

CLIENT ALERT

NAIC Report: 2024 Fall National Meeting

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The 2024 Fall National Meeting (the “Fall National Meeting”) of the National Association of Insurance Commissioners (the “NAIC”) was held from November 16 to November 19, 2024 in Denver, Colorado.

In his final opening session as NAIC President, Connecticut Insurance Commissioner Andrew Mais referred to the following central themes of his presidency, noting that they will continue to be regulatory priorities: the NAIC’s efforts to close coverage gaps for consumers and to strengthen the solvency of insurers through its financial initiatives.

Highlights from the Fall National Meeting include:

- The Life Actuarial (A) Task Force reached consensus on aspects of its proposed guideline requiring asset adequacy analysis for certain life reinsurance transactions.
- Executive and Plenary adopted an amendment to the P&P Manual that authorizes regulator discretion to exclude a security from the automated filing exemption process if the exemption is based on a CRP rating that does not provide a reasonable assessment of investment risk.
- VOSTF directed the SVO to begin to deactivate private rating securities issued after January 1, 2022 that do not have a corresponding rating rationale report on file with the SVO, consistent with amendments to the P&P Manual that were adopted in 2021.

NAIC Report: 2024 Fall National Meeting

- The Big Data and Artificial Intelligence (H) Working Group will decide whether the current regulatory framework is effective to address potential harms from the use of artificial intelligence (“AI”), potentially developing a new framework for incorporation in NAIC handbooks.
- The Privacy Protections (H) Working Group received an extension until the 2025 Fall National Meeting to amend the Privacy of Consumer Financial and Health Information Regulation Model Law (#672) to address modern privacy concerns.
- The International Insurance Relations (G) Committee heard reports on two major achievements at the IAIS: (i) approval by the IAIS Executive Committee of the final version of the Insurance Capital Standard for internationally active insurance groups; and (ii) the completion of the comparability assessment of the Insurance Capital Standard and the U.S.-developed Aggregation Method, which concluded that the two group capital methods produce comparable outcomes.

NAIC members also elected the following officers for 2025:

President: North Dakota Insurance Commissioner Jon Godfread

President-Elect: Virginia Commissioner of Insurance Scott A. White

Vice President: Rhode Island Department of Business Regulation Director Elizabeth Kelleher Dwyer

Secretary-Treasurer: Utah Insurance Commissioner Jon Pike

The report below further summarizes key activities at the Fall National Meeting, and certain interim conference calls and other developments leading up to the Fall National Meeting, that may be of interest to our clients in the insurance industry.

NAIC Report: 2024 Fall National Meeting

Table of Contents

I.	Financial Condition Regulation	6
A.	Progress on the Reinsurance AAT Guideline	6
B.	Insurer Investment Matters	7
1.	Bond Project Implementation	7
2.	Final Adoption of P&P Manual Amendment Authorizing Review of Filing-Exempt Securities	7
3.	Valuation of Securities Task Force Developments	8
4.	CRP Due Diligence Framework	9
5.	Repack and Derivative Investments Proposal	9
C.	Statutory Accounting Updates	9
1.	Issue Paper Recategorization	9
2.	Interest Maintenance Reserve	9
D.	New NAIC Handbook Guidance	10
1.	Review of Form A and Disclaimer of Affiliation Applications	10
2.	Solvency Monitoring of Run-Off Insurers	11
3.	Surplus Notes and Capital Maintenance Agreements	12
II.	Innovation, Technology and Privacy Developments	13
A.	Artificial Intelligence	13
B.	Cybersecurity	13
C.	Update on Amended Privacy Model Law	13
D.	Status of Framework to Regulate Third-Party Data	14
III.	Reinsurance Matters	14
A.	Collateral Reduction Applications	14
B.	Qualified and Reciprocal Jurisdictions	14
IV.	International Updates	15
V.	Topics of Interest to the Life Insurance Industry	15
A.	Annuity Suitability	15
B.	Fiduciary Rule	16
VI.	Topics of Interest to the P/C Insurance Industry	16
A.	Climate-Related Initiatives	16
B.	New Guidance on Premium Increase Transparency	16
VII.	Briefly Noted	16
A.	IBT/Corporate Division Best Practices and White Paper	16
B.	Proposal to List Canada as a Jurisdiction which “Recognizes and Accepts” the GCC	17

NAIC Report: 2024 Fall National Meeting

Glossary

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

“AI/ML” means artificial intelligence and machine learning.

“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.

“Covered Agreements” means the Bilateral Agreement Between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on September 22, 2017 and the Bilateral Agreement Between the United States and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on December 11, 2018.

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

“CRP” means credit rating provider.

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

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

“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. It is a tool that uses a risk-based capital aggregation methodology for all entities within the insurance holding company system, including non-U.S. entities.

“IAIS” means the International Association of Insurance Supervisors.

“IAO” means the NAIC’s Investment Analysis Office, comprised of the SVO and SSG.

“IBT” means an insurance business transfer transaction.

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

NAIC Report: 2024 Fall National Meeting

“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.

“SAPWG” means the Statutory Accounting Principles (E) Working Group.

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

“SSAP” means Statement of Statutory Accounting Principles.

“SSG” means the NAIC’s Structured Securities Group.

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

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

NAIC Report: 2024 Fall National Meeting

I. Financial Condition Regulation

A. Progress on the Reinsurance AAT Guideline

At the Fall National Meeting, the Life Actuarial (A) Task Force (“LATF”) continued to discuss the proposed draft of an actuarial guideline for reinsurance asset adequacy testing (the “Reinsurance AAT Guideline”), which was exposed for comment at the 2024 Summer National Meeting and discussed at interim LATF meetings in October.

Insurance regulators have been evaluating the risk that domestic life insurers may enter into reinsurance transactions with offshore reinsurers that materially lower the total asset requirement (the sum of reserves and required capital) supporting asset-intensive reinsurance business (i.e., long duration business that relies substantially on asset returns). To address this issue, LATF has been developing the Reinsurance AAT Guideline, which proposes enhancements to the asset adequacy testing (“AAT”) methodology for assets supporting life and annuity reinsurance transactions, as previously reported [here](#). The objective of the guideline is to determine whether the assets and reserves supporting this ceded business continue to be adequate based on moderately adverse conditions.

Following a discussion of interested party comments, LATF made key decisions related to the scope and aggregation sections of the Reinsurance AAT Guideline:

- **Scope:** LATF members agreed that the cash-flow testing requirements under the Reinsurance AAT Guideline should apply to a narrowed scope of reinsurance treaties. The current draft of the Reinsurance AAT Guideline applies to all life insurers with large, impactful asset-intensive reinsurance transactions that either meet certain size-based thresholds or result in significant reinsurance collectability risk (as determined by the cedent’s appointed actuary), with a focus on affiliated treaties with effective dates falling within a certain time period.¹ However, LATF is considering excluding from the Reinsurance AAT Guideline those asset intensive reinsurance transactions which are already subject to a reporting requirement to state insurance regulators under *Valuation Manual-30, Actuarial Opinion and Memorandum Requirements*, or AG 53.
- **Aggregation:** LATF members agreed that aggregation of blocks of business that are determined to be sufficient for purposes of AAT with those that are determined to be deficient should generally be allowed within a counterparty (i.e., the relevant reinsurer, and not across all reinsurance transactions).

Instead of attempting to address all possible regulatory issues in the Reinsurance AAT Guideline, LATF members decided that the new guideline should focus on disclosure by the cedent, as opposed to adopting new substantive reserving

¹ LATF intends that discussions with respect to whether the Reinsurance AAT Guideline will apply to non-affiliated treaties will occur after issues related to affiliated treaties have been resolved, likely in early 2025.

NAIC Report: 2024 Fall National Meeting

requirements. The Reinsurance AAT Guideline will not specifically require additional reserves, but states will continue to have discretion to take action based on the newly required disclosures.

LATF voted to expose questions about certain language in the Reinsurance AAT Guideline for a public comment period ending on January 15, 2025 (available [here](#)). LATF's goal is to adopt the Reinsurance AAT Guideline by mid-2025 to be effective by year-end 2025.

B. Insurer Investment Matters

In his opening remarks, Commissioner Mais recognized the NAIC's progress in its pursuit of transparency in insurer investments through the ongoing development of the *Framework for Regulation of Insurer Investments—A Holistic Review* (as we last reported on [here](#)) (the "Investment Framework"). The Financial Condition (E) Committee has a new proposed charge for 2025 to continue to oversee the implementation of the Investment Framework, "ensuring that updates or reviews of the [RBC] framework align with the [Investment] Framework's principles and take into consideration [the] evolving role of the insurance sector in financing the economy and reducing the protection gap." Other investment-related updates from the Fall National Meeting are discussed below.

1. *Bond Project Implementation*

With respect to the NAIC's principles-based bond project (the "Bond Project") 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, SAPWG continues to advance related initiatives as the new principles-based bond definition in the revised SSAPs will become effective on January 1, 2025. For further detail on the new bond definition and its application, please refer to our recent reporting available [here](#). The Bond Project documents, including the SSAPs and the issue paper that was adopted at the 2024 Summer National Meeting, are available on SAPWG's website [here](#).

At the Fall National Meeting, SAPWG adopted the Bond Project's Question-and-Answer Implementation Guide (the "Q&A") as a new interpretation (INT 24-01) to SSAP No. 21—Other Admitted Assets and SSAP No. 26—Bonds. Following its initial exposure at the 2024 Summer National Meeting, SAPWG has incorporated additional topics into the Q&A, including commercial mortgage-backed securities, interest-only strips, commercial mortgage loan single asset single borrower investments and hybrids. INT 24-01 provides guidance for Bond Project information at Level 2 in the statutory hierarchy prescribed by the NAIC's Accounting Practices and Procedures Manual, and should be considered by reporting entities as they conform statutory accounting practices to the new bond definition following the January 1, 2025 effective date.

2. *Final Adoption of P&P Manual Amendment Authorizing Review of Filing-Exempt Securities*

In August 2024, the Valuation of Securities (E) Task Force ("VOSTF") adopted an amendment to the P&P Manual that outlines a process by which a state insurance regulator or NAIC IAO staff can challenge a security's filing-exempt status where such status is based on a CRP rating that is "not a reasonable assessment of investment risk of the security for

NAIC Report: 2024 Fall National Meeting

regulatory purposes.” The amendment, described in detail in our [Summer National Meeting](#) report, was subsequently adopted by the Financial Condition (E) Committee and then by Executive and Plenary at the Fall National Meeting. It is the result of a multiyear effort prompted by SVO concerns about over-reliance on CRP ratings for the assessment of complex securities held by insurers and a resulting lack of transparency into the underlying risks, credit exposure, and nature of such investments. The new procedures will become effective on January 1, 2026, although this date may change if the NAIC needs more time to implement the required technological enhancements to IAO systems.

3. *Valuation of Securities Task Force Developments*

a. P&P Manual Updates

VOSTF adopted three amendments to the P&P Manual in Denver. Each was identified as “non-substantive,” meaning that the amendment is effective when adopted by VOSTF without parent committee approval.

- *Use of CRPs*: The NAIC uses credit ratings for a number of regulatory purposes, including to administer the filing exempt rule. The amendment clarifies that the NAIC only uses credit ratings from those classes of credit rating (as defined by the SEC) for which the CRP is registered with the SEC as a Nationally Recognized Statistical Rating Organization, and that the SEC’s definitions of classes of credit ratings are distinct from those used for statutory accounting asset classification purposes.
- *Annual Review of Regulatory Transactions*: The amendment requires an annual review by SVO or SSG of “regulatory transactions,” defined for purposes of the P&P Manual as a security or other instrument in a transaction submitted to one or more state insurance departments for review and approval, and notification by the insurer to the SVO or SSG when there is a material change. The SVO considers this a non-substantive change as it is otherwise implied throughout the P&P Manual that SVO and SSG opinions are updated at least annually.
- *References to Investment Risk*: This technical amendment removes references to “Other Non-Payment Risk” and replaces the term “credit risk” with “investment risk” throughout the P&P Manual, to correspond to an earlier amendment adopted in August 2024 (as reported [here](#)), where “credit risk” was replaced with “investment risk” in the definition of NAIC Designation.

b. Rationale Report Requirement for Private Letter Rating Securities

The P&P Manual requires that for each private letter rating security issued on or after January 1, 2022 (i.e., an insurer-owned security that has been assigned a private rating by a CRP which rating is not publicly disseminated but is instead published in a letter or report provided by the CRP to the issuer of the security and to the insurer as an investor and has been submitted to the SVO), insurance companies are required to provide the SVO with a copy of the related private rating letter rationale report from the applicable CRP. The SVO had deferred acting on this requirement while it implemented

NAIC Report: 2024 Fall National Meeting

technological updates. As of December 2024, SVO will move forward with deactivating private letter rating securities that do not have accompanying rationale reports. However, there will be a 30-day grace period to file rationale reports for securities that are renewing at year-end 2024.

4. *CRP Due Diligence Framework*

At an interim meeting on October 24, 2024, the Financial Condition (E) committee discussed the draft request for proposal (“RFP”) that was exposed for comment at the 2024 Summer National Meeting as part of the Investment Framework. The RFP seeks an external consultant to design and implement a due diligence framework for the ongoing use of CRPs in evaluating investment risk. The RFP will next be presented to the Executive (EX) Committee for approval and then made public for bidding. The current documents open for consideration related to the Investment Framework are available [here](#).

5. *Repack and Derivative Investments Proposal*

At the Fall National Meeting, SAPWG directed NAIC staff to further modify the proposed revisions to SSAP No. 86—Derivatives to eliminate the bifurcation of embedded derivatives. Draft revisions to address debt security investments with derivative components that do not qualify as structured notes, commonly referred to as “repacking” or “repack” structures, were exposed at the 2024 Summer National Meeting. For debt securities that have derivative components or wrappers that are not structured notes, the proposed amendments would have required separate reporting of the debt security and embedded derivative instrument, and would have applied to all debt securities with derivative components or wrappers. Interested parties criticized this change, noting various reporting challenges with the proposal. SAPWG therefore requested that NAIC staff remove the bifurcation concept and instead limit the agenda item to just sponsoring blanks revisions to clarify guidance regarding bond disposal and acquisition schedules. A new draft of Ref #2024-16 should be ready for exposure at SAPWG’s upcoming meeting on December 17, 2024.

C. Statutory Accounting Updates

1. *Issue Paper Recategorization*

SAPWG directed NAIC staff to prepare a new agenda item classifying issue papers in Level 5 (the lowest level) of the statutory hierarchy. Although not authoritative statutory accounting guidance, issue papers (such as the Bond Project issue paper) are often used to interpret SSAPs. This insertion in the statutory hierarchy aims to clarify that issue papers should only be used as guidance when they do not conflict with guidance in a higher level of the statutory hierarchy, providing clarity on the extent to which issue papers can be relied upon as interpretive tools.

2. *Interest Maintenance Reserve*

SAPWG heard an update on the work of the IMR Ad Hoc Group, which was formed in 2023 to consider potential modifications to statutory accounting treatment of interest maintenance reserve (“IMR”), including net negative (disallowed) IMR. The group’s work to date has resulted in new SAPWG agenda items regarding derivatives and separate account

NAIC Report: 2024 Fall National Meeting

transfers, with further proposals expected to follow as it considers IMR from reinsurance transactions, IMR allocation from bond investments, reinvestment requirements, guidance on excess withdrawals and admittance of net negative IMR. The IMR Ad Hoc Group is currently focused on matters related to IMR in reinsurance transactions and it hopes to have a more detailed discussion on this topic at the 2025 Spring National Meeting, with the goal to complete its work by year-end 2025.

D. New NAIC Handbook Guidance

At interim meetings leading up to the Fall National Meeting, the NAIC completed several workstreams by adopting regulatory guidance for the Financial Analysis Handbook and Financial Condition Examiners Handbook on topics related to the oversight of insurers' ownership and financial activities.

1. *Review of Form A and Disclaimer of Affiliation Applications*

On September 26, 2024, the Financial Analysis Solvency Tools (E) Working Group (the "FAST WG") adopted enhanced guidance in the Financial Analysis Handbook for state insurance regulators reviewing Form A applications and disclaimers of control/affiliation. The guidance was drafted in response to certain of the NAIC's Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers (the "Considerations") and regulators seeking to obtain a clearer picture of holding company control structures. See the Annex to this Report for a detailed overview of the Considerations.

For Form A applications, it suggests that when analyzing "a simple corporate structure, or a unique or complex structure such as trusts, limited partnerships (LP) and limited liability corporations (LLC)," analysts should "review the ownership documents and agreements to understand the terms of the structure, each parties' rights and responsibilities conveyed by the agreement, who has responsibility for decisions and who controls the insurer." The amendments also include guidance relevant to non-U.S. acquiring parties, such as considering the impact of international accounting standards and coordinating with other jurisdictions.

The new disclaimer of control/affiliation guidance highlights situations where a disclaiming party may control the insurer through provisions in a nonvoting arrangement or a contract that conveys elements of control (e.g., investment management, reinsurance, administrative service and employment agreements), or passive investment companies "where the actions and activities do not support the investment company's assertion that it does not exert control." The burden of proof is on the applicant to demonstrate that they do not have control or affiliation. The guidance also provides "best practices" for approving a disclaimer, such as stipulations to ensure that the facts on which the disclaimer is based do not change without further regulatory review. Prior to adoption, NAIC staff made several changes to the disclaimer guidance in response to interested party feedback, such as acknowledging that actions that "asset managers take in the ordinary course of their advisory services, such as engagement with management and proxy voting, should not be viewed as actions and activities that indicate exerting influence or control," and adding a section on "Passive Investors," noting that "the purchase of equity securities or debt securities by passive investors, such as institutional investors, regulated funds and fund advisors, do not typically result in control of the insurer."

NAIC Report: 2024 Fall National Meeting

NAIC staff noted that the Form A and disclaimer guidance is based on established state practices and experiences when reviewing filings. The adopted guidance reflects feedback from interested parties to clarify that it “does not supersede state law and regulation but is merely additional guidance and best practices that analysts may consider useful,” and to use a definition of “control” that is consistent with the *Insurance Holding Company System Model Act* (#440) (the “HCA Model”), i.e., “the power to direct or cause the direction of the management and policies of a person.” NAIC staff emphasized that “control” is not limited to ownership of 10% of voting securities under the plain language of the HCA Model. They disagreed with interested party comments suggesting that the Financial Analysis Handbook guidelines should not “go beyond the presumption of 10%.”

The revised guidance will appear in the 2025 edition of the Financial Analysis Handbook to be used in conjunction with 2024 Annual and 2025 Quarterly Financial Statements.

2. *Solvency Monitoring of Run-Off Insurers*

On October 10, 2024, the Risk-Focused Surveillance (E) Working Group adopted revisions to the Financial Analysis Handbook and the Financial Condition Examiners Handbook related to monitoring the solvency of run-off insurers. The new guidance reflects interested party feedback on the initial exposures (reported on [here](#)) and is summarized below.

- **Applicability:** The new guidance pertains to (i) solvent run-off insurers, as opposed to companies in receivership, and (ii) insurers where the entire company is in run-off.
 - For run-off insurers that are financially troubled or in receivership, there is a cross-reference to the NAIC Troubled Insurance Company Handbook and the NAIC Receiver’s Handbook for Insurance Company Insolvencies.
 - For run-off insurers involved in insurance business transfers (“IBTs”) or corporate divisions, there is a cross-reference to the Restructuring Mechanisms (E) Working Group’s guidance on considerations related to the solvency oversight of such entities.
- **Run-Off Plan:** An insurer should prepare a “run-off plan” addressing how it will manage its resources, the size of its operations and employee retention plans. The plan should identify key performance indicators, such as cash flow projections.
- **Corporate Governance and Operations:** Since it may be difficult for a run-off insurer to maintain effective oversight due to its limited resources and employee retention issues, regulators should monitor employee turnover and request additional reporting on changes to senior officers.

NAIC Report: 2024 Fall National Meeting

- Managing Certain Types of Risks:
 - Capital and Liquidity Risk. Regulators should review and monitor information such as a run-off insurer's investment income in relation to operating expenses (using pro forma projections and reconciling differences) and information used by the company to determine its future cash flow needs.
 - Reinsurance Risk. Regulators should closely monitor a run-off insurer's reinsurance transactions because the credit risk associated with reinsurance can be material to the company's solvency.

The handbook amendments were also adopted by the FAST WG and the Financial Examiners Handbook (E) Technical Group this fall, and will be included in the 2025 editions of the Financial Analysis Handbook and the Financial Condition Examiners Handbook.

3. *Surplus Notes and Capital Maintenance Agreements*

On November 7, 2024, the FAST WG adopted revisions to the Financial Analysis Handbook, adding procedures for analysts reviewing surplus note applications and capital maintenance agreements ("CMAs").

a. Surplus Notes

The revisions state that the primary goal of the financial analyst's review of surplus notes is to ensure that the instrument is subject to "strict control" by the relevant commissioner and contains the provisions for classification as surplus rather than debt, such as subordination to all other classes of creditors (other than surplus note holders) and interest and principal payments which require prior regulatory approval. The new Financial Analysis Handbook guidance provides detailed procedures for analysts when reviewing a surplus note application to confirm that the application includes all information required under state law and complies with statutory accounting rules, has a market-rate interest rate, and that the insurer's financial condition supports the application.

b. Capital Maintenance Agreements

The Financial Analysis Handbook states that a parental guarantee or CMA may be appropriate in certain situations, such as (i) when a Form A filing for an acquisition of control of an insurer is pending; (ii) when an insurer has triggered a hazardous financial condition or an RBC action level; or (iii) when an insurer has applied for primary or foreign licensure in a particular state. Under the new guidance, financial analysts are to use the following procedures when reviewing a parental guarantee or CMA.

- The agreement should clearly outline the parent's obligation to provide capital and the analyst should understand the insurer's minimum RBC ratio expected to be maintained under the agreement.

NAIC Report: 2024 Fall National Meeting

- The analyst should evaluate the financial stability of the parent holding company to determine if it is adequately capitalized to maintain the insurer's capital above minimum thresholds. The analyst should also consider the impact of the guarantee or CMA on the parent's debt covenants, if applicable.
- The analyst should review the agreement's effective date, renewal terms and termination provisions, and determine whether the agreement has a dollar limit threshold on capital.

Additionally, domestic states are encouraged to “proactively communicate” to an insurer's other licensed states when a parental guarantee or CMA has been approved (or denied), modified or terminated.

II. Innovation, Technology and Privacy Developments

A. Artificial Intelligence

Following the NAIC's adoption of the *Model Bulletin on the Use of Artificial Intelligence Systems by Insurers* (the “Model AI Bulletin”) in December 2023, the Big Data and Artificial Intelligence (H) Working Group formed an “AI systems evaluation workstream” to focus on understanding AI-use outcomes and how well the current regulatory framework addresses potential harms from the use of AI. The workstream is currently focused on determining whether additional tools, resources and education are needed to effectuate the goals of the Model AI Bulletin. In 2025, it will consider developing an overall AI regulatory framework that could be incorporated into the NAIC Market Regulation Handbook or a stand-alone handbook.

The Big Data and Artificial Intelligence (H) Working Group also reported that it hopes to publish a report in March 2025 on the results of the Health Insurance AI/ML Survey, which launched in early November. This survey is part of a series of surveys that was developed to help insurance regulators better understand the industry's use of AI and governance systems for each type of business.

B. Cybersecurity

The Cybersecurity (H) Working Group (“Cybersecurity WG”) heard comments on a proposed confidential cybersecurity event repository and portal. This NAIC portal would be used for licensees to report cybersecurity events pursuant to the *Insurance Data Security Model Law* (#668). The Cybersecurity WG received mixed comments on the portal—while many parties were supportive of a centralized and uniform cybersecurity breach notification process, other parties voiced concerns regarding the security of the portal, and whether appropriate protections are in place regarding the handling of confidential data shared by licensees. Moving forward, the Cybersecurity WG plans to work with regulators to address these concerns before the portal is formally launched.

C. Update on Amended Privacy Model Law

The Privacy Protections (H) Working Group (“PPWG”) continues to review and propose updates to each section of the *Privacy of Consumer Financial and Health Information Regulation Model Law* (#672) (“Model 672”). Following several

NAIC Report: 2024 Fall National Meeting

drafting calls, the edits to Article II, Section 5 of Model 672 addressing certain requirements for contractual arrangements with third-party service providers have been completed, although the PPWG will re-expose this section with the entirety of Model 672 once all the revisions are drafted. Comments have most recently been solicited on Article III, Sections 6 (Access, Correction, and Deletion of Nonpublic Personal Information), 7 (Sale of Nonpublic Personal Information), and 8 (Use and Disclosure of Sensitive Personal Information). At the Fall National Meeting, the PPWG was granted an extension for this project until the 2025 Fall National Meeting.

D. Status of Framework to Regulate Third-Party Data

The Third-Party Data and Models (H) Task Force is charged with developing and proposing a framework for the regulatory oversight of third-party data and predictive models. As previously reported [here](#), Task Force Chair Michael Conway (CO) suggested that the framework consider a blend of nationwide and market-wide factors, taking into account state-specific risks. Task Force members will now work to identify risks in their respective individual markets for consideration in developing the framework.

III. Reinsurance Matters

A. 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 may be recognized as a Certified Reinsurer and/or a Reciprocal Jurisdiction Reinsurer. As of October, ReFAWG had approved 93 Reciprocal Jurisdiction Reinsurers and 41 Certified Reinsurers. Forty-nine states have passported a Reciprocal Jurisdiction Reinsurer to date. 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 and Reciprocal Jurisdiction Reinsurers is available [here](#).

B. Qualified and Reciprocal Jurisdictions

On October 24, 2024, the Mutual Recognition of Jurisdictions (E) Working Group (“[MRJWG](#)”) re-approved the seven existing Qualified Jurisdictions on the *NAIC List of Qualified Jurisdictions* (Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom). 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 MRJWG also determined that Bermuda, Japan and Switzerland (which are not parties to the Covered Agreements) should maintain their existing status on the list. The Financial Condition (E) Committee reviewed MRJWG’s determinations and provided its own approval at the Fall National Meeting. The MRJWG is also continuing to monitor anticipated changes to the regulatory regimes of Bermuda, Japan and the United Kingdom that are expected in the near future.

NAIC Report: 2024 Fall National Meeting

IV. International Updates

On November 14, 2024, the IAIS Executive Committee approved the final version of the Insurance Capital Standard (“ICS”) as a consolidated group-wide capital standard for internationally active insurance groups (“IAIGs”). Once the ICS is adopted at the IAIS’ Annual General Meeting on December 5, IAIS members will implement the ICS as a prescribed capital requirement for IAIGs. For more information on this project, please refer to our prior reporting available [here](#). The IAIS intends to work closely with its members during the implementation process to ensure a smooth transition to the ICS. Looking further ahead, IAIS members will perform a baseline self-assessment in 2026, and in 2027, the IAIS will begin conducting assessments of the ICS implementation in targeted jurisdictions.

The NAIC has developed the aggregation method (“AM”) as an alternative group capital method to the ICS for U.S. IAIGs, finding that the AM is a more appropriate approach for the U.S. insurance market and supervisory regime. The AM is being implemented in the United States through the states’ adoption of the NAIC’s amendments to the *Insurance Holding Company System Regulatory Act*, which includes the annual GCC filing requirement. All states that serve as group-wide supervisors of U.S. IAIGs have already adopted the GCC.

The IAIS recently completed its comparability assessment of the ICS and the AM and concluded that the AM produces comparable outcomes to the ICS, a result which state insurance regulators and the NAIC enthusiastically welcomed in a press release and in remarks at the Fall National Meeting. The *Report on the Aggregation Method Comparability Assessment*, dated November 14, 2024, states that the IAIS identified certain areas where the AM produces “divergent outcomes to the ICS” in specific scenarios, such as with U.S. life IAIGs and changes in interest rates, and the U.S. has committed “to addressing those areas in appropriate ways, which will be reviewed during the IAIS ICS implementation assessment process.”

V. Topics of Interest to the Life Insurance Industry

A. Annuity Suitability

The Annuity Suitability (A) Working Group discussed comments on the proposed draft of the *Annuity Best Interest Regulatory Guidance and Considerations* document (the “[Safe Harbor Guidance](#)”), which is intended to provide insight for regulators when conducting a review of a life insurer’s compliance with the *Suitability in Annuity Transactions Model Regulation* (#275-1). A group of trade associations, represented by the Insured Retirement Institute, recommended that the Safe Harbor Guidance remain principles-based and provide flexibility for companies to develop compliance programs based on their individual business needs. The Annuity Suitability (A) Working Group plans to develop a new exposure draft in response to these comments.

NAIC Report: 2024 Fall National Meeting

B. Fiduciary Rule

NAIC staff provided an update to the Life Insurance and Annuities (A) Committee on the U.S. DOL's adoption of amendments to the Retirement Security Rule (the "Fiduciary Rule"), on which we previously reported [here](#). The current version of the Fiduciary Rule continues to apply until lawsuits have been resolved. Moreover, it is widely anticipated that the amended Fiduciary Rule will not be adopted under the incoming administration.

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

A. Climate-Related Initiatives

At the Fall National Meeting, Commissioner Mais highlighted climate risk mitigation as an ongoing priority for the NAIC. The Climate and Resiliency (EX) Task Force heard an update on the [NAIC National Climate Resilience Strategy](#), which was launched earlier this year to protect the nation's property insurance market. The NAIC has established a resource center to assist filers and their advisors to prepare responses to new interrogatories adopted by the Financial Condition (E) Committee on August 2, 2024 for the disclosure of climate-conditioned catastrophe exposure for hurricane and wildfire as part of the catastrophe risk component of the P&C RBC blanks. These interrogatories will come into effect for the 2024 year-end RBC filing.

B. New Guidance on Premium Increase Transparency

The Property and Casualty Insurance (C) Committee adopted the *Premium Increase Transparency Guidance* drafted by the Transparency and Readability of Consumer Information (C) Working Group. If adopted by a state, the guidance would require insurers to provide written disclosures to policyholders explaining the reason(s) for premium increases on their personal auto or homeowners policies. The guidance envisions a phased approach over several years to allow insurers time for development. In the first phase, insurers would be required to notify policyholders of their right to request an explanation for their premium increase. Once a policyholder provides a written request, insurers must provide a reasonable explanation for the premium increase no later than 30 days from the insurer's receipt of the written request. In the second phase, insurers would automatically provide notices to consumers with a reasonable explanation, including the "primary factors," as detailed in the guidance, if their renewal premium has increased by at least 10% or upon the policyholder's written request for any increase.

VII. Briefly Noted

A. IBT/Corporate Division Best Practices and White Paper

The NAIC's Restructuring Mechanisms (E) Working Group held an interim meeting on October 3, 2024 to discuss comments on the exposures from May 2024 (previously reported [here](#)). Comments discussed related to run-off insurers, policyholder consent, guaranty fund continuity, and monoline insurers, among other topics. NAIC staff will suggest revisions to the Best Practices and White Paper in response.

NAIC Report: 2024 Fall National Meeting

B. Proposal to List Canada as a Jurisdiction which “Recognizes and Accepts” the GCC

Prior to the Fall National Meeting, the MRJWG recommended including the Canada Office of the Superintendent of Financial Institutions on the *NAIC List of Jurisdictions that Recognize and Accept the Group Capital Calculation*. The list currently consists of the European Union member states, the United Kingdom, Bermuda, Japan and Switzerland. Pursuant to the NAIC’s amended *Model Insurance Holding Company System Regulatory Act* (Model #440), there is a GCC filing exemption for an insurance group whose non-U.S. group-wide supervisor, which is not a Reciprocal Jurisdiction, “recognizes and accepts” the GCC as the worldwide group capital assessment for U.S. groups doing business in such jurisdiction. The MRJWG has exposed the proposal for public comment until November 25, 2024 and it will next be considered for adoption by the Financial Condition (E) Committee.

NAIC Report: 2024 Fall National Meeting

Annex to 2024 Fall National Meeting Report: Update on Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers

The Macroprudential (E) Working Group (“MWG”) is charged with coordinating the NAIC’s work related to the private equity-related Considerations. In his opening remarks at the Fall National Meeting, Commissioner Mais noted that while there has been “great progress” on the Considerations, which “has resulted in significant progress and enhancements for our regulatory system, mostly around investments and affiliated transactions,” certain projects remain ongoing “or may lend themselves to continuous ongoing monitoring in the future.” Set forth below is a full report on the Considerations.

- 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, provisions of an investment management agreement (“IMA”), 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. In addition, new guidance will appear in the 2025 edition of the Financial Analysis Handbook relating to the review of Form A and disclaimer of control/affiliation filings, as described in Section I.D of our meeting report above.
- 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:** The NAIC has adopted guidance in the Financial Analysis Handbook for regulators to evaluate the fairness and reasonableness of affiliated IMAs, as we reported in [Summer 2024](#). At an interim meeting on September 23, 2024, the Financial Examiners Handbook (E) Technical Group also adopted revisions to the Financial Condition Examiners Handbook with procedures and considerations related to IMAs when regulators conduct financial examinations.

NAIC Report: 2024 Fall National Meeting

- 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 IMA guidance discussed above, as well as by AG 53, which requires life insurers that are in scope to submit information related to complex assets that support their business to help regulators evaluate a company's reserve adequacy and claims-paying ability in moderately adverse conditions. The Valuation Analysis (E) Working Group, which is tasked with reviewing AG 53 filings, reported at the Fall National Meeting that it has followed up with companies with respect to net yield assumptions (to lessen reliance on high net yields to pay claims) and reinsurance collectability (to ensure there are enough quality assets at the reinsurer to pay reinsurance claims in moderately adverse conditions). The Valuation Analysis (E) Working Group has also sought information regarding tranche ratings of structured assets, projected asset allocations, and assets with payment in kind features.
 - In addition, the FAST WG recently adopted revisions to the Financial Analysis Handbook adding procedures for the review of surplus note applications and CMAs, which are described in Section I.D of our meeting report above.
- 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**: The MWG has not reported on this Consideration since the 2024 Summer National Meeting, where it noted that no new action has occurred because the MWG was focused on Consideration Thirteen (discussed 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.
 - **Status of Consideration Six**: This Consideration is closed, and no action will be taken 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.

NAIC Report: 2024 Fall National Meeting

- **Status of Consideration Seven:** This Consideration is also closed because it is addressed by the financial statement related party transaction reporting requirements adopted in 2022 and 2023, as reported [here and here](#).
- **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:** The MWG considers this Consideration closed and addressed by previously adopted changes to statutory reporting requirements, including as a result of the Bond Project. Changes to NAIC handbook guidance regarding disclaimers (described in Section I.D of our meeting report above) also address 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.
 - **Status of Consideration Ten:** This Consideration is addressed by several NAIC financial workstreams, including (i) AG 53; (ii) the Bond Project; (iii) ongoing efforts to determine appropriate RBC charges for CLOs and other structured securities held by insurers; (iv) the P&P Manual amendment authorizing SVO discretion in the filing exempt process, discussed in Section I.B of our meeting report above, and (v) the Investment Framework.
- **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).

NAIC Report: 2024 Fall National Meeting

- **Status of Consideration Eleven:** This Consideration is addressed by the P&P Manual amendment authorizing SVO discretion in the filing exempt process, discussed in Section I.B of our meeting report above. The CRP due diligence framework being developed as part of the Investment Framework is also expected to address this Consideration.
- **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 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 are monitoring; and (iii) modifications to the reporting of pension risk transfer transactions adopted by SAPWG in May 2021. In addition, the Longevity Risk (E/A) Subgroup of LATF will consider the development of pension risk transfer/longevity risk mortality factors in the future.
- **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 the "Reinsurance Comparison Worksheet" addressed this Consideration, as reported [here](#). In addition, LATF is considering the Reinsurance AAT Guideline, as discussed in Section I.A of our meeting report above. The MWG also reported at the Fall National Meeting that it recently met to discuss cross-border reinsurance in a closed session, where regulators made proposals for additional analysis and monitoring tools. These proposals will be developed into a work plan for 2025, which will be shared with interested parties.

NAIC Report: 2024 Fall National Meeting

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