

CLIENT ALERT

NAIC Report: 2024 Spring National Meeting

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AUTHORS

Kara Baysinger | **Leah Campbell** | **Stephanie Duchene** | **Matthew J. Gaul**
Michael Groll | **David Heales** | **Donald B. Henderson, Jr.** | **Allison J. Tam**
Nicole Zayac

The 2024 Spring National Meeting of the National Association of Insurance Commissioners (the “[Spring National Meeting](#)”) was held from March 15 to March 18, 2024 in Phoenix, Arizona.

NAIC President and Connecticut Insurance Commissioner Andrew Mais opened the Spring National Meeting by reminding regulators to “mind the gap,” referring to the need for regulators to work with industry to close coverage gaps for consumers. Commissioner Mais focused on the collaborative aspect of the NAIC in this regard and encouraged regulators to work “shoulder to shoulder.” He noted that innovation is a key component in closing coverage gaps and that regulators should be “fast followers of innovation,” while ensuring a path that is “bordered by the necessary guardrails.”

To that end, Commissioner Mais highlighted the NAIC’s 2024 strategic priorities as:

- Climate Risks/Natural Catastrophes and Resilience
- Insurer Financial Oversight and Transparency
- Marketing of Insurance Products
- Race and Insurance, Financial Inclusion, and Protection Gaps
- Use of AI by Insurers and Cyber Risk

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Commissioner Mais concluded his remarks by announcing the election of a new CEO of the NAIC, Commissioner Gary Anderson of Massachusetts. Commissioner Anderson is expected to assume his new role as CEO of the NAIC by May 1 after completing his service in Massachusetts. He replaces Andy Beal, who currently serves as acting CEO in addition to his roles as COO and CLO of the organization.

Highlights from the Spring National Meeting include:

- The Risk-Focused Surveillance (E) Working Group exposed for comment additional guidance for the NAIC Financial Analysis Handbook and Financial Condition Examiners Handbook for regulators when reviewing investment management agreements with affiliates. The proposed handbook revisions include items for financial analysts to consider in reviewing Form D filings for investment management agreements with affiliates.
- The Statutory Accounting Principles (E) Working Group adopted revisions to SSAP No. 21R—*Other Admitted Assets*, representing the final SSAP revisions needed to implement the Bond Project effective January 1, 2025. Remaining items to conclude the Bond Project include finalizing an issue paper, revisions to Schedule BA and a training program for regulators and industry.
- Last year's 30% interim RBC factor for structured security residual tranches is expected to rise to 45% for year-end 2024 pursuant to a proposal adopted last year, pending any further amendment by the Risk-Based Capital Investment Risk and Evaluation (E) Working Group and subsequent adoption by the Capital Adequacy (E) Task Force prior to June 30, 2024.
- NAIC staff anticipates delaying the onset of CLO modeling by the SVO to year-end 2025 to allow more time for the CLO Ad Hoc Group to develop a modeling methodology. This delay will require an amendment to the *Purposes and Procedures Manual* of the NAIC Investment Analysis Office, which the NAIC indicated will likely be adopted at the Summer National Meeting.
- The Big Data and Artificial Intelligence (H) Working Group reported on adoption by seven states of the NAIC AI Bulletin in a largely consistent form. It is expected that additional states will adopt the NAIC AI Bulletin in coming months—part of a flurry of state AI and big data-related regulatory actions.
- The Reinsurance (E) Task Force discussed possible changes to the asset adequacy analysis methodology for the assets that support life and annuity reinsurance transactions, including transactions concerning variable universal life insurance, individual annuities and group annuities. These proposed enhancements include requirements that asset adequacy analysis be performed (i) using a cash flow testing methodology that evaluates ceded reinsurance as an integral component of asset-intensive business and (ii) at the line of business and treaty level.

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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, that may be of interest to our clients in the insurance industry.

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GLOSSARY

“ACLI” means the American Council of Life Insurers.

“Annuity Suitability and Best Interest Standard” means the 2020 revisions to the *Suitability in Annuity Transactions Model Regulation* (#275).

“Bond Project” means 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 statements and to improve accounting and reporting.

“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.

“CLO” means collateralized loan obligation.

“Credit for Reinsurance Models” means the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786).

“ERISA” means the Employee Retirement Income Security Act of 1974.

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

“Holding Company Models” means the *Insurance Holding Company System Model Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms* (#450).

“IAIS” means International Association of Insurance Supervisors.

“IMA” means investment management agreement.

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

“LST” refers to 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. The LST filing provides an insurance regulator with quantitative and qualitative insights for macroprudential surveillance.

“NAIC” means National Association of Insurance Commissioners.

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“NAIC AI Bulletin” means the *Model Bulletin on the Use of Artificial Intelligence Systems by Insurers*.

“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 U.S. Securities and Exchange Commission.

“SSAP” means Statement of Statutory Accounting Principles.

“Summer National Meeting” means the upcoming 2024 NAIC Summer National Meeting.

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

“UCAA” means the NAIC Uniform Certificate of Authority Application.

I. Financial Condition Regulation

A. Work Continues on the Framework for Insurer Investment Regulation

In his opening remarks, Commissioner Mais referred to the Financial Condition (E) Committee’s (the “(E) Committee”) proposed *Framework for Regulation of Insurer Investments – A Holistic Review* (the “Investment Framework”) as the centerpiece for the NAIC’s strategic priority related to insurer financial oversight and transparency. The Investment Framework was first exposed at the 2023 Summer National Meeting (as we reported [here](#)) and remains in its early stages of development. It is intended to highlight areas where the insurance regulatory framework and the SVO can be enhanced to strengthen oversight of insurers’ investments in complex assets. The proposed changes to modernize investment oversight include:

- Reducing/eliminating “blind” reliance on credit rating providers while continuing to utilize them by implementing a due diligence framework that oversees credit rating providers’ effectiveness, with such system to be designed and implemented by an external consultant/resource;
- Bolstering the SVO’s portfolio risk analysis capabilities by investing in a risk analytics tool and adding personnel with investment, actuarial and risk management backgrounds; and
- Potentially establishing an investment working group under the (E) Committee to advise on several investment processes, such as reviewing bond reporting analysis under the principles-based bond definition and challenging individual designations provided by credit rating providers.

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In mid-February, the (E) Committee exposed the following documents, which were prepared by a new drafting group of regulators: (i) a memorandum to interested parties summarizing the (E) Committee's reaction to initial comments on the first draft of the Investment Framework (available [here](#)), which notes that the development process will continue during 2024 into 2025, with more detailed time frames being provided when the work is further along; (ii) a work plan with action items that are updated as necessary (available [here](#)); and (iii) a slightly revised draft of the Investment Framework (available [here](#)). The new draft clarifies that the framework's goal is to establish "a long-term, strategic direction for investment regulation" and not to reach technical conclusions on current NAIC initiatives. In addition, with respect to future changes to RBC factors for investments, the draft states that the primary consideration should be the impact on insurers' solvency and consistency across asset classes, as opposed to market impacts. Comments on the three exposure drafts are due by April 1, 2024.

Several interested parties at the Spring National Meeting expressed preliminary support for a holistic approach for regulating insurers' investments in a diverse set of asset classes and structures. Industry members agreed with the (E) Committee that the NAIC's related workstreams should not be delayed while the Investment Framework is developed. Interested parties also strongly supported hiring an independent consultant to design the due diligence framework for credit rating providers. Commissioner Nathan Houdek (WI), Chair of the (E) Committee said that this design work will soon be underway since it is an important initial piece of the larger Investment Framework, although there is no established time frame at this point.

B. Statutory Accounting

1. *NAIC Nears Completion of Bond Project*

At the Spring National Meeting, the Statutory Accounting Principles (E) Working Group ("SAPWG") adopted revisions to SSAP No. 21R—*Other Admitted Assets*, marking the conclusion of its work to revise the SSAPs as part of the Bond Project. Also relating to the Bond Project, SAPWG re-exposed an agenda item to clarify existing guidance on the treatment of debt securities issued by funds under the principles-based bond definition.

Remaining items include finalizing an issue paper for historical documentation of the discussions behind the Bond Project and adopting currently exposed revisions to Schedule BA, expected in May 2024. NAIC staff is also working to develop a comprehensive training program relating to the Bond Project for regulators and industry by no later than June 2024.

a. *Adoption of Revisions to SSAP No. 21R—Other Admitted Assets*

As noted above, SAPWG adopted revisions to SSAP No. 21R that provide guidance for debt securities that do not qualify as bonds, detail accounting practices for residual tranches, and reflect changes to SSAP No. 48—*Joint Ventures, Partnerships and Limited Liability Companies* with respect to the definition of residual tranches. The revisions will be effective January 1, 2025, consistent with other Bond Project revisions to the SSAPs, with early application of the residual guidance allowed for year-end 2024 reporting.

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b. Exposure to Clarify Bond Definition Treatment of Debt Securities Issued by Funds

At the 2023 Summer National Meeting, revisions to SSAP No. 26R—*Bonds* and SSAP No. 43R—*Asset-Backed Securities* were adopted to incorporate the principles-based bond definition, as we reported at that time [here](#). The adopted version of SSAP No. 26R, which will be effective January 1, 2025, defines a “bond” at a high level 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.”

Under existing guidance, an issuer credit obligation (“ICO”) includes bonds issued from SEC-registered business development corporations, closed-end funds or similar operating entities—requiring SEC registration as a rule. To move from a rule to a principles-based approach and eliminate inconsistent application between similar funds, SAPWG exposed revisions to SSAP No. 26R in January 2024 that would (i) permit debt securities issued by funds to be classified as ICOs if the fund represents an operating entity, regardless of SEC registration status, and (ii) provide guidance to determine whether a fund represents an operating entity. Consistent with the new bond definition, debt securities that are not ICOs must be considered asset-backed securities (“ABS”) to qualify for bond treatment.

At the Spring National Meeting, SAPWG Chair Dale Bruggeman (OH) explained that SAPWG received informal feedback during the exposure period indicating that some companies interpreted the proposed guidance to permit debt securities issued by feeder funds to be classified as ICOs. SAPWG members emphasized that this was not the intent of the guidance, and that feeder funds should be assessed as ABS to determine whether a debt instrument qualifies for bond treatment, particularly when the underlying investments are equity interests. SAPWG voted to re-expose the agenda item for a public comment period ending May 31, 2024, and requested NAIC staff to revise this language to distinguish between debt issued by funds that should qualify as ICOs and debt issued by feeder funds, collateralized fund obligations or other ABS structures.

2. *Interest Maintenance Reserve Updates*

SAPWG created the IMR Ad Hoc Group in 2023 to consider potential modifications to statutory accounting treatment of interest maintenance reserve, following SAPWG’s earlier adoption of INT 23-03 Net Negative (Disallowed) Interest Maintenance Reserve as a short-term solution to the issue. Additional background on these developments is detailed in our prior reporting [here](#) and [here](#). At the Spring National Meeting, the IMR Ad Hoc Group reported that it has met regularly since October 2023, focusing on the definition and purpose of interest maintenance reserve, its impact on actuarial calculations and the effects of derivatives and reinsurance on interest maintenance reserve. The group will continue to meet.

In addition, NAIC staff are compiling information on interest maintenance reserve reported in year-end 2023 statutory financial statements under INT 23-01T to share with regulators, including regarding the extent to which insurers have moved to net negative (disallowed) interest maintenance reserve positions or exceeded the 10% admittance and the required narrative disclosures.

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C. Valuation of Securities

1. *NAIC Designations*

The Valuation of Securities (E) Task Force (“VOSTF”) continues to consider an amendment to the definition of “NAIC Designation” in the *Purposes and Procedures Manual* of the NAIC Investment Analysis Office (the “P&P Manual”). 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.

VOSTF discussed an initial proposal at the Summer National Meeting that NAIC Designations 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” as well as “consideration of potential ‘tail risks.’” Additionally, the proposal included 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 criticized the initial proposal’s expansiveness and, at the 2023 NAIC Fall National Meeting, VOSTF exposed for comment a revised proposal that replaced the language noted above with more limited guidance that “[w]here appropriate for a given investment, NAIC Designations shall reflect ‘tail risk’ and/or loss given default” and that “NAIC Designations and Designations Categories shall reflect . . . other non-payment risks or non-payment mitigants.” Additionally, the revised version would remove application of the Subscript S concept for other non-payment risks.

During the Spring National Meeting, VOSTF heard from interested parties who questioned the SVO’s ability to distinguish “other non-payment risks” from credit risk in the context of assigning NAIC Designations, and argued that SAPWG’s efforts through the Bond Project already address such risks. SVO staff responded in written materials that the ability to reflect other non-payment risks has been a fundamental component of an NAIC Designation, and defended VOSTF’s “important role” in assessing the risk that an insurer-owned security may have an impact on the financial solvency of the insurer. VOSTF will work with SVO and interested parties to develop a further revised draft of this amendment, with VOSTF Chair Carrie Mears (IA) commenting that she expects to expose a revised version for comment prior to the Summer National Meeting.

2. *Rating Agency Matters*

Beginning with an initial exposure in May 2023, VOSTF has sought to amend the P&P Manual to address concerns about reliance on credit rating provider ratings in the filing exemption process. VOSTF’s original draft would have made “structured equity and funds” investments ineligible for filing exemption based on credit rating provider ratings. Interested parties criticized this proposal at the 2023 Summer National Meeting based on a lack of transparency and potential inconsistent treatment resulting in market uncertainty.

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At the 2023 NAIC Fall National Meeting, VOSTF exposed a revised version of the amendment, narrowing its impact by instead providing a process for the SVO to review and potentially challenge a credit rating provider rating for a specific filing-exempt investment. Under this process, the SVO Senior Credit Committee ("SVO SCC") would be able to place "under review" a filing-exempt security with an NAIC Designation determined by a credit rating provider rating that appears to be an unreasonable assessment of risk. If a security is placed "under review," SVO SCC will gather information from insurers that hold the security and will perform a full analysis. If SVO SCC determines that the NAIC Designation assigned through the filing exemption process is three or more notches different from its post-analysis opinion, the credit rating provider rating for that security will no longer permit filing exemption.

At the Spring National Meeting, interested parties were largely complimentary of the collaborative approach taken in developing the revised proposal. Multiple speakers reiterated the importance of ensuring that the final amendment allows appropriate transparency to insurers and investors in impacted securities. In written responses, SVO staff indicated that anonymized public disclosures would be made and were receptive to allowing insurers to present supporting information throughout the review process described above. Both VOSTF members and interested parties noted the importance of continued coordination among the NAIC's working groups with respect to its investment workstreams and ongoing discussions around the Investment Framework, described above.

It is not yet clear how the comments will be addressed, but VOSTF anticipates exposing a revised draft of the amendment following a regulator-only meeting in May to allow interested parties to review prior to the Summer National Meeting.

3. *CLO Modeling Update*

The CLO Ad Hoc Group work developing a modeling methodology for CLOs has been slower than anticipated in the lead-up to the scheduled onset of CLO modeling for year-end 2024. Consequently, NAIC staff are preparing an amendment to the P&P Manual to postpone the effective date for CLO modeling to year-end 2025. We anticipate that VOSTF will expose this amendment at an interim meeting in the coming months, allowing for subsequent adoption at the Summer National Meeting.

D. RBC Matters

1. *Residual Tranches*

The interim RBC factor for structured security residual tranches of 30% for year-end 2023 RBC filings will rise to 45% for year-end 2024 RBC filings, unless amended by the Risk-Based Capital Investment Risk and Evaluation (E) Working Group ("RBCIRE WG"). RBCIRE WG previously committed to consider increasing or decreasing the 45% factor if it received information (e.g., from industry) supporting a different charge.

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At the Spring National Meeting, interested parties presented a report they commissioned from Oliver Wyman (the “[OW Report](#)”) to RBCIRE WG. The OW Report presents a quantitative analysis of the relative risk of residual tranches of certain classes of ABS, namely CLOs, auto loans, and student loans. Interested parties argued that the OW Report’s findings indicate that the cash flows of these asset classes outperformed common stock (which has a 30% RBC factor) in periods of market instability, such that the impending 45% interim factor is not reflective of actual risk. To that end, interested parties argued that a continued 30% charge is “reasonably conservative” and requested to delay implementation of the 45% interim factor for one year.

RBCIRE WG Chair Philip Barlow (DC) noted that the group had already determined that the 45% interim factor was “reasonably conservative” and that the OW Report is consistent with that conclusion. He also suggested that RBCIRE WG would be unlikely to again defer implementation since the group already delayed implementation of the 45% interim factor by one year.

RBCIRE WG exposed the OW Report for a 21-day public comment period (ending April 8, 2024), rejecting interested parties’ request for a longer, 30-day exposure period. We expect that RBCIRE WG will hold an interim meeting in April to decide whether to maintain, amend or delay the 45% interim factor ahead of a June 30, 2024 deadline to be effective for year-end 2024 reporting.

E. [Proposed NAIC Handbook Guidance on Reviewing Affiliate IMAs](#)

At the Spring National Meeting the Risk-Focused Surveillance (E) Working Group (“[RFSWG](#)”) exposed enhanced guidance for the NAIC Financial Analysis Handbook and Financial Condition Examiners Handbook for regulators when reviewing affiliate IMAs. The proposed Financial Analysis Handbook revisions (available [here](#)) include the following.

- [Financial Analysis Handbook – Form D Review of Affiliate IMAs](#): When evaluating the reasonableness of an affiliate IMA, financial analysts should consider if certain items are addressed in the agreement, including:
 - i. *Selection of Investments*. Whether the agreement contains “clear investment guidelines” for the investment advisor that comply with the insurer’s investment strategy and applicable laws;
 - ii. *Authority for Transactions*. The investment advisor’s level of authority in regard to executing transactions on behalf of the insurer;
 - iii. *Conflicts of Interest*. “To the extent that any conflicts of interest may be known to the insurer,” the specific way in which such conflicts of interest are addressed;
 - iv. *Calculation of Fees*. Whether fees are well defined in the agreement and include any incentive fees in addition to a base management fee;

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- v. *Fiduciary Responsibility*. Whether the investment advisor's fiduciary duties are acknowledged;
- vi. *Reporting Obligations*. Whether the investment advisor is required to report to the insurer on portfolio performance;
- vii. *Review of Performance*. Whether the insurer will receive information that will allow it to adequately review the advisor's performance and its compliance with the insurer's investment guidelines;
- viii. *Sub-Advisors*. The investment advisor's ability to contract with sub-advisors, whether the insurer's consent is required and which party is responsible for the sub-advisor's fees; and
- ix. *Termination Rights*. Whether there are termination provisions with and without cause.

The RFSWG voted to expose the revisions for a 45-day comment period ending on April 30, 2024.

II. Macroprudential Risk and Insurance Industry

A. Status of Private Equity Considerations Work Plan

Work relating to the *Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers* (the "Considerations") continues at working groups and task forces across the NAIC. Presenting to the Financial Stability (E) Task Force, Macroprudential (E) Working Group ("MWVG") Chair Robert Kasinow (NY) introduced a chart to track the various Considerations, referrals to other groups across the NAIC and the status of each, included in the Financial Stability (E) Task Force's meeting materials available [here](#). A summary of the current status of the thirteen Considerations is below:

- 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 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, 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 of Considerations One and Two**: The Group Solvency Issues (E) Working Group adopted regulator-only "Sound Practices" guidance for reviewing complex ownership structures of insurers in November 2023.

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Further, proposed additions to the Financial Analysis Handbook relating to the review of Form A and disclaimer of control/affiliation filings are expected to be exposed for public comment by the Financial Analysis Solvency Tools (E) Working Group in 2024.

- **Consideration Three (IMAs):** The material terms of an IMA and whether they are arm's length or include conflicts of interest—such as in 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 of Consideration Three:** In addition to the proposed affiliate IMA guidance discussed in Section I(E) above, in August 2023, RFSWG finalized NAIC handbook guidance related to reviewing affiliate service agreements generally, as previously reported [here](#).
- **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 of Consideration Four:** This Consideration is addressed by the proposed IMA guidance discussed above, as well as by *Actuarial Guideline 53—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves* (“AG 53”), which became effective for year-end 2022. AG 53 requires life insurers that are in scope to submit information related to complex assets that support their business. These reports help regulators evaluate a company's reserve adequacy and claims-paying ability in moderately adverse conditions. For the initial AG 53 filings in 2023, the Valuation Analysis (E) Working Group focused on identifying and working with companies with outlier net yield assumptions to implement increased conservatism in their assumptions. In its review of the 2024 submissions, which are due in April, the Working Group will also focus on areas including reinsurance collectability and whether higher investment expenses for complex assets are reasonable and reserved for in life insurers' cash flow testing models. In addition, RFSWG has referred considerations related to capital maintenance agreements to the Financial Analysis Solvency Tools (E) Working Group.
- **Consideration Five (Operational Oversight):** Operational, governance and market conduct practices may be affected 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 owners.
 - **Status of Consideration Five:** As of the Spring National Meeting, no new action has occurred on this Consideration because regulators have focused on Consideration Thirteen (see below).
- **Consideration Six (Private Equity Definition):** There is no uniform or widely accepted definition of private equity; there are challenges in maintaining a complete list of insurers' material relationships with private equity firms.

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- **Status of Consideration Six:** 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) may create conflicts of interests and excessive and/or hidden fees in the portfolio structure. 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 of Consideration Seven:** This Consideration is addressed by the financial statement related party transaction reporting requirements that took effect for year-end 2022, as well as the subsequent clarification to SSAP No. 25—*Affiliates and Other Related Parties* that SAPWG adopted at the 2023 Spring National Meeting, as reported [here](#). No further work is intended on 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. Also, 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 (e.g., loans in a CLO issued by a corporation owned by a related party).
- **Status of Consideration Eight:** The approach to this Consideration overlaps with Consideration Seven (related party reporting requirements, which is considered complete) and Consideration Ten (privately structured securities).
- **Consideration Nine (*Disclaimers of Affiliation*):** Broader considerations exist around asset manager affiliates (not just private equity owners) and disclaimers of affiliation avoiding current affiliate investment disclosures.
- **Status of Consideration Nine:** This Consideration is addressed by (i) 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 interest regardless of whether a disclaimer is in place; and (ii) the revised SSAPs and reporting changes that will become effective January 1, 2025 as a result of the Bond Project. No further work is intended on 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.

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- **Status of Consideration Ten:** This Consideration is addressed by (i) AG 53, described under Consideration Four above; (ii) the reporting changes that will become effective January 1, 2025 as part of the Bond Project; (iii) ongoing efforts to determine appropriate RBC charges for CLOs held by insurers; and (iv) VOSTF's work to amend the P&P Manual as discussed in Section I(C)(2), "Rating Agency Matters," as well as more broadly by the Investment Framework described in Section I(A) 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 of Consideration Eleven:** VOSTF remains actively engaged on this topic. For more information, see Section I(C)(2), "Rating Agency Matters."
- Consideration Twelve (*Pension Risk Transfer Risks*): The trend of life insurers engaging in pension risk transfer business and supporting such business with the more complex investments outlined above.
- **Status of Consideration Twelve:** This Consideration is addressed by certain prior NAIC actions, including (i) AG 53; (ii) a 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 pension risk transfer transactions adopted by SAPWG in May 2021. Other completed actions addressing this Consideration include revisions by the U.S. Department of Labor to its Interpretive Bulletin 95-1, related to fiduciary standards under ERISA with respect to annuity providers, and work by the National Organization of Life and Health Insurance Guaranty Associations indicating that state guaranty funds provide adequate protections for pension risk transfer business.

In addition, NAIC staff will review and compile 2023 year-end data regarding the reporting of pension risk transfer transactions to consider if any additional steps are required.

- Consideration Thirteen (*Offshore Reinsurers*): Insurers' use of offshore reinsurers (including captives) and complex affiliated sidecar vehicles increase investment risk and introduce complexities into the group structure.
- **Status of Consideration Thirteen:** The NAIC's adoption of and recent revisions to the Reinsurance Comparison Worksheet address this Consideration. The updated document is available on the MWG's website [here](#). Revisions include new instructions for providing asset and balance sheet information, additional format options for reporting balance sheet information at the regulator's direction, and revised reporting fields related to transaction details and asset listings. In addition, LATF is considering a proposal that recommends changes to the asset adequacy analysis methodology for reinsurance transactions, as discussed in Section IV(B).

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The MWG continues to monitor the offshore reinsurance market.

B. Updates on Other Macroprudential Initiatives

1. *Liquidity Stress Test*

The primary objective of the LST filing is to allow regulators to evaluate the market impact of potential asset sales by large life insurers under different stress scenarios. The LST study group is considering whether and how the LST should address the potential sale of separate account assets in a stress scenario. The MWG will determine next steps after gathering more information to better understand the assets that support separate account products, which process will include outreach to LST participants further to a data call from November 2023.

2. *Actuarial Guideline 53*

AG 53, which is described under Consideration Four above, became effective for year-end 2022. It requires life insurers that are in scope to submit information related to complex assets that support their business. These reports help regulators evaluate a company's reserve adequacy and claims-paying ability in moderately adverse conditions.

For the initial AG 53 filings in 2023, the Valuation Analysis (E) Working Group focused on identifying and working with companies with outlier net yield assumptions to implement increased conservatism in their assumptions. In its review of the 2024 submissions, which are due in April, the Working Group will also focus on areas including reinsurance collectability and whether higher investment expenses for complex assets are reasonable and reserved for in life insurers' cash flow testing models.

III. **Innovation, Cybersecurity and Technology and Privacy Developments**

A. NAIC AI Bulletin Update

The Big Data and Artificial Intelligence (H) Working Group (the "Big Data WG") is monitoring state adoption of the NAIC AI Bulletin and other AI-related regulatory activities. To date seven states have adopted the NAIC AI Bulletin, some with minor (but occasionally notable)¹ changes to the model's language.

The Big Data WG is also developing a Health Artificial Intelligence/Machine Learning Survey (the "Health Survey"), which follows the Private Passenger Auto, Life and Home surveys it released in the last two years. The Health Survey is currently

¹ E.g., Connecticut has added an annual Artificial Intelligence Certification to be submitted by insurers stating that (i) the insurer is not currently using any "AI Systems" (as defined) or (ii) the insurer's use of AI is substantially consistent with the NAIC AI Bulletin.

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in its pilot stage and is expected to be completed by the end of 2024 and reported during the NAIC's 2025 Spring National Meeting.

The development of the Health Survey is concurrent with the Colorado Division of Insurance's recent initiative to develop health insurance AI and big data governance and testing regulations, as part of its implementing of SB21-169, as we reported [here](#).

B. Third-Party Data and Models (H) Task Force

The Third-Party Data and Models (H) Task Force held its first public meeting at the Spring National Meeting. It intends to spend 2024 working to understand the industry's use of third-party data and predictive models in preparation to formulate a framework in 2025 for the regulatory oversight of those topics.

C. Adoption of the Cybersecurity Event Response Plan

The Cybersecurity (H) Working Group adopted the Cybersecurity Event Response Plan ("CERP"), found [here](#), which is a guidance document based on the NAIC's *Insurance Data and Security Model Law* (#668), and is intended to support a department of insurance in its response following a cybersecurity event at a regulated entity.

D. Privacy Update

The Privacy Protections (H) Working Group is continuing to consider how to approach replacing or updating relevant model laws, specifically the *Insurance Information and Privacy Protection Model Act* (#670) and *Privacy of Consumer Financial and Health Information Regulation* (#672). The Working Group will hold both regulator-only and public meetings throughout 2024 while working toward this goal.

IV. **Reinsurance Matters**

The Reinsurance (E) Task Force met virtually on Monday, February 26, 2024 in lieu of the Spring National Meeting.

A. Passporting Update

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 February 26, 2024, ReFAWG had approved 77 Reciprocal Jurisdiction Reinsurers and 41 Certified Reinsurers, and 43 states had "passporting" 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

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ReFAWG to answer questions from governments, foreign jurisdictions or other interested parties. The NAIC's complete list of Certified and Reciprocal Jurisdiction Reinsurers is available [here](#).

B. Proposal to Require Asset Adequacy Analysis to Be Performed Using a Cash Flow Testing Methodology for Life and Annuity Reinsurance Transactions

The Reinsurance (E) Task Force discussed possible changes proposed by LATF to the asset adequacy analysis ("AAA") methodology for the assets that support life and annuity reinsurance transactions, including transactions concerning variable universal life insurance, individual annuities and group annuities.

According to LATF, for long-duration insurance business that relies heavily on asset returns ("asset-intensive business"), LATF believes there is a risk that domestic life insurers may enter into reinsurance transactions that materially lower the total asset requirement (the sum of reserves and required capital) in support of their asset-intensive business and thereby facilitate releases of capital. Although AAA requires reserves to be held at a level that meets moderately adverse conditions (approximately one standard deviation beyond expected results), when a reinsurance transaction lowers the ceding insurer's reserves, the new reserves established by the reinsurer could in LATF's view be materially less than what would be needed to meet policyholder obligations under moderately adverse conditions.

The LATF proposal recommends enhancements to the reserve adequacy requirements for all reinsurance transactions, including long-duration business that is subject to material market or credit risks or is subject to material cash flow volatility. These proposed enhancements include requirements that AAA be performed (i) using a cash flow testing methodology that evaluates ceded reinsurance as an integral component of asset-intensive business and (ii) at the line of business and treaty level. The proposal intends to ensure that the AAA safeguard continues to apply within the domestic cedent for all business for which it remains directly liable to pay policyholder claims, and that the assets supporting reserves continue to be held based on moderately adverse conditions, whether those assets are held by the direct insurer or a reinsurer.

LATF believes these proposed requirements will allow for reserve levels and associated supporting assets that will be sufficient under moderately adverse conditions consistent with the minimum reserve requirements, while still allowing companies to enter into reinsurance arrangements with reinsurers subject to various formulaic, economic or principles-based reserving standards. The proposed requirements will also continue to allow for application of judgment by an insurer's appointed actuary in determining the methods and assumptions underlying the cash flow testing analysis.

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V. Other Topics of General Interest

A. Topics of Interest to the Life Insurance Industry

1. *Life Insurance Related Federal Updates*

Taylor Walker (NAIC) provided an update to the (A) Committee on the Department of Labor's proposed Retirement Security Rule (the "Fiduciary Rule"), which, if finalized as proposed, would expand the definition of "fiduciary" in the context of investment advice to ERISA and IRA investors involving rollovers and the purchase of various products, including fixed index annuities.

We previously reported on the Fiduciary Rule in our report of the 2023 NAIC Fall National Meeting, found [here](#). Following the 2023 NAIC Fall National Meeting, the NAIC submitted a letter responding to the Fiduciary Rule proposal. In that letter, NAIC members expressed concerns with the substance of the proposal and that the proposal could undermine some of the federal efforts that have been put in place in an effort to close the retirement savings gap (such as the Secure 2.0 Act). NAIC members also criticized the Department of Labor's lack of coordination with the NAIC and regulators and emphasized that the landscape for annuities has changed significantly since the initial proposal due to widespread adoption of the NAIC's Annuity Suitability and Best Interest Standard. On March 8, 2024, the Department of Labor sent the Fiduciary Rule proposal to the Office of Management and Budget for a 90-day review period. We expect that the final version of the Fiduciary Rule will be released in the second quarter of 2024.

2. *Accelerated Underwriting*

The Accelerating Underwriting (A) Working Group ("AUWG") is considering a draft regulatory guidance document and a referral to the Market Conduct Examination Guidelines (D) Working Group, on which we previously reported in our [2023 Spring National Meeting report](#). Work on these documents, which relate to AUWG's charge to "consider the use of external data and data analytics in accelerated life underwriting including drafting guidance for the states," was suspended pending the resolution of related projects by the (H) Committee and Big Data WG. The Working Group will meet on April 3, 2024 to discuss its work plan for 2024 which will complement the (H) Committee workstreams on AI reported above.

3. *Annuity Suitability*

The Annuity Suitability (A) Working Group ("ASWG") has continued to work on implementation of the NAIC's Annuity Suitability and Best Interest Standard adopted in 2020. To date, 45 states have implemented the Annuity Suitability and Best Interest Standard, three states (Missouri, Nevada and New Jersey) have pending adoption and one state (New York) has other provisions in its law regulating annuity transactions. Only the District of Columbia and Louisiana have neither adopted nor have legislation pending to adopt these revisions.

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Because of noted deficiencies with insurers' compliance with the applicable "safe harbor" provisions, ASWG reported that they are prepared to draft regulatory guidance or a question and answer process to assist with insurers' understanding of such provisions.

B. Topics of Interest to the P/C Insurance Industry

1. *Service of Process Issues for Surplus Lines Insurers*

The Surplus Lines (C) Task Force heard an update from the drafting group formed to address issues raised by the current UCAA *Uniform Consent to Service of Process* ("Form 12") in light of the United States Supreme Court's decision in *Mallory v. Southern Railway Co.*, 600 U.S. 122 (2023). The concern is that the broad language contained in Form 12, which was drafted for use by admitted carriers, could subject surplus lines issuers executing the form to a state's general jurisdiction under *Mallory*. The drafting group reported that at least 16 states require the use of the service of process form for both U.S., and non-U.S. insurers. The Task Force directed the drafting group to prepare a specific form for surplus lines insurers.

2. *Climate and Resiliency (EX) Task Force Updates*

During the meeting of the Climate and Resiliency (EX) Task Force, the Task Force heard updates on federal legislative activities, including the Incorporating National Support for Unprecedented Risks and Emergencies (INSURE) Act, which would establish a federal catastrophe reinsurance program. In addition, Commissioner Birrane (MD) provided the Task Force with an update from its Solvency Workstream. The Solvency Workstream was previously tasked with developing a risk-based capital blanks proposal in relation to climate scenario analysis reporting, and exposed a directional memorandum on this matter on December 4, 2023. The proposal would require P&C insurers to utilize existing CAT modeler products (known as Climate Conditioned Catalogs) to conduct climate scenario analysis to determine the impact of climate change on hurricane and wildfire risk. After receiving criticism from industry on the initial exposure regarding anticipated costs and complexity, the Solvency Workstream extended the comment period for the proposal until April 8, 2024.

C. Interstate Compact Meeting

1. *Registered Index-linked Annuities Updates*

A joint meeting of the Management Committee and the Interstate Insurance Product Regulation Commission (the "Insurance Compact Commission") took place at the Spring National Meeting. The Insurance Compact Commission was established under the *Interstate Insurance Product Regulation Compact*, a multi-state agreement to modernize the regulatory approval of asset-based insurance products through the development of comprehensive uniform product standards.

At the meeting, the Insurance Compact Commission received oral comments on the proposed uniform product standards for *Individual Deferred Index Linked Variable Annuity Contracts (Commonly Marketed as Registered Index Linked Annuities)*

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and amendments to the *Additional Standards for Market Value Adjustment Feature Provided Through a Separate Account*. Interested parties provided support for the development of these standards, including the ACLI and Committee of Annuity Insurers, which provided a joint comment letter suggesting one clarifying drafting note on substitution of an index during an index strategy term. Written comment letters are due to the Insurance Compact Commission by April 2, 2024. The Insurance Compact Commission also initiated the rulemaking process for certain individual Annuity Contract Standards to expand their use with the proposed *Standards for Individual Deferred Index Linked Variable Annuity Contracts*, and will post the recommended amendments for notice and comment.

VI. International Matters

A. International Activities Related to Insurer Investments

Commissioner Anderson (MA) devoted a portion of the International Insurance Relations (G) Committee (the “(G) Committee”) meeting to the topic of insurer investments, noting that insurance regulators in the United States and abroad are focused on this matter because the economic environment in recent years has led to significant changes in insurer investment practices and certain companies’ ownership structures.

Ricardo Garcia, Managing Director at the Bermuda Monetary Authority (“BMA”), described how the BMA has modified its risk-based regime over the past two years to provide appropriate oversight of private equity-owned insurers, including changes to (i) capital requirements, namely expense risk charges; (ii) reserving requirements; and (iii) governance and risk management requirements. Mr. Garcia also presented the (G) Committee with an overview of the BMA’s white paper titled *Supervision and Regulation of Private Equity Insurers in Bermuda*, published on December 18, 2023 (the “BMA Paper”), which outlines how the regulator is addressing the challenges and risks associated with private equity insurers (available [here](#)). The BMA Paper is summarized in greater detail in Section III(B) of our 2023 Insurance Year in Review, available [here](#).

During the Financial Stability (E) Task Force meeting, Mr. Kasinow commented that the NAIC supports the BMA’s efforts as the BMA Paper addresses many of the same issues that are covered by the Considerations. He also noted that increased communication between the United States and Bermuda has become “paramount” due to the increased volume and complexity of cross-border reinsurance transactions.

B. IAIS Updates

A brief update on certain key priorities at the IAIS is provided below.

- International Capital Standard (“ICS”). The ICS, which is the group capital standard being developed by the IAIS, is in the last year of the five-year monitoring period, as previously reported [here](#). In December 2024, the IAIS will adopt the ICS as a prescribed capital standard for internationally active insurance groups.

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- Comparability Assessment. In March 2023, the IAIS published the final criteria it is using to assess whether the aggregation method approach to a group capital standard, which forms part of the NAIC's group capital calculation, produces comparable outcomes to the ICS. The IAIS continues to analyze data and will make a final determination in late 2024.

VII. Briefly Noted

A. SAPWG to Expand Valuation Guidance for Separate Accounts

SAPWG directed NAIC staff to work with industry toward expanding guidance in SSAP No. 56—*Separate Accounts* to address how transfers between the general and separate accounts should occur when insurers report assets at “book value” within the separate account. Currently, SSAP No. 56 focuses on separate account products where the policyholder bears the investment risk and assets are reported at fair value. However, NAIC staff has noticed an increase in separate account assets being reported at book value under state prescribed practices and under interpretations by insurers that existing guidance in SSAP No. 56 for fund accumulation contracts also captures pension risk transfer and registered index-linked annuity products (as well as other similar general-account type products approved for separate account reporting). SAPWG directed NAIC staff to assess current applications and different interpretations and suggest revisions to codify an approach within SSAP No. 56.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Kara Baysinger

415 858 7425

kbaysinger@willkie.com

Leah Campbell

212 728 8217

lcampbell@willkie.com

Stephanie Duchene

310 855 3066

sduchene@willkie.com

Matthew J. Gaul

212 728 8261

mgaul@willkie.com

Michael Groll

212 728 8616

mgroll@willkie.com

David Heales

212 728 8294

dheales@willkie.com

Donald B. Henderson, Jr. Allison J. Tam

212 728 8262

dhenderson@willkie.com

212 728 8282

atam@willkie.com

Nicole Zayac

415 858 7443

nzayac@willkie.com

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