementing various statutory accounting revisions associated with the Bond Project continues. The Project is intended to clarify which securities should be reported as a bond on Schedule D-1 (Long-Term Bonds) of an insurance company's statutory financial statements, and to improve accounting and reporting of these investments.

At the Summer National Meeting, SAPWG adopted the previously exposed revisions to SSAP No. 26R and SSAP No. 43R, along with corresponding revisions. The adopted version of SSAP No. 26R includes the centerpiece of the Bond Project, the updated bond definition, which at a high level defines a "bond" as "any security representing a creditor relationship, whereby there is a fixed schedule for one or more future payments, and which qualifies as either an issuer credit obligation or an asset-backed security." With this final adoption by SAPWG, new bond definition and other revisions to SSAP No. 26R and SSAP No. 43R will take effect on January 1, 2025. Because a number of comments were received from interested parties on revisions to SSAP No. 21R, SAPWG elected to expose an updated version of those revisions that provides additional accounting guidance related to non-bond debt securities and proposed measurement guidance for residuals.

SAPWG also voted to expose further revisions to the bond definition issues paper, as well as to sponsor a blanks proposal for further revisions to the Schedule BA reporting lines to clarify reporting. In connection with these revisions, SAPWG referred a request by interested parties to allow debt securities that do not qualify as bonds to be permitted to

NAIC Report: 2023 Summer National Meeting

retain a filing exemption or private letter rating capability to VOSTF and the Capital Adequacy (E) Task Force for consideration.

B. Revisions to the Insurance Holding Company Systems Accreditation Standard

During its meeting on August 13, 2023, the Financial Regulation Standards and Accreditation (F) Committee adopted revisions to the 2020 amendments to the *Insurance Holding Company System Regulatory Act* (Model #440) and the *Insurance Holding Company System Model Regulation* (Model #450), which implement a group capital calculation allowing for commissioners to exempt qualifying groups without having to file at least once a liquidity stress test as an accreditation standard. As background, in December 2020, the NAIC adopted revisions to Model #440 and Model #450 that implement a group capital calculation for the purpose of group solvency supervision and a liquidity stress test for macroprudential surveillance. The revisions to these model laws went through multiple exposure periods, one of which included a recommendation by the (F) Committee for revisions that would allow the commissioner to grant exception to qualifying groups meeting the standards set forth in Model #450 Sections 21(A) and 21(B). At the Spring 2023 (F) Committee meeting, committee members discussed the importance of allowing the commissioner to exempt qualifying groups from the group capital calculation requirements when appropriate to avoid placing an unnecessary burden on groups where such a filing would not provide any additional benefit. Following this adoption by the (F) Committee, these amendments will next go to the Executive (EX) Committee and Plenary for approval at the Fall 2023 National Meeting. Once adopted by the Executive (EX) Committee and Plenary, the revised standard will become effective January 1, 2026.

C. Update on NAIC Handbook Revisions Related to Reviewing Affiliate Services Agreements

The Risk-Focused Surveillance (E) Working Group discussed a further revised draft of changes to the NAIC Financial Analysis Handbook and the Financial Condition Examiners Handbook that provide additional guidance for regulators when they review and monitor affiliate service agreements, particularly those with non-cost fee structures. Following the 2023 Spring National Meeting (see [here](#) for more information), NAIC staff updated the proposed draft in response to interested parties' comments, which support adding guidance for "cost-plus" arrangements where pricing is based on the cost of the relevant services plus a negotiated fee or profit margin. Set forth below is a brief summary of the proposed handbook changes.

- Form D Review Procedures. For transactions other than cost, an insurer may use the following approaches to provide evidence in a Form D filing that the pricing of a proposed affiliate service agreement satisfies the "fair and reasonable" standard.
 - The insurer can demonstrate that it will pay an amount that is similar to the price charged to non-affiliates because the affiliate service provider conducts a significant portion of its business with third parties.

NAIC Report: 2023 Summer National Meeting

- *Cost-Plus Arrangements*. When market rates cannot be used as a point of comparison, the insurer must “provide adequate supporting rationale and documentation demonstrating its analysis supporting the profit margin selected under the approach.”
- *Form D Approval Notices*. The Form D approval of an affiliate service agreement should state that the insurer’s representations in the filing are subject to verification on examination in order to ensure that the charges are fair and reasonable. If an examiner discovers an issue, a “correction would generally be required on a going forward basis.”
- *Verification Procedures upon Examination*. “[An] examination team may be in a better position [than the Form D reviewer] to assess the fairness and reasonableness of expense allocations after the agreement has been in place for a period of time.”

An examiner should use certain criteria to determine whether an affiliate service agreement, or certain aspects of the agreement, should be reviewed, such as: (i) whether the agreement is new; (ii) the basis for pricing (e.g., an affiliate agreement with a non-cost fee structure with limited support in the Form D filing would be of highest concern); and (iii) whether there is a change in operations that has, or could significantly impact, the parties’ cash flows as compared to what was stated in the Form D.

Amy Malm (WI), Chair of the Risk-Focused Surveillance (E) Working Group, noted that it was important to move forward with the proposed handbook guidance because of the increased number of Form D submissions for affiliate service agreements. The Working Group voted to approve the handbook revisions with the following friendly amendment from Virginia. Since a cost-plus arrangement may not be acceptable in all jurisdictions, when a proposed affiliate service agreement with this structure is reviewed, the analyst should determine if the documentation submitted in support of the methodology is sufficient or if another payment structure should be selected. The draft guidance will be referred to the Financial Analysis Solvency Tools (E) Working Group and the Financial Condition Examiners (E) Handbook Technical Group for consideration of adoption.

D. Receivership and Insolvency

The Receivership and Insolvency (E) Task Force voted to expose proposed amendments to the *Property and Casualty Insurance Guaranty Association Model Act* regarding (i) insurance business transfer and corporate division (“IBT/CD”) transactions and (ii) cybersecurity insurance. The amendments are intended to ensure that policyholders do not lose guaranty fund coverage as a result of an IBT/CD and that cyber insurance policies are eligible for guaranty fund coverage. The amendments were adopted by the Receivership Law (E) Working Group at an interim meeting in July following multiple rounds of comments from interested parties regarding the IBT/CD aspects of the amendments. However,

NAIC Report: 2023 Summer National Meeting

the Working Group stated that it is still considering further edits and requested the additional exposure period for continued feedback from interested parties. The amendments were exposed for 30 days until September 14, 2023.

The Task Force also exposed for the same period a template for describing the U.S. receivership regime. The template is intended for lead state insurance departments to use in discussions with international regulators and aid in developing resolution plans for internationally active insurance groups. The Task Force's current exposure materials are available [here](#).

II. Macroprudential Risk and Insurance Industry

A. Updates on the Private Equity Considerations Work Plan

In 2022, the NAIC's Macroprudential (E) Working Group (the "MWG") began work on a plan to address the list of "Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers" (linked [here](#)). The MWG and other working groups shared updates regarding the status of certain of the Considerations at the Summer National Meeting, as set forth below. In a [status update document](#) on the Considerations prepared for the Summer National Meeting, the MWG noted that "[s]ome of these Working Group projects will continue for several years."

- Consideration One (*Structuring Contracts in a Holding Company System*): Regulators may not be obtaining a clear picture of risk due to holding companies structuring contractual agreements in a manner to avoid regulatory disclosures and requirements. Related party agreements, which impact an insurer's risks, may also be structured to avoid disclosure (for example, by not including the insurer as a party to the agreement).
- Consideration Two (*Control*): Control is presumed to exist where ownership is greater than or equal to 10% of an insurer's voting securities, but control and conflict of interest considerations may exist with less than 10% ownership. For example, a party may exercise a controlling influence over an insurer through board and management representation or contractual arrangements, including non-customary minority shareholder rights or covenants, investment management agreement ("IMA") provisions, such as onerous or costly IMA termination provisions, or excessive control or discretion given over the insurer's investment strategy and its implementation.

Status: The MWG has referred Considerations One and Two to the Group Solvency Issues (E) Working Group, which has discussed enhancing regulator training and best practices surrounding insurance company acquisition transactions and "control" determinations. The Working Group has formed a drafting group to develop "best practices" for regulatory review in this area. After such best practices are developed, the drafting group will consider whether any should be proposed for inclusion in NAIC handbooks, or if other actions should be considered.

NAIC Report: 2023 Summer National Meeting

- **Consideration Three (IMAs):** The material terms of an IMA and whether they are arm's length or include conflicts of interest—such as the amount and types of investment management fees paid by the insurer, the termination provisions (how difficult or costly it would be for the insurer to terminate the IMA) and the investment manager's degree of discretion or control over investment guidelines, allocation and decisions.

Status: The MWG referred this Consideration to the Risk-Focused Surveillance (E) Working Group (the "RFSWG"), which is turning from its project to update guidance in the Financial Analysis Handbook and Financial Condition Examiners Handbook regarding affiliate service agreements, discussed in Section I.C above, to work on more targeted guidance related to affiliated IMAs specifically.

At the Summer National Meeting, the RFSWG agreed to form a drafting group of regulators to develop guidance for NAIC handbooks regarding affiliated IMAs.

- **Consideration Four (Asset-Liability Matching):** Owners of insurers, regardless of type and structure, may be focused on short-term results that may not be in alignment with the long-term nature of liabilities in life insurance products.

Status: In 2022, the NAIC adopted Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves ("AG 53"), which addresses this Consideration and is described in greater detail [here](#). Regulators received the first filings under AG 53 from 246 in-scope life insurers. Valuation Analysis (E) Working Group Chair Fred Andersen (MN) reported that a team of regulators with actuarial, investment and financial expertise has been assembled to review the filings, focusing on the highest risk areas first. An initial area of focus is insurers' net yield assumptions and whether those are appropriate to ensure adequacy of reserves. The Reinsurance (E) Task Force is also involved in the review of filings with respect to reinsurance.

The MWG also referred this Consideration to the Risk-Focused Surveillance (E) Working Group for review, such as suggesting guidance for appropriate entities to provide capital maintenance agreements. At the Summer National Meeting, the RFSWG confirmed that it would be reviewing the topic of capital maintenance agreements separately from the drafting group project on IMAs.

- **Consideration Five (Operational Oversight):** Operational, governance and market conduct practices may be effected by the different priorities and level of insurance experience possessed by entrants into the insurance market without prior insurance experience, including, but not limited to, private equity ("PE") owners.

Status: At the Summer National Meeting, MWG Chair Bob Kasinow (NY) reported that the MWG will turn its attention to this Consideration and "soon begin" considering it now that it has completed the reinsurance worksheet with respect to Consideration Thirteen, discussed below.

NAIC Report: 2023 Summer National Meeting

- Consideration Six (PE Definition): No uniform or widely accepted definition of PE and challenges in maintaining a complete list of insurers' material relationships with PE firms.

Status: As previously reported, no action will be taken on this Consideration since regulators agree the focus should be on activities and not specific types of owners.

- Consideration Seven (Related Party Investments): The lack of identification of related party-originated investments (including structured securities). This may create potential conflicts of interests and excessive and/or hidden fees in the portfolio structure, as assets created and managed by affiliates may include fees at different levels of the value chain—for example, a CLO, which is managed or structured by a related party.

Status: The financial statement related party transaction reporting requirements effective for year-end 2022, as reported on [here](#), with updates adopted at the Spring National Meeting reported on [here](#), addresses this Consideration.

- Consideration Eight (Affiliate Investments within Structured Securities): Although the NAIC's Annual and Quarterly Statement blanks include affiliate investment disclosures, it is not easy to identify underlying affiliate investments and/or collateral within structured security investments. Additionally, transactions may be excluded from affiliate reporting due to nuanced technicalities. Regulatory disclosures may be required to identify underlying related party and subsidiary, controlled and affiliated investments and/or collateral within structured security investments. This would include, for example, loans in a CLO issued by a corporation owned by a related party.

Status: The approach to this Consideration overlaps with Consideration Seven, above, regarding related party reporting requirements, and Consideration Ten, below, related to privately structured securities.

- Consideration Nine (Disclaimers of Affiliation): Broader considerations exist around asset manager affiliates (not just PE owners) and disclaimers of affiliation avoiding current affiliate investment disclosures.

Status: The MWG has stated that this Consideration is addressed by the Schedule Y, Part 3 reporting requirement, which went into effect for year-end 2021, to identify all entities with a greater than 10% ownership regardless of whether a disclaimer is in place. SAPWG's ongoing Bond Project, discussed in Section I.A.4.b above, further addresses this Consideration.

- Consideration Ten (Increased Risk from Certain Investments): The material increases in privately structured securities (both by affiliated and nonaffiliated asset managers), which introduce other sources of risk or increase traditional credit risk, such as complexity risk and illiquidity risk, and involve a lack of transparency.

NAIC Report: 2023 Summer National Meeting

Status: AG 53 addresses this Consideration, since it includes disclosure requirements for the referenced risks. The MWG also referred this Consideration to the NAIC's Valuation of Securities (E) Task Force, which (along with related NAIC groups) has been working on a project to determine appropriate RBC charges for CLOs held by insurers. Relevant updates are described in Section I.A.3 above.

- Consideration Eleven (Reliance on Ratings): The level of reliance on rating agency ratings and their appropriateness for regulatory purposes (e.g., accuracy, consistency, comparability, applicability, interchangeability and transparency).

Status: The MWG referred this Consideration to VOSTF. Updates from the Summer National Meeting related to VOSTF's review of credit rating provider matters are discussed in Section I.A.2.b above.

- Consideration Twelve (Pension Risk Transfer Risks): The trend of life insurers engaging in pension risk transfer ("PRT") business and supporting such business with the more complex investments outlined above.

Status: The MWG expects that certain prior NAIC actions will address this Consideration, including (i) AG 53; (ii) the new charge added to the 2021 Life Risk-Based Capital Formula related to longevity risk transfer business, which regulators will monitor; and (iii) modifications to the reporting of PRT transactions adopted by SAPWG in May 2021. LATF is also considering the development of PRT/longevity risk mortality factors but there have been no updates on such projects. In addition, NAIC staff is holding discussions with U.S. Department of Labor ("DOL") representatives and industry groups. At the Summer National Meeting, MWG Chair Kasinow (NY) highlighted the DOL's work to update its Interpretive Bulletin 95-1, related to fiduciary standards under ERISA with respect to annuity providers, as a developing area for insurance regulators and interested parties to follow.

- Consideration Thirteen (Offshore Reinsurers): Insurers' use of offshore reinsurers (including captives) and complex affiliated sidecar vehicles to maximize capital efficiency, reduce reserves, increase investment risk and introduce complexities into the group structure.

Status: At the Summer National Meeting, the Financial Condition (E) Committee voted to adopt a "reinsurance comparison worksheet" that the MWG developed following meetings with interested parties and U.S. and foreign insurance regulators. The worksheet is an "optional tool" for regulators to request from reinsurance parties and is intended to help state regulators assess cross-border reinsurance treaties involving different regulatory systems and to enhance regulators' ability to monitor these activities by understanding the impacts of a reinsurance transaction. The MWG has emphasized that the worksheet is only designed to be used when regulators "need to determine the economic impacts" of a particular reinsurance transaction and that if a transaction is easily understood without the use of the worksheet then it should not be used. The worksheet is

NAIC Report: 2023 Summer National Meeting

not intended to affect other policies or procedures of the Reinsurance (E) Task Force, and will not be a required element in the NAIC's financial handbooks. Although the worksheet was designed with life reinsurance transactions as the initial focus, it is not limited to life transactions. The worksheet is available [here](#).

B. Other Macroprudential Initiatives

1. *FSOC Proposes Changes to the SIFI Designation Process*

On April 21, 2023, FSOC exposed two proposals for public comment (available [here](#)):

- (i) the Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (the "[Analytic Framework](#)"); and
- (ii) interpretive guidance related to a new process for designating non-bank SIFIs (the "[Proposed Guidance](#)"). This guidance would replace the existing designation process that FSOC finalized in December 2019, which prioritizes an "activities-based approach" to addressing systemic risk, as we reported [here](#).

FSOC is authorized under Dodd-Frank to designate an entity that poses systemic risk to the entire financial system as a non-bank SIFI, which subjects it to enhanced prudential standards under the Federal Reserve's supervision. Superintendent Elizabeth Dwyer (RI) referred to this authority as a "a potent tool in FSOC's toolbox" during the Joint Meeting of the Financial Stability (E) Task Force and the Macroprudential (E) Working Group.

The Analytic Framework describes how FSOC would identify and address potential risks to U.S. financial stability that can surface from the financial distress or activities of large nonbank financial companies or bank holding companies. Sources of financial stability risk include leverage, liquidity risk and operational risk, and FSOC may consider these risks as well as "transmission channels in activities-based reviews [or] entity-specific analyses." FSOC would be permitted to use different approaches or "tools" to address a systemic risk, including considering whether to designate a company as a non-bank SIFI.

With respect to modifying the SIFI designation process, the Proposed Guidance states that FSOC would no longer be required to take the following steps – steps which FSOC believes "unduly hamper [its] ability to use the statutory authority Congress provided to it" – (1) using an activities-based approach to addressing financial stability risks before considering whether to designate a company (i.e., FSOC would be permitted to use the "most appropriate tool" for addressing the relevant risks); and (2) conducting a cost-benefit analysis and assessing the likelihood of a company's material financial distress before making a designation.

The NAIC did not comment publicly on FSOC's proposals before the exposure period ended on July 27 because Superintendent Elizabeth Dwyer (RI) serves as the NAIC members' FSOC representative. However, at the Summer

NAIC Report: 2023 Summer National Meeting

National Meeting, she noted that while insurance companies may be affiliated with parts of the financial system that could create financial stability risk, the U.S. system of state insurance regulation can address these issues effectively. Furthermore, this system has evolved since the 2008 financial crisis as regulators now have “far deeper insights” into non-insurance entities within a group, better risk management and liquidity tools, and enhanced disclosure requirements to further limit the potential for systemic risk in the insurance sector.

2. *Brief Update on the LST Framework*

The Macroprudential (E) Working Group plans to share highlights from the 2022 LST filings when the review process is completed, and they will soon consider whether to modify the scope criteria and stress scenarios for the 2023 LST framework.

III. Innovation, Cybersecurity, Technology, and Privacy Developments

The Innovation, Cybersecurity, and Technology (H) Committee (the “(H) Committee”) met to hear updates from its Working Groups and discuss the exposure draft of its *Draft Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers* (the “AI Bulletin”) (linked [here](#)).

A. Draft Model Bulletin on the Use of Algorithms, Predictive Models, and Artificial Intelligence Systems by Insurers

As we previously reported on [here](#), on July 17, 2023, the (H) Committee exposed its AI Bulletin. The AI Bulletin outlines how state departments of insurance should govern the development, acquisition and use of AI technologies, as well as the types of information and documentation that departments may request during an investigation or examination of an insurer in relation to AI systems.

At the Summer National Meeting, the (H) Committee received initial public comments on the AI Bulletin from various parties, including trade group representatives, consumer representatives, and interested regulators. Generally, parties were supportive of the draft AI Bulletin, but suggested tightening certain definitions including “Artificial Intelligence,” “AI Systems” and “Bias.” Additionally, interested parties suggested that the NAIC work with various companies (large, medium and small) to conduct private audits to better understand how AI is being used in insurance space in order to bolster the AI Bulletin. Lastly, interested parties were in favor of the Bulletin’s principles-based approach to setting governance expectations, as opposed to a prescriptive approach.

B. Home AI/ML Survey Summary Results

The most notable update from the Big Data and Artificial Intelligence (H) Working Group was a summary from Co-Vice Chair Commissioner Kevin Gaffney (VT) on the results of the 2022-2023 Home Artificial Intelligence/Machine Learning

NAIC Report: 2023 Summer National Meeting

survey (“[Home AI/ML Survey](#)”). The Home AI/ML Survey was conducted in 10 states and completed by insurers writing homeowners insurance with at least \$50 million in premiums.

Commissioner Gaffney reported that seventy percent (70%) of the reporting companies currently use, plan to use, or plan to explore using AI/ML in their operations. This percentage was lower than reported in the private passenger auto AI/ML survey (“[Auto Survey](#)”), in which 88% of auto insurers reported use of AI/ML. The home insurers’ operational use of AI/ML was primarily in claims (54%), underwriting (47%) and marketing (47%), fraud detection (42%), rating (35%) and loss prevention (14%). In contrast to the Auto Survey respondents, home insurers are using AI/ML more in underwriting and loss prevention. In the claims function, home insurers are using AI/ML mostly for subrogation, claims triage and evaluating images of loss. They generally are not using AI/ML for claim assignments or determining settlement amounts as auto insurers have reported. With respect to underwriting and reporting, home insurers are using less advanced models due mostly to transparency requirements of state insurance departments. Half of the home insurers reported that they have a documented governance program for the use of AI/ML.

The Working Group intends to explore insurers’ use of AI models, evaluate the use of third party models in the regulatory framework, and determine if additional white papers on AI/ML would be useful. In addition, they are in the beginning stages of developing a similar survey for health insurance. The full Home AI/ML Survey report may be read [here](#).

C. [Insurance Consumer Privacy Model Law \(#674\) Updates](#)

The Privacy Protections (H) Working Group continues to meet publicly and privately with industry trade groups, companies, and other interested parties to discuss the new Insurance Consumer Privacy Model Law (#674). Due to the volume of comments received on the latest draft exposed on July 11, the Working Group intends to seek an extension of time to further develop the draft and engage the public. In the next exposure, the Working Group intends to provide a redline with a summary of the revisions. The next exposure period will be longer to allow sufficient time to review and comment (e.g., four to six weeks). After reviewing comments received on the next exposure draft, the Working Group will evaluate the additional time needed and request an extension of time from the (H) Committee prior to the Fall National Meeting.

Since the Spring National Meeting, eight states have passed data privacy bills—Delaware, Florida, Iowa, Indiana, Montana, Oregon, Tennessee and Texas—bringing the total to twelve states. There are sixteen other states that introduced data privacy bills during the current legislative cycle. The American Data Privacy and Protection Act passed out of the Energy and Commerce Committee and almost made it to the House Floor vote. The federal Data Privacy Act of 2023 passed out of Committee and would create a preemptive ceiling and floor.

NAIC Report: 2023 Summer National Meeting

IV. Reinsurance Matters

The Reinsurance (E) Task Force met virtually on July 24, 2023 in lieu of the Summer National Meeting. The Task Force approved its 2024 charges, which were revised from 2023 to remove the charge to monitor the implementation of the revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786), and the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787), as these revisions respectively became accreditation standards on September 1, 2022 and have either completely been implemented by the states or significance progress has been made toward implementation.

A. Update on Reinsurance Collateral Reduction Applications

The Reinsurance Financial Analysis (E) Working Group (“ReFAWG”) continues to assist states with reviewing reinsurance collateral reduction applications to determine whether an applicant meets the requirements to be recognized as a Certified Reinsurer and/or a Reciprocal Jurisdiction Reinsurer. As of July 24, 2023, ReFAWG had approved 61 Reciprocal Jurisdiction Reinsurers and 41 Certified Reinsurers, and 41 states had “passported” at least one Reciprocal Jurisdiction Reinsurer, which is the process that gives states discretion to defer to the collateral reduction status of a reinsurer in another state. Although not required by law, the Reinsurance (E) Task Force continues to recommend submission of reinsurance collateral reduction applications to ReFAWG in order to ensure uniformity in the review process, which can better equip ReFAWG to answer questions from governments, foreign jurisdictions or other interested parties. The NAIC’s complete list of Certified Reinsurers and Reciprocal Jurisdiction Reinsurers is available [here](#).

B. Qualified and Reciprocal Jurisdictions

This fall, the Mutual Recognition of Jurisdictions (E) Working Group (formerly the Qualified Jurisdictions (E) Working Group) (the “MRJ Working Group”) will consider the annual re-approval of the status of seven existing jurisdictions (Bermuda, France, Germany, Ireland, Japan, Switzerland, and the United Kingdom) on the *NAIC List of Qualified Jurisdictions*. While most of the current Reciprocal Jurisdictions included on the *NAIC List of Reciprocal Jurisdictions* are afforded automatic Reciprocal Jurisdiction status by virtue of the Covered Agreements, the MRJ Working Group will also consider whether Bermuda, Japan and Switzerland (which are not parties to the Covered Agreements) will maintain their existing status on that list.

C. Ongoing Reinsurance-Related Projects at the NAIC

The Task Force described other ongoing projects at the NAIC that are focused on reinsurance:

- 1) New Optional Reinsurance Worksheet, as described in Section II.A, above.

NAIC Report: 2023 Summer National Meeting

- 2) Custody Control Account Proposal to Amend Life RBC Manual Instructions: The Life Risk-Based Capital (E) Working Group received a proposal in June to potentially modify the Life RBC Manual Instructions, which currently provide that if collateral is held by the cedant as funds withheld, or if a comfort reinsurance trust is established by the reinsurer, the cedant may avoid an overstatement of RBC charges that would otherwise be applied for credit exposure to reinsurance counterparties. The proposal put forth would amend the Life RBC Manual Instructions to similarly avoid overstatement of credit risk on a reinsurance transaction where collateral is held by the cedant in a “custody control account.”

The proposal would therefore allow comfort trusts and custody control accounts (which do not meet the rigorous standards set in the *Credit for Reinsurance Model Law (#785)*) to be allowed as collateral only for RBC treatment purposes and not for credit for reinsurance purposes. During an interim meeting in June, the Life RBC Working Group determined that further materials to consider the topic should be developed. The Task Force and the Life RBC Working Group have not yet had formal discussions on the topic.

- 3) Catastrophe Insurance: As a result of recent catastrophe-related insolvencies and the increasing cost of catastrophe reinsurance coverage, NAIC staff have started a new project to collect additional detail from property and casualty insurers about the structure of their catastrophe reinsurance programs on an annual basis. This project is intended to enhance the disclosures for catastrophe reinsurance programs and will include several new interrogatories that will be added to the P&C RBC Manual Instructions, since the reinsurance program structure relates to the existing Catastrophe Risk Charge in RBC. As some insurers view detailed information about their reinsurance program structure as proprietary, including it in the RBC filing provides confidentiality protections.

- 4) QUSFI List: After the failure of Silicon Valley Bank and Signature Bank and their removal from *List of Qualified U.S. Financial Institutions* (the “QUSFI List”) as of March (see discussion in our [2023 Spring National Meeting report](#)), VOSTF adopted a revision to the P&P Manual intended to streamline the process of removing troubled financial institutions from the QUSFI list in the future. A drafting note to Section 3 of the *Credit for Reinsurance Model Law (#785)* notes that when a financial institution that has provided a letter of credit for credit for reinsurance purposes subsequently loses its status on the QUSFI List, the letter of credit continues to be acceptable as security until there is an opportunity in the normal course of business for the credit facility to be replaced.

NAIC Report: 2023 Summer National Meeting

V. Other Topics of General Interest

A. NAIC Adopts Revisions to Mortgage Guaranty Insurance Model Act

The Mortgage Guaranty Insurance (E) Working Group has been engaged in a 10-year project to develop a new capital standard for mortgage guaranty insurers and to “strengthen and modernize” the *Mortgage Guaranty Insurance Model Act* (#630), in response to the 2008 financial crisis. In May 2022, the Working Group decided to pause the development of the capital model and continue collecting data for future analysis. Since then, the Working Group has focused on finalizing the amendments to Model #630, which the Executive and Plenary adopted at the Summer National Meeting following three rounds of public comment in 2022 and 2023.

The amendments, available [here](#), extensively revise Model #630 (which was last amended in 1979), including with respect to risk concentration limits, capital and reserve requirements, reinsurance, underwriting practices and quality assurance. Model #630 is not currently an NAIC Accreditation Standard and the NAIC reported that prior versions of the model had previously been adopted in 20 states.

B. NAIC Adopts Revisions to Nonadmitted Insurance Model Act (#870)

In the spring of 2021, the Surplus Lines (C) Task Force began working on revisions intended to modernize the *Nonadmitted Insurance Model Act* (#870). The Task Force and Property and Casualty (C) Committee had adopted the revisions to Model #870 during the spring meeting, and on Wednesday, August 16, 2023, the revisions were adopted by the Executive and Plenary. No discussion has been held regarding making the Model Act an accreditation standard.

The Model Act had last been updated in 2002, and therefore did not reflect the changes to the regulation of surplus lines insurance resulting from the federal Nonadmitted and Reinsurance Reform Act of 2010 (“[NRRRA](#)”), which was part of Dodd-Frank. Key revisions address (1) the role of the *Quarterly Listing of Alien Insurers* maintained by the International Insurers Department (IID) of the NAIC with respect to the determination of eligibility of non-US insurers; (2) collection of the surplus lines tax; (3) domestic surplus lines insurers; and (4) incorporation of NRRRA concepts such as “home state” and “exempt commercial purchaser.”

C. Topics of Interest to the Life Insurance Industry

During the Life Insurance and Annuities (A) Committee meeting, Director Judith French (OH) provided a high-level update for the Accelerated Underwriting (A) Working Group (“[AUWG](#)”) and Annuity Suitability (A) Working Group since these groups have not met formally since the last meeting. The AUWG’s continued work on the draft regulatory guidance document is on hold until the H Committee completes its AI model bulletin to avoid conflicts and duplication of effort. After the Summer National Meeting, the Annuity Suitability (A) Working Group will continue its discussion on potential questions

NAIC Report: 2023 Summer National Meeting

to add questions with respect to the safe harbor and comparable standards provisions in the FAQ document for the *NAIC Annuity Transactions Model Regulation (#275)*.

D. Topics of Interest to the Property and Casualty Insurance Industry

1. *Wildfires in Hawaii*

Amidst the backdrop of the wildfire tragedy in Hawaii, the Climate and Resiliency (EX) Task Force stressed the importance of its ongoing work on protecting insurer solvency and addressing protection gaps in the insurance market stemming from climate risk. The Task Force heard presentations on topics including: rising sea levels and atmospheric river storms and their impact on insurers; recommendations to make disaster insurance more affordable and accessible; and a recent study using a new machine learning algorithm to review insurance companies' responses to the NAIC 2021 Climate Risk Disclosure Survey.

The Task Force also received an update from its Solvency Workstream, which has been examining how climate scenario analysis exercises are conducted by other nation states. The Solvency Workstream is considering which climate scenario analysis methods will provide reliable information and data and may be best suited to utilize existing solvency tools. A draft referral on this topic is expected to be presented to the Task Force this year.

2. *Cannabis Insurance White Paper*

During its July 18, 2023 open meeting, the Cannabis Insurance (C) Working Group adopted the *Understanding the Market for Cannabis Insurance: 2023 Update* White Paper. During the Summer National Meeting, the White Paper was adopted by the Property and Casualty (C) Committee and then by the Executive (EX) Committee and Plenary. As background, the Working Group published the original White Paper in 2019, but at that time, many insurance gaps for cannabis-related businesses existed. Since 2019, cannabis regulation, particularly at the state and local levels has evolved, so the original White Paper needed to be updated in order to be a benefit to state insurance regulators. The Working Group was officially tasked with providing an updated White Paper in 2022, and since then has been exploring emerging issues, primarily in the commercial cannabis space. The updated White Paper finds that most of the commercial insurance for cannabis-related business is found in the non-admitted market and insurance gaps are most prevalent in the emerging areas of the cannabis industry such as ancillary services, cannabis infused products and social consumption lounges. Among the potential structures being explored to facilitate cannabis-related business coverage are the use of state-based commercial insurance programs, risk retention groups, captives and joint underwriting associations.

NAIC Report: 2023 Summer National Meeting

VI. International Matters

A. Comparability Assessment of Group Capital Standards Will Soon Get Underway

In September, the IAIS will begin the comparability assessment to determine whether the Aggregation Method approach to a group capital standard, which forms part of the GCC, produces comparable outcomes to the ICS. The NAIC expects the assessment to be based on a “robust, technical, evidence-based analysis,” per Commissioner Gary Anderson’s (MA), Chair of the International Insurance Relations (G) Committee, remarks at the summer meeting. The IAIS’s Executive Committee will make the final decision on comparability at the end of 2024.

In other work related to the ICS, the IAIS issued a public consultation in June on potential changes to the ICS before it becomes a prescribed capital requirement for IAIGs in 2025. Comments are due on September 21.

B. Other IAIS Updates

A brief update on certain of the IAIS’s other key projects and priorities is provided below.

- Preliminary Report on Systemic Risk. In July, the IAIS published a preliminary report on the outcome of the 2023 Global Monitoring Exercise (“GME”). The GME, which is part of the Holistic Framework for systemic risk identification, is based on year-end 2022 data that was collected from international insurance groups and supervisors. In the preliminary report, the IAIS identified the following themes in the 2023 GME: (i) insurers faced risks related to the challenging macroeconomic environment, namely interest rate risk, liquidity risk and credit risk; and (ii) there were “structural shifts in the life insurance sector, specifically the use of cross-border asset-intensive reinsurance and the increased allocation of capital to alternative assets.” The final report will be published in November.
- Climate Risk. During a Q&A session, Romain Paserot, IAIS Deputy Secretary General and Head of Capital and Solvency, said climate risk is an important priority at the IAIS. They have held workshops on this topic with supervisors and the IAIS is considering how to embed climate risk into its standards. In addition, at the end of 2023, the IAIS’s Climate Risk Steering Group plans to release a draft application paper on scenario analysis for public consultation.

NAIC Report: 2023 Summer National Meeting

VII. Other Updates

Additionally, briefly noted updates from the Summer National Meeting are summarized at a high level below:

A. Insurance Business Transfers and Corporate Divisions

The Restructuring Mechanisms (E) Working Group last met on May 4, 2023 and continued to discuss comments on draft “Foundational Principles” and “Best Practices” for insurance regulators to use when reviewing IBT/CD transactions. Comments focused on the use of independent experts, the appropriate standard for regulatory approval and regulatory filing requirements, and guaranty fund coverage following an IBT/CD. The Working Group’s stated goal is to finalize the Foundational Principles and Best Practices, along with a related white paper, by the end of 2023.

B. Adoption of the Market Regulation Certification Program

At the Summer National Meeting, the Market Regulation and Consumer Affairs (D) Committee adopted a voluntary Market Regulation Certification Program (the “MRC Program”). The MRC Program resulted from a pilot program involving 18 states that arose as a response to the federal government’s critique of market conduct regulation in the separate U.S. states, is intended to establish and maintain minimum standards that promote sound practices relating to the market conduct examination, market analysis and related functions performed for insurance consumer protection. Unlike an accreditation program, the MRC Program is voluntary and provides a checklist, guidelines, scoring matrix and implementation plan relating to 11 standards, including departmental authority, staffing, confidentiality and information sharing, collaboration, the use of the Market Conduct Annual Statement, and others.

NAIC Report: 2023 Summer National Meeting

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