

**NAIC HIGHLIGHTS – SPRING 2010 NATIONAL MEETING****The NAIC**

The National Association of Insurance Commissioners (the “NAIC”) works to coordinate the efforts of the insurance commissioners of the U.S. states and territories and the District of Columbia (including by promulgating model laws and regulations and encouraging adoption thereof by legislators and regulators). The NAIC held its Spring 2010 National Meeting from March 24 through March 28, 2010 in Denver, Colorado. At this meeting, many important issues were discussed by the various NAIC committees, task forces and working groups. Set forth below are certain highlights of the meeting.

**Solvency Modernization Initiative (EX) Task Force**

The Solvency Modernization Initiative (EX) Task Force met on March 25, 2010. The Task Force received a report on the SMI Interim Meeting held on March 11 and 12, 2010, which focused on two consultation papers: (i) Consultation Paper on Capital Requirements and High-level Accounting/Valuation Issues and (ii) Consultation Paper on Corporate Governance and Risk Management.<sup>1</sup> The capital requirements discussion focused on the purposes of regulatory capital as calculated through the risk based capital (“RBC”) process. Broad comments centered on the current and future purposes of RBC, recognizing that it is currently formulated as a benchmark for regulatory action but could be modified to assess target capital and encourage risk management. Potential modifications were identified for RBC including equivalent RBC treatment by nature of risk versus line of business, assessment of new investment vehicles and new products, recognition of structural changes in the capital markets, interdependencies and risk offsets and the impact of taxes on capital. In addition, the group discussed the potential use of a company’s own internal models in RBC. In this respect, participants acknowledged the regulatory expense and challenge of model assessments. With respect to the corporate governance and risk management discussion, regulators and interested parties considered the possibility of a system similar to the Own Risk and Solvency Assessment (“OSRA”), a supervisory tool under the Solvency II Directive (“Solvency II”), whereby an insurer would perform an internal assessment of its overall solvency needs given its specific risk profiles.

The NAIC is focused on the potential impact of international accounting standards on U.S. statutory accounting in light of the planned convergence by the U.S. Financial Standards

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<sup>1</sup> The consultation papers were prepared by the International Solvency (EX) Working Group in December 2009. The Consultation Paper on Capital Requirements and High-level Accounting/Valuation Issues is available at [http://www.naic.org/documents/committees\\_ex\\_isftf\\_1003\\_cg\\_rm\\_appx\\_2.pdf](http://www.naic.org/documents/committees_ex_isftf_1003_cg_rm_appx_2.pdf). The Consultation Paper on Corporate Governance and Risk Management is available at [http://www.naic.org/documents/committees\\_ex\\_isftf\\_1003\\_cg\\_rm\\_appx\\_2.pdf](http://www.naic.org/documents/committees_ex_isftf_1003_cg_rm_appx_2.pdf).

Accounting Board (“FASB”) and the International Accounting Standards Board (“IASB”) of the U.S., Generally Accepted Accounting Principles (“GAAP”) and the International Financial Reporting Standards (“IFRS”).<sup>2</sup> Since statutory accounting is based on GAAP, the convergence will affect the interactions between statutory accounting and federal taxes, RBC and other regulatory processes. Accordingly, a new subgroup, the Statutory Accounting and Financial Reporting Subgroup of the SMI, was formed to consider and adopt policy regarding the future of statutory accounting. The Subgroup’s recommendations are to be prepared by the end of 2011. It will consider international developments affecting accounting, assess the need to control accounting and financial reporting and recommend whether there is a need for public financial reporting by all insurance companies. The specific charges of the Subgroup include recommending whether the NAIC should retain the current U.S. statutory accounting model or adopt another model such as GAAP or IFRS with appropriate “statutory adjustments.” In addition, the Subgroup is charged to recommend by the end of 2011 a timetable for adoption, transitioning and contingency planning for a different accounting model in consideration of the final form of convergence of GAAP with IFRS.

The applicability of international standards and the convergence of international regulatory solvency regimes was also discussed. Although achieving a finding of U.S. equivalence under the EU’s Solvency II is not a specific objective of the SMI, regulators indicated that they are open to converging solvency systems internationally where practicable and consistent with U.S. focus on policyholder protection. SMI member regulators noted that the insurance core principles formulated by the International Association of Insurance Supervisors (“IAIS”) are the standards used to assess the effectiveness of U.S. insurance regulation by virtue of U.S. membership in G-20 and the Financial Stability Board and participation in the IMF-World Bank Financial Sector Assessment Program (“FSAP”).<sup>3</sup> Accordingly, U.S. involvement with the development of the IAIS core principles and either satisfaction of, or the ability to define differences from, such principles are important for the NAIC and U.S. insurance regulators. In addition, regulators focused on considerations that factor into the discussion of international solvency regimes such as the fact that convergence of solvency systems internationally is important to most international insurers, the cost/benefit impact of having different systems internationally, potential competitive imbalances between international and U.S. domestic companies and the capital implications that may result if requirements are lower in one major jurisdiction compared to another.

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<sup>2</sup> Additional information regarding the FASB convergence with IASB can be found on the FASB website, available at [http://www.fasb.org/intl/convergence\\_iasb.shtml](http://www.fasb.org/intl/convergence_iasb.shtml).

<sup>3</sup> For a detailed discussion of the standards that would be applied to the U.S. upon convergence of international solvency systems, see the Financial Stability Board “Framework for Strengthening Adherence to International Standard” (January 9, 2010), available at [http://www.financialstabilityboard.org/publications/r\\_100109a.pdf](http://www.financialstabilityboard.org/publications/r_100109a.pdf).

### ***International Solvency (EX) Working Group***

The International Solvency (EX) Working Group met on March 24, 2010 and indicated that a comparison of U.S. and EU solvency measures was timely in view of the fact that Solvency II was formally adopted by the European Parliament and the European Union's Economic and Financial Affairs Council in 2009. With respect to IAIS solvency initiatives, the Working Group reported that other nations are very impressed with the comprehensiveness of U.S. regulation and transparency and yet query U.S. intentions concerning the adoption of Solvency II. Accordingly, the group deems it very important for the U.S. to produce a comprehensive description of its solvency measures in order to educate the international community in this regard. Distinguishing features of U.S. solvency regulation were noted including its wide scope, the financial examination role of U.S. insurance regulators and U.S. focus on the legal insurance company entity as contrasted with international systems that focus on group solvency. The Working Group will also coordinate with the Financial Condition (E) Committee to develop more granular detail on the solvency measures of RBC and the NAIC's Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to Be in Hazardous Financial Condition (#385).

### ***Corporate Governance (EX) Working Group***

A newly formed Corporate Governance (EX) Working Group met on March 24, 2010. The charge of the Working Group is to outline high level corporate governance principles applicable to insurers and determine the appropriate methodology to evaluate adherence with such principles, giving due consideration to the development of a model law. The Working Group noted that the IAIS is currently evaluating and developing corporate governance principles. Regulators expressed concern that, in the absence of specific authority, regulators will have limited ability to meet this challenge. Industry representatives challenged the initiative suggesting that before developing standards, regulators should first consider whether they should be involved in the corporate governance of insurers. Ultimately, the Working Group discussed plans for a future survey of the industry regarding corporate governance best practices and for research by the NAIC of existing legislation and case law in several states in order to gain an understanding of existing corporate governance requirements for insurers.

### ***Group Solvency Issues (EX) Working Group***

The Group Solvency Issues (EX) Working Group met on March 24, 2010 and discussed its continued work on amendments to the Insurance Holding Company System Model Act (#440) ("IHCA")<sup>4</sup> and Insurance Holding Company System Model Regulation (#450) ("IHCR").<sup>5</sup> The

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<sup>4</sup> The current draft of the IHCA is available at [http://www.naic.org/documents/committees\\_ex\\_isftf\\_group\\_solvency\\_100416\\_md1\\_440.pdf](http://www.naic.org/documents/committees_ex_isftf_group_solvency_100416_md1_440.pdf).

<sup>5</sup> The current draft of the IHCR is available at [http://www.naic.org/documents/committees\\_ex\\_isftf\\_group\\_solvency\\_100416\\_md1\\_450.pdf](http://www.naic.org/documents/committees_ex_isftf_group_solvency_100416_md1_450.pdf).

IHCA currently provides for, *inter alia*, (i) regulatory requirements for registration and change of control of an insurer and (ii) the application of certain general standards to agreements between a U.S. insurer and any member of its holding company system, including requirements related to reasonable contract terms and fees and proper allocation of expenses. Proposed amendments to the IHCA, discussed during interim meetings held via telephone conference since the Winter 2009 National Meeting, would include, without limitation, revisions to the change of control requirements (including filing of a pre-acquisition notification along with the change of control statement), permitting a public hearing on an acquisition of control to be held on a consolidated basis and inclusion of financial statements of a holding company system with an insurer's registration statement. A public hearing on proposed changes to Models 440 and 450 is scheduled for June 4, 2010 at the NAIC's 2010 Financial Summit.<sup>6</sup>

The Working Group also addressed the issue of group capital requirements noting that group solvency is a concept that pervades IAIS standards from the highest level. It was reported that the IAIS provides that there are a number of approaches for assessing group-wide capital adequacy based on a jurisdiction's approach to group-wide supervision. Additional direction from SMI is required in order for the Working Group to specifically address the issue. The nature of group supervision is also under consideration by the Working Group which noted that the EU is engaged in a similar undertaking. The problem associated with group supervision, as noted by industry participants, is the likelihood that each local jurisdiction in which a member insurer is domiciled will assert group supervision authority opening international insurance groups to costly, conflicting and duplicative standards. Regulators countered that a supervisory college approach to group supervision should be seriously considered to avoid such duplication and cost.

The Working Group also discussed the necessity of incorporating standards for an examiner's analysis of a holding company system into the NAIC accreditation standards and considered the appropriate means to achieve this goal.

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For our past discussions on the IHCA and IHCR, *see* NAIC Highlights – Winter 2009 National Meeting (December 29, 2009) 1, *available at* [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/3183/NAIC%20Highlights%20Winter%202009%20National%20Meeting.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3183/NAIC%20Highlights%20Winter%202009%20National%20Meeting.pdf); NAIC Highlights – Fall 2009 National Meeting (October 9, 2009) 4, *available at* [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/3129/NAIC%20Highlights%20Fall%202009%20Meeting.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3129/NAIC%20Highlights%20Fall%202009%20Meeting.pdf).

<sup>6</sup> Additional information regarding the 2010 Financial Summit is available at [http://www.naic.org/frs\\_financial\\_summit.htm](http://www.naic.org/frs_financial_summit.htm).

## Regulatory Modernization

During the Winter 2009 National Meeting, the NAIC held a Regulatory Modernization Public Forum to introduce the concept of a National Insurance Supervisory Commission (the “NISC”).<sup>7</sup> The NISC proposal envisioned a federally established insurance commission comprised of the states which would be authorized to develop and adopt standards for uniform national treatment of identified areas of insurance.

The NISC faced strong opposition at the Winter 2009 National Meeting, where state legislators argued that the proposal dissolved the separation between the executive and legislative branches of government and allowed the Federal government to take over state lawmaking authority. In the face of this opposition, the NISC proposal has been put on hold, and during its meeting on March 26, 2010, the Regulatory Modernization (EX) Task Force stated that it will shift its focus from Federal action to building NAIC member consensus for national uniformity in areas that will enhance the existing strengths of state regulation. The Task Force will remain open to regulatory solutions that take into account assistance from the Federal government.

During the Spring 2010 National Meeting, the Task Force also heard comments from state legislators and industry representatives on regulatory modernization. State legislators seemed in agreement that modernization through state-based initiatives, rather than Federal initiatives, was the preferred path. Industry representatives, however, stated that Federal action would be helpful in improving uniformity in state treatment and enforcement of common regulatory requirements.

## Reduction of Regulatory Reliance on Rating Agencies

The Rating Agency (E) Working Group was organized to consider the role of rating agencies in state insurance regulation.<sup>8</sup> The Working Group’s draft report was released for exposure with comments due January 6, 2010, and a final report was adopted by the Financial Condition (E) Committee at its meeting on March 28, 2010.

The Working Group made broad recommendations in the final report that regulators: (i) ascertain ways to reduce their reliance on NAIC Acceptable Rating Organizations’ (each, an “ARO”)<sup>9</sup> ratings for new, structured or alternative asset classes, particularly by introducing

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<sup>7</sup> NAIC Highlights – Winter 2009 National Meeting, *supra* at 4. The National Insurance Supervisory Commission Discussion Draft is available at [http://www.naic.org/documents/committees\\_ex\\_rmsg\\_nisc\\_discussion\\_draft.pdf](http://www.naic.org/documents/committees_ex_rmsg_nisc_discussion_draft.pdf).

<sup>8</sup> See NAIC Highlights – Winter 2009 National Meeting, *supra* at 6-7.

<sup>9</sup> The NAIC has historically utilized credit quality ratings issued by Nationally Recognized Statistical Rating Organizations (collectively, “NRSROs”) to set RBC by assigning an NAIC designation (“NAIC Designation”) to any NRSRO-rated securities based on a prescribed formula, and RBC charges are determined by reference to such NAIC Designation. The Purposes and Procedures Manual (the “Purposes and Procedures Manual”) of the NAIC Securities Valuation Office (the “SVO”), which sets forth the NAIC’s procedure for placing a security or asset class under regulatory review, identifies the criteria that make an NRSRO eligible to be an NAIC vendor of rating services, and an NRSRO that meets such criteria may be added to the ARO List by the SVO if directed by the Capital Adequacy (E) Task Force.

additional or alternative risk measurement benchmarks; (ii) explore alternative investment risk assessment measures, including expansion of the SVO's scope of assessment; and (iii) take into consideration, in the continued use of ratings in insurance regulation, the measures taken by the NRSROs in correcting the causes of recent rating shortfalls. The final report also detailed specific recommendations for future undertakings of the Working Group and other Committee task forces and working groups. Accordingly, the Working Group will evaluate whether public entities' creditworthiness should reflect burdens faced by such entities due to aging populations, public pension liabilities, infrastructure needs, and revenue instability, establish a process to monitor and evaluate ARO activities, and examine the extent of insurers' reliance on ratings. Recommendations referred to other Committee task forces and working groups include, without limitation, referrals to the Valuation of Securities (E) Task Force to modify the filing exempt rule and to the Capital Adequacy (E) Task Force to conduct a comprehensive review of RBC formulae. The Committee will schedule a conference call in April to discuss the referrals.

### **Producer Licensing**

On March 3, 2010, the National Association of Registered Agents and Brokers Reform Act of 2009 (H.R. 2554) ("NARAB II") was approved by the House of Representatives.<sup>10</sup> NARAB II amends the Gramm-Leach-Bliley Act to establish the National Association of Registered Agents and Brokers ("NARAB") to oversee licensing, continuing education, and other non-resident insurance producer qualification requirements and conditions. NARAB would be a non-profit association whose board, comprised of state insurance commissioners and industry executives, would be appointed by the President. Under NARAB II, an insurance producer holding a "home state" license<sup>11</sup> may apply for NARAB membership. Acceptance by NARAB would be the equivalent of receiving non-resident insurance producer licenses in any state where the producer pays the required fee. NARAB would act as a centralized licensing authorization facility and would advise the NAIC of all states in which a member producer qualified. However, states would retain the authority to revoke or suspend a producer's authority in the state and regulate the producer's conduct under applicable state law, unless inconsistent with NARAB.

At its meeting on March 28, 2010, the Producer Licensing (EX) Task Force discussed the current status of NARAB II. While industry representatives expect that NARAB II will be introduced in the Senate in the near future, the exact form or timing of the introduction is unclear.

The Task Force also received an update on compliance with the NAIC Uniform Licensing Standards from the NAIC/Industry Producer Licensing Coalition. The Coalition reported that compliance with the Standards was up 6% from 80% at this time last year and that sixteen (16) bills in thirteen (13) states implementing a number of uniform standards have already been enacted in 2010. The Standards relate to a number of topics, including standards for fingerprinting, continuing education, major or limited lines of authority and pre-licensing requirements.

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<sup>10</sup> The text of NARAB II is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2554rfs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2554rfs.txt.pdf).

<sup>11</sup> NARAB II defines a producer's "home state" as the state in which the producer maintains its principal place of residence or business and is licensed as an insurance producer.

In addition, the NARAB (EX) Working Group reported that it continues to work with the NAIC Legal Division in executing the state reciprocity recertification plan. Approximately half the states have completed a Reciprocity Checklist, and the Working Group intends to prepare a report on continuing compliance with Gramm-Leach-Bliley reciprocity for the NAIC Summer 2010 National Meeting.

## **Reinsurance Issues**

### ***Amendment to the NAIC Credit for Reinsurance Model Law***

During 2009, the Reinsurance (E) Task Force debated a proposal to reduce trustee surplus amounts required of unauthorized reinsurers in run-off. In December of 2008, Tawa Management, LLC proposed an amendment to the NAIC Credit for Reinsurance Model Law (#785) to reduce the trustee surplus requirement in connection with the U.S. multi-beneficiary trust maintained for reinsurance collateral purposes by a reinsurer in run-off (the “Tawa Proposal”).<sup>12</sup> Pursuant to Section 2D(3) of the Model Law, U.S. ceding insurers may take financial statement credit for reinsurance ceded to an unauthorized reinsurer provided the reinsurer establishes a multi-beneficiary trust in an amount not less than the reinsurer’s obligations to U.S. ceding insurers plus a trustee surplus of not less than \$20 million. Tawa argued that since reinsurers in run-off do not assume new risks, the \$20 million trustee surplus amount was excessive and strained the reinsurers’ liquidity. While Tawa proposed a reduction in trustee surplus to 5% of outstanding U.S. liabilities, during the Winter 2008 National Meeting, the Task Force suggested that the minimum surplus be no less than 50% of U.S. reinsurance obligations, and the New York State Insurance Department expressed its support of a minimum surplus of no less than 30% of U.S. reinsurance obligations.

At its meeting on March 27, 2010, the Reinsurance (E) Task Force voted to submit a request to the Financial Condition (E) Committee to amend the NAIC Credit for Reinsurance Model Law consistent with the TAWA Proposal. Final determination on the minimum trustee surplus amount will be considered as part of the Model Act amendment process.

### ***Letter of Credit Rules for Reinsurance Collateral Purposes***

The Reinsurance (E) Task Force received a request to clarify a reference to the Example Letter of Credit made in the NAIC Credit for Reinsurance Model Regulation (#786) (the “Model Regulation”) and the Accounting Practices and Procedures Manual (the “AP&P Manual”) and to make a recommendation to the Financial Examiners Handbook (E) Technical Group to revise a reference to the Example Letter of Credit made in the Financial Condition Examiners Handbook. The Financial Condition Examiners Handbook currently states that the Example Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce Publication No. 500 (“UCP 500”). The Model Regulation and the AP&P

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<sup>12</sup> See NAIC Highlights – Summer 2009 National Meeting (June 25, 2009) 1-3, available at [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/3015/NAIC\\_Highlights\\_Summer\\_2009\\_Meeting.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3015/NAIC_Highlights_Summer_2009_Meeting.pdf).

Manual both require that a letter of credit indicate whether it is subject to and governed by the laws of the ceding insurer's state or UCP 500, or any successor publication. While the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce Publication No. 600 ("UCP 600"), which replaces the existing International Chamber of Commerce (the "ICC") rules for commercial letters of credit and applies to standby letters of credit, is a successor publication to UCP 500, the ICC also issued in 1998 International Standby Practices Publication No. 590 ("ISP98"), which applies to standby letters of credit. The Task Force adopted a motion to broadly interpret the term "successor publication" in the Model Regulation and the AP&P Manual to include any guidance published by the ICC with respect to letters of credit, including standby letters of credit under ISP98, and to recommend to the Financial Examiners Handbook (E) Technical Group to revise the Financial Condition Examiners Handbook to treat both UCP 600 and ISP98 as successor publications to UCP 500.

#### ***Amendment to Schedules F and S of the Annual Statement***

At the Spring 2010 National Meeting, the Reinsurance (E) Task Force received a summary of the Blanks (E) Working Group proposal to monitor the creditworthiness of financial institutions that issue letters of credit held by U.S. ceding insurers for reinsurance collateral purposes. Currently regulators have no means within the annual statement to assess and monitor the credit risks associated with such letters of credit, and the proposal by the Blanks (E) Working Group would amend Schedules F and S of the annual statement to disclose the name and American Bankers Association number of the issuer of a letter of credit provided as reinsurance collateral. The Blanks (E) Working Group voted during its meeting on March 26, 2010 to expose the proposal for a public comment period ending on May 21, 2010, and the proposal will be distributed to the Task Force members for their review.

#### ***Reinsurance-Related Activities of the International Association of Insurance Supervisors***

The Reinsurance (E) Task Force received a recommendation that the NAIC take on a study to compile information and evaluate current reinsurance contract certainty practices in the U.S. The IAIS Reinsurance and Other Forms of Risk Transfer Subcommittee is developing an IAIS Insurance Core Principle, Standards and Guidance with respect to risk transfer, including reinsurance. Such development is particularly significant because as part of the Financial Sector Assessment Program, the U.S. insurance regulatory system is evaluated on the basis of the IAIS Insurance Core Principle, Standards and Guidance.

#### ***Reinsurance Regulatory Modernization Framework Proposal***

At its meeting on March 27, 2010, the Reinsurance (E) Task Force received a report that the NAIC has yet to procure Congressional sponsorship for the Reinsurance Regulatory Modernization Act of 2009, a draft Federal bill that would provide a first step toward implementation of the NAIC's Reinsurance Regulatory Modernization Framework Proposal to reform state reinsurance regulation. The NAIC will continue to monitor the Federal initiatives to reform reinsurance regulation and provide input.

## **Congressional Initiatives Affecting Insurance**

The Reinsurance (E) Task Force, the Government Relations (EX) Leadership Council (the “GRLC”), the Surplus Lines (C) Task Force and the Property and Casualty Insurance (C) Committee discussed several recent Federal initiatives affecting state-based regulation of insurance at their respective meetings on March 27 and 28, 2010.

### ***Federal Financial Reform Legislation***

As discussed in our NAIC Highlights – Winter 2009 National Meeting,<sup>13</sup> on December 11, 2009, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 (the “House Bill”) was approved by the House of Representatives and was referred to the Senate Committee on Banking, Housing, and Urban Affairs on January 20, 2010.<sup>14</sup> A discussion draft of a parallel bill, the Restoring American Financial Stability Act (the “Senate Bill”), was first introduced in the Senate on November 10, 2009, and a revised draft was released on March 15, 2010.<sup>15</sup> The Senate Bill passed through the Senate Banking Committee on March 22, 2010 and will next be debated by the full Senate.

The House Bill would establish a Federal Insurance Office within the Treasury Department to monitor the insurance industry, identify gaps in the regulation of insurers that could contribute to systemic crisis in the industry and financial system and determine whether state insurance measures are preempted by certain international agreements. The House Bill is favored by the NAIC. The Senate Bill would establish the Office of National Insurance within the Treasury Department that would mirror the duties of the Federal Insurance Office. Both the House Bill and the Senate Bill include the Nonadmitted and Reinsurance Reform Act of 2009 (H.R. 2571), which passed the House of Representatives unanimously on September 9, 2009 (the “NRRA”).<sup>16</sup> Similar to the House Bill, the Senate Bill explicitly states that nothing in the legislation should be construed as providing the Treasury Department with general supervisory or regulatory authority over the business of insurance. The NAIC continues to work with Banking Committee members to have the provisions of the Senate Bill mirror the House Bill.

### ***H.R. 3424 – The “Neal Bill”***

Introduced in the House on July 30, 2009 by Rep. Richard Neal (D-MA), H.R. 3424 is intended to amend the Internal Revenue Code of 1986 to prohibit tax deductions for certain non-taxed reinsurance premiums paid by U.S. property and casualty insurance companies to their offshore

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<sup>13</sup> NAIC Highlights – Winter 2009 National Meeting, *supra* at 8-9.

<sup>14</sup> The text of the House Bill is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4173rfs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173rfs.txt.pdf).

<sup>15</sup> The text of the Senate Bill is available at [http://banking.senate.gov/public/files/AYO09D44\\_xml.pdf](http://banking.senate.gov/public/files/AYO09D44_xml.pdf).

<sup>16</sup> The text of the NRRA is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2571rfs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2571rfs.txt.pdf).

affiliates (the “Neal Bill”).<sup>17</sup> The Neal Bill does not yet have any cosponsors; however, it was included in the proposed Budget of the United States Government, Fiscal Year 2011. During the Spring 2010 National Meeting, the GRLC received a report by the NAIC’s Government Relations Policy Analyst that the NAIC does not have a position on the Neal Bill.

### ***H.R. 4802 – Modernization of the Liability Risk Retention Act of 1986***

The Risk Retention Modernization Act of 2010 (the “RRMA”) was introduced into the House on March 10, 2010 by Rep. Dennis Moore (D-KS) and Rep. John Campbell (R-CA).<sup>18</sup> This bipartisan legislation is an update of the Liability Risk Retention Act of 1986 (the “LLRA”), which authorized businesses to create self-insured risk retention groups that could operate across state lines.<sup>19</sup> The RRMA proposes to expand the LLRA to allow risk retention groups to write commercial property coverage, thus entering a market that has been exposed to catastrophic damage in recent years. The RRMA would also require creation of uniform corporate governance standards for risk retention groups and establish procedures for Federal dispute resolution between the groups and non-domiciliary states. The NAIC has not yet taken a formal position on the RRMA but has expressed support for the improved corporate governance standards provisions of an earlier version of the bill.<sup>20</sup>

### ***H.R. 4851 – Continuing Extension Act of 2010 (NFIP)***

The Continuing Extension Act of 2010 (the “Extension Act”) was approved by the Senate and signed into law on April 15, 2010.<sup>21</sup> The Extension Act, among other things, extends the National Flood Insurance Program (the “NFIP”) through May 31, 2010. The NFIP, a Federal program created in 1968 to provide insurance coverage for flooding to property owners in flood-prone areas where such coverage was not provided for in standard homeowners’ policies, expired on March 28, 2010 when the Senate failed to pass the Extension Act prior to leaving for spring recess. During the two-week expiration period, more than 90 private insurers offering policies through the program were not able to write or renew any policies, and real estate closings that required the purchaser to obtain flood protection under Federally-backed mortgage requirements

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<sup>17</sup> The text of the Neal Bill is available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3424ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3424ih.txt.pdf).

<sup>18</sup> The text of the RRMA is available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4802ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4802ih.txt.pdf).

<sup>19</sup> The text of the LLRA is available at <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+2479+3++%28liability%28>.

<sup>20</sup> See NAIC Offers Views on Three Insurance Bills at Subcommittee Mark-Up, dated July 9, 2008, available at [http://www.naic.org/Releases/2008\\_docs/insurance\\_bills\\_mark\\_up.htm](http://www.naic.org/Releases/2008_docs/insurance_bills_mark_up.htm).

<sup>21</sup> The text of the Extension Act is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4851eas.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4851eas.txt.pdf). See also S. 3203, available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s3203is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s3203is.txt.pdf) (Senate bill extending date of the NFIP to May 31, 2010).

were put on hold until the NFIP's reauthorization. Proponents of the program are calling on Congress to enact a long-term extension of the NFIP to avoid another lengthy expiration period in May.

### ***H.R. 2555 – Homeowners' Defense Act of 2009***

On March 10, 2010, the House Financial Services Subcommittees on Housing and Community Opportunity and Capital Markets, Insurance, and Government Sponsored Enterprises held a joint hearing on the Homeowners' Defense Act of 2009 (the "Defense Act").<sup>22</sup> The hearing, entitled "Approaches to Mitigating and Managing Natural Catastrophe Risk: H.R. 2555, The Homeowners' Defense Act," allowed legislators and interested parties to discuss the need for additional protection against natural disasters and the likelihood of the Defense Act addressing such concerns. Title II of the Defense Act includes provisions substantially similar to those of the Catastrophe Obligation Guarantee Act of 2009 (the "Catastrophe Act"), as discussed in "NAIC Highlights – Summer 2009 National Meeting."<sup>23</sup> The Catastrophe Act was introduced in the Senate on April 23, 2009 and would provide relief to states that have experienced significant natural catastrophes such as earthquakes, hurricanes and tornadoes, but excluding floods. The Catastrophe Act would authorize the Secretary of the Treasury to guarantee debt issued by eligible state catastrophe insurance programs, specifically those offering residential property insurance and reinsurance, up to a maximum principal amount of \$5 billion for state programs that cover earthquake risks and \$20 billion for programs that cover all other perils. The NAIC has endorsed earlier versions of the Defense Act, stating it was "consistent with the guiding principles established by the NAIC."<sup>24</sup> The Defense Act is opposed by some industry representatives, such as the Bermuda Insurers & Reinsurers, who are concerned that the Federal government will take over a market adequately served by private reinsurers. Outside of the Congressional hearing, there has been no action on the Defense Act since May of 2009.

### ***Health Insurance Legislation***

Health Care Reform Act. On March 30, 2010, President Obama signed the final piece of legislation necessary to enact the Patient Protection and Affordable Care Act (P.L. 111-148) (the "Health Care Reform Act").<sup>25</sup> The Health Care Reform Act will expand health care coverage to over 30 million currently uninsured Americans through a combination of cost controls, subsidies and mandates. The NAIC is addressing its role in assisting the states in the implementation of

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<sup>22</sup> The text of the Defense Act is available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2555ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2555ih.txt.pdf).

<sup>23</sup> NAIC Highlights – Summer 2009 National Meeting, *supra* at 8. The text of the Catastrophe Act is available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s886is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s886is.txt.pdf).

<sup>24</sup> Natural Catastrophe Risk: Creating a Comprehensive Plan (June 15, 2009) 4-6, *available at* [http://www.naic.org/documents/committees\\_c\\_natural\\_catastrophe\\_plan\\_final.pdf](http://www.naic.org/documents/committees_c_natural_catastrophe_plan_final.pdf); *see also* NAIC Highlights – Fall 2009 National Meeting, *supra* at 11.

<sup>25</sup> The text of the Health Care Reform Act is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h3590enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf).

the Health Care Reform Act. The NAIC's role will include coordination with Federal and state legislatures and will incorporate industry participation as well. The substantive elements of the Health Care Reform Act and the NAIC's implementation process fall outside the scope of our NAIC reporting. However, we have set forth below certain discrete issues arising from the Health Care Reform Act and other Federal bills.

As part of the Health Care Reform Act's overhaul of the health care system, the legislation addresses medical malpractice insurance and tort reform. The Health Care Reform Act encourages the states to develop alternative dispute resolution mechanisms outside of the current civil litigation system and establishes a demonstration program through which states can evaluate such alternatives. The legislation further authorizes the Secretary of Health and Human Services (the "Secretary") to grant awards to states for "the development, implementation, and evaluation of alternatives to current tort litigation for resolving disputes over injuries allegedly caused by health care providers or health care organizations."<sup>26</sup> States taking advantage of the program will have to show how their proposed alternative improves reliability of the medical liability system, promotes efficient resolution of disputes and disclosure of health care errors, and enhances patient safety. Under the proposals, patients must be fully informed as to the differences between traditional tort litigation and the alternative, as well as have the option to withdraw from the program at their discretion.

Repeal of Federal Antitrust Exemption for Health Insurance. On February 24, 2010, the House passed the Health Insurance Industry Fair Competition Act (H.R. 4626) (the "Fair Competition Act"), which would repeal the limited antitrust exemptions provided by the McCarran-Ferguson Act for the "business of health insurance" and permit the Federal Trade Commission (the "FTC") to enforce the "unfair methods of competition" provision of Section 5 of the FTC Act regarding such business.<sup>27</sup> The McCarran-Ferguson Act, enacted in 1945, delegated to the states the authority to regulate and tax the "business of insurance" and specifically exempted the insurance industry from Federal antitrust laws.

The Fair Competition Act is the current version of a similar bill introduced in the House in the fall of 2009 (H.R. 3596); however, where the earlier bill addressed removing McCarran-Ferguson protection from both health insurers and medical malpractice insurers, the Fair Competition Act is silent as to medical malpractice. The bill is supported by the Obama Administration as a measure that would increase competition and lower the price of health insurance while doing away with such practices as price-fixing, bid-rigging and market allocation. The NAIC, however, opposes the repeal of the McCarran-Ferguson Act as unnecessary given that insurers are currently regulated by state antitrust laws.<sup>28</sup> Opponents are also concerned that if the Fair Competition Act passed, it would open the door to repealing

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<sup>26</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 10607 (2010).

<sup>27</sup> The text of the Fair Competition Act is available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h4626pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4626pcs.txt.pdf).

<sup>28</sup> See NAIC letter to House Speaker Nancy Pelosi, January 6, 2010, available at [http://www.naic.org/documents/testimony\\_100106\\_health\\_reform\\_letter\\_officers.pdf](http://www.naic.org/documents/testimony_100106_health_reform_letter_officers.pdf).

McCarran-Ferguson for the entire insurance industry. The bill was placed on the Senate's legislative calendar on March 1, 2010 and remains pending.

Health Insurance Rate Authority Act of 2010. On March 4, 2010, Senator Dianne Feinstein (D-CA) introduced the Health Insurance Rate Authority Act of 2010 (S. 3078) (the "Rate Authority Act") into the Senate.<sup>29</sup> The Rate Authority Act would authorize the Federal government, through the Secretary, to work in conjunction with the states to establish procedures to review potentially unreasonable increases in rates for health insurance coverage, including premiums, determine whether the rate increases are unreasonable and take corrective action for such increases. While the NAIC has voiced some concern that the legislation could be used to undermine the authority of states to regulate rates, it supports the initiative to the extent it is a collaborative effort between the Federal and state governments. The Rate Authority Act allows for a determination of which states currently have the authority to undertake the necessary actions regarding unreasonable rate increases and for which states the Secretary will be responsible. The NAIC would assist the Secretary in both determining what constitutes an unreasonable increase and in identifying states with the authority and capability to conduct the rate reviews. The Rate Authority Act also provides the Secretary with \$250 million to fund grants to the states to assist with carrying out the rate reviews.

### **Antifraud Issues**

At its meeting on March 27, 2010, the Antifraud (D) Task Force discussed continuing efforts to revise guidelines for the states in connection with the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §§ 1033 and 1034 (the "Enforcement Act").<sup>30</sup> Under the Enforcement Act, an individual who has been convicted of any criminal felony involving dishonesty or a breach of trust and who willfully engages or participates in the business of insurance is subject to fine or imprisonment, and any person who permits a convicted person to participate in the insurance business is similarly subject to fine and imprisonment.<sup>31</sup> However, a convicted person may engage in the business of insurance if he or she receives the written consent of an insurance regulatory authority. The Enforcement Act does not specify the appropriate insurance regulatory authority based on the person's domestic or foreign licenses. The Task Force took comments on the current draft of the guidelines from regulators and interested parties that would, among other things, add provisions to prevent "forum shopping" by 1033 applicants, clarify that the applicant's "home state" is the state of domicile rather than the state of conviction and insert citations in the guidelines from the Federal statute. The Task Force set a deadline to complete the revision by the Summer 2010 National Meeting.

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<sup>29</sup> The text of the Rate Authority Act is available at [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s3078is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s3078is.txt.pdf).

<sup>30</sup> The text of the Enforcement Act is available at <http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+614+0++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%293ACITE%20AND%20%28USC%20w%2F10%20%281033%29%293ACITE%20%20%20%20%20%20%20%20%20%20>.

<sup>31</sup> See 18 U.S.C. § 1033(e)(1)(A).

The Task Force also discussed the development of two new initiatives. The first initiative is in response to a letter from the Consumer Federation of America (the “CFA”) to the NAIC concerning travel insurance fraud. The CFA expressed concern that consumers were purchasing travel protection from companies that are not licensed to sell insurance products. The Task Force plans to recommend creating a new charge on this issue pending further review and discussion with interested parties.

The second initiative the Task Force has undertaken is to draft a uniform health insurance fraud and abuse reporting form as a result of the recently enacted healthcare reform legislation. The Task Force plans to adapt their current Online Fraud Reporting System reporting form and will hold public telephone conferences to discuss the necessary revisions.

### **Surplus Lines Matters**

As discussed in our past NAIC Highlights, the Surplus Lines (C) Task Force has been charged with considering various methods to establish uniform reporting and allocation procedures for surplus lines premium taxes on insurance covering multi-state risks.<sup>32</sup> While the states support uniformity in tax allocation, the method of implementation remains an open topic. In the past year, the Task Force has contemplated the use of both interstate compacts and universal reporting forms.<sup>33</sup> The most recent compact solution considered was the Surplus Lines Insurance Multi-state Compliance Compact (the “SLIMPACT”).<sup>34</sup> The SLIMPACT is a draft interstate compact which would allow surplus lines brokers to comply only with the laws of, and be licensed in, the home state of the insured when placing a multi-state risk, as well as permit compacting states to adopt uniform tax allocation formulae and establish an information clearinghouse for purposes of calculating the taxes owed to member states. Compacts, like the SLIMPACT, have failed to garner majority support from the states, causing the Task Force to place this approach on hold. However, at its meeting on March 28, 2010, the Task Force returned to the possible use of an interstate compact at the suggestion of the NAIC. Recent advancement of Federal legislation mandating uniform regulation and tax allocation among states (*i.e.*, the NRRA), has spurred renewed interest in the compact approach.<sup>35</sup> The Surplus Lines Multi-State Premium Tax (C) Working Group is tasked with reviewing the compact approach, and as a first step will assess the pros and cons of this type of system, as well as the likelihood that a majority of states would adopt such a compact.

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<sup>32</sup> See NAIC Highlights – Winter 2009 National Meeting, *supra* at 12; NAIC Highlights – Summer 2008 National Meeting (June 12, 2008) 6-7, *available at* [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/2616/NAIC\\_Summer\\_2008.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2616/NAIC_Summer_2008.pdf).

<sup>33</sup> See NAIC Highlights – Winter 2009 National Meeting, *supra* at 12; NAIC Highlights – Fall 2009 National Meeting, *supra* at 13.

<sup>34</sup> See NAIC Highlights – Winter 2009 National Meeting, *supra* at 12.

<sup>35</sup> As noted above, both the Wall Street Reform and Consumer Protection Act of 2009 and the Restoring American Financial Stability Act both include provisions of the NRRA which would authorize the states to enter into a compact to establish uniform procedures for the regulation of surplus lines brokers and the reporting, payment and allocation of premium taxes paid on nonadmitted insurance.

## Credit-Based Insurance Scores

During its meeting on March 28, 2010, the Property and Casualty Insurance (C) Committee discussed developing a survey to gather information on risk classification factors for private passenger automobile insurance, including the use of consumers' credit information. As discussed in our NAIC Highlights – Winter 2009 National Meeting, while insurance companies use policyholders' credit scores in their risk calculus for determining premiums (believing there is a corollary between one's credit score and the risk of providing that individual with insurance), consumer advocates argue that the use of credit scoring can lead to unfair and harmful discrimination.<sup>36</sup> Currently, while some states are concerned with the discriminatory effects of credit-based scoring and therefore prohibit insurers from using credit scores as the sole factor in determining risk, other states believe the majority of policyholders benefit from the use of credit-based scoring. While insurers that use credit scores in their underwriting are regulated under states' insurance laws, companies that supply insurers with processes to determine policy rates using credit scores are not. Accordingly, the Committee decided to submit a request for model law development to the Executive (EX) Committee to regulate such insurance scoring vendors.

## Also Noted

Several other developments during the NAIC's Spring 2010 National Meeting are noted below.

- Residential Mortgage Backed Securities Proposal. As discussed in our NAIC Highlights – Winter 2009 National Meeting, recent downgrades of a significant segment of AAA rated residential mortgage backed securities (collectively, "RMBS") to below investment grade by one or more NRSROs have resulted in a significant increase of RBC required for the life and health insurers that hold RMBS.<sup>37</sup> In November of 2009, the NAIC adopted a proposal that for year-end 2009 reporting purposes RBC for non-agency RMBS would be determined using a financial model instead of the NAIC ARO credit ratings (the "Short Term Proposal").<sup>38</sup> As a result, RMBS are no longer eligible for the filing exempt rule and ARO rating cannot be used to derive RBC for RMBS.<sup>39</sup> At its meeting on March 27, 2010, the Valuation of Securities (E) Task Force decided to extend the Short Term Proposal until a long-term solution can be implemented and to conduct the RMBS modeling semi-annually to the extent it is feasible. The Task Force also

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<sup>36</sup> NAIC Highlights – Winter 2009 National Meeting, *supra* at 13.

<sup>37</sup> *Id.* at 4-6.

<sup>38</sup> The Short Term Proposal affects non-agency RMBS, which are securities created by private, not government-sponsored, entities. As used herein, the term RMBS refers only to non-agency RMBS, unless otherwise specified.

<sup>39</sup> While certain securities that are rated by an ARO are assigned an equivalent NAIC Designation (subject to certain limitations) and are exempt from the filing requirements with the SVO, non-agency RMBS are no longer exempt. Instead, non-agency RMBS are required to be reviewed by the SVO in a process that replaces ARO ratings with a financial model to establish price ranges for each non-agency RMBS to be translated to appropriate NAIC Designation and accompanying RBC charges.

decided to apply a similar RBC methodology to certain other structured securities, such as commercial mortgage backed securities or other asset-backed securities.<sup>40</sup>

- Climate Risk Disclosure Survey. At the Joint Executive (EX) Committee Plenary meeting held on March 28, 2010, the NAIC adopted a new version of the Climate Risk Disclosure Survey (the “Revised Climate Survey”) to replace the initial version adopted in March of 2009 (discussed in “NAIC Highlights – Spring 2009 National Meeting”) (the “Initial Climate Survey”).<sup>41</sup> The Revised Climate Survey asks the same questions as the Initial Climate Survey and requests that insurance companies assess the risks they face from climate change and disclose them to applicable state regulators as well as report their response to such risks. Both the Initial Survey, which has already been adopted and distributed by some states, and the Revised Climate Survey are intended to be submitted to the domestic regulator of an insurer group’s lead state (*i.e.*, the regulator overseeing the insurer within the group that reports the largest direct written premium volume). While the adoption of the Initial Climate Survey and the requirements thereunder had been at the discretion of each state, the Initial Climate Survey had recommended that states require mandatory disclosure by May 1 of each year for insurer groups writing direct written premium over \$500 million for 2009 and \$300 million for 2010 and thereafter, and the individual responses to the Survey be made public. While the Revised Climate Survey makes the same recommendation in terms of disclosure by insurer groups based on the size of direct written premium, it specifically states that the requirement for completion of the survey is at the direction of the state, and the individual responses to the Survey are confidential. The NAIC will develop a public report on aggregate responses from insurer groups. NAIC is currently conducting a survey on states’ adoption of a climate survey, which will become available on the NAIC website by the end of April.
- Amendments to the NAIC Standard Valuation Model Law – Accreditation Standards. As discussed in our previous NAIC Highlights, at a joint meeting of the Executive (EX) Committee and Plenary during the Fall 2009 National Meeting, the NAIC adopted amendments to the Standard Valuation Model Law (#820) to implement the principles-based reserving methodology (collectively, the “2009 Revisions”).<sup>42</sup> Certain sections of the Standard Valuation Model Law are required to be adopted by the states as part of their NAIC accreditation standards in order to promote uniformity. At its meeting on

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<sup>40</sup> Securities that are not subject to the Short Term Proposal would be (i) rated by the NAIC ARO using the modified filing exempt rule, (ii) assigned a designation by the SVO, or (iii) subject to the 5\*/6\* rule as set forth in the Purposes and Procedures Manual (requiring that an insurer either file a security and appropriate documentation with the SVO to obtain an NAIC Designation, file a Principal and Interest Certification Form to obtain an NAIC 5\* Designation or report the security with an NAIC 6\* Designation on Schedule D of its Annual Statement).

<sup>41</sup> NAIC Highlights – Spring 2009 National Meeting (March 27, 2009) 11, *available at* [http://www.willkie.com/files/tbl\\_s29Publications/FileUpload5686/2932/NAIC\\_Highlights\\_Spring\\_2009\\_Meeting.pdf](http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2932/NAIC_Highlights_Spring_2009_Meeting.pdf).

<sup>42</sup> NAIC Highlights – Winter 2009 National Meeting, *supra* at 9-10; NAIC Highlights – Fall 2009 National Meeting, *supra* at 6-7.

March 26, 2010, the Financial Regulation Standards and Accreditation (F) Committee released the 2009 Revisions for a 30-day preliminary comment period to be considered for accreditation purposes. The Committee will discuss and consider the comments at the Summer 2010 National Meeting, at which time the Committee will vote on whether to expose the 2009 Revisions for a one-year comment period starting on January 1, 2011.

- Restructuring Mechanisms for Troubled Companies Subgroup of the Financial Condition (E) Committee. During the Winter 2009 National Meeting, the Subgroup adopted the “White Paper on Alternative Mechanisms for Troubled Companies” (the “White Paper”) for consideration by the Financial Condition (E) Committee and by the Financial Analysis (E) Working Group for incorporation of the White Paper in the Appendix of the NAIC’s Troubled Insurance Company Handbook.<sup>43</sup> The White Paper discusses schemes of arrangement and Part VII portfolio transfers (a transfer leaving no recourse to the original contractual obligor/insurer) and similar restructuring mechanisms that are employed internationally for financially troubled insurers.<sup>44</sup> The NAIC adopted the White Paper at a joint meeting of the Executive (EX) Committee and Plenary on March 28, 2010.
- RBC Health Accreditation Standard. At its interim meeting via telephone conference on March 16, 2010, the Capital Adequacy (E) Task Force decided to recommend to the Financial Regulation Standards and Accreditation (F) Committee that the Risk-Based Capital (RBC) for Health Organizations Model Act (#315) be an accreditation standard. At its meeting on March 28, 2010, the Financial Condition (E) Committee adopted the referral from the Capital Adequacy (E) Task Force. Upon approval by the (E) Committee, the recommendation for accreditation standard would be submitted to the (F) Committee.

### **Upcoming NAIC Activities**

The NAIC’s Summer 2010 National Meeting is scheduled to be held in Seattle, Washington from August 14 through August 17, 2010. In the meantime, the NAIC’s committees, task forces, and working groups continue to work on the above and other issues faced by state insurance commissioners, including through interim meetings and conference calls. The NAIC’s calendar of upcoming meetings and events is available at [http://www.naic.org/meetings\\_calendar.htm](http://www.naic.org/meetings_calendar.htm).

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<sup>43</sup> NAIC Highlights – Winter 2009 National Meeting, *supra* at 13.

<sup>44</sup> The White Paper will comprise a review of alternative mechanisms for troubled insurers within and outside the U.S., such as the run off of existing blocks of business, New York Regulation 141 commutations and Rhode Island voluntary restructurings as well as U.K. Solvent Schemes of Arrangement and Part VII Portfolio Transfers. See NAIC Highlights – Summer 2009 National Meeting, *supra* at 10 (describing the White Paper in further detail).

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If you have any questions regarding this memorandum, please contact Leah Campbell (212-728-8217, [lcampbell@willkie.com](mailto:lcampbell@willkie.com)) or the Willkie attorney with whom you regularly work.

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