

NAIC HIGHLIGHTS – FALL 2008 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 Fall 2008 National Meeting from September 21st through September 24th in National Harbor, Maryland. 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.

AIG

One of the top issues discussed at the NAIC National Meeting was the financial crisis faced by American International Group (“AIG”). In response to the crisis, the NAIC held several closed meetings (including meetings or conversations with, among others, Edward M. Liddy, the CEO of AIG’s non-insurance parent holding company American International Group, Inc., banks, private equity firms and representatives of the Federal Reserve and the Department of the Treasury) and an open public briefing (described below).

NAIC - AIG Public Hearing

On September 23, 2008, the NAIC held a public hearing regarding AIG.¹ The panel, comprised of various state insurance commissioners, emphasized the following points:

- Throughout these meetings, the NAIC’s primary concerns were that any restructuring transactions provide for the continued protection of the solvency of AIG’s insurance company subsidiaries and the interests of their policyholders.
- Although commonly referred to as the “world’s largest insurer,” only approximately 1/3 of AIG’s holdings relate to its insurance business. Only 71 out of AIG’s companies are U.S. insurance companies regulated by the states. As noted in an NAIC press release, “the remaining 176 entities are split between foreign entities and non-insurance U.S. entities. The lead U.S. regulator of AIG financial holding company is the Office of Thrift Supervision, a federal banking regulator.”²

¹ The NAIC press release, which includes links to audio downloads of the public hearing, is available at http://www.naic.org/Releases/2008_docs/AIG_press_briefing.htm.

² News Release, NAIC, “STATE REGULATORS: AIG INSURERS ABLE TO PAY CLAIMS - State Solvency Standards Protect Policyholders” (Sept. 17, 2008), available at http://www.naic.org/Releases/2008_docs/AIG_pay_claims.htm.

- The recent crisis relates to AIG's non-insurance parent holding company and its non-insurance assets (including financial products such as credit default swaps). The NAIC views AIG's insurance company subsidiaries as remaining sound and solvent, noting that there is no reason to doubt the AIG insurers' ability to pay claims.
- Noting that critics of state-based insurance regulation (and proponents of federal regulation instead) have suggested that AIG's financial troubles are signs of a failure by state regulators (and are thus calling for federal regulation or an optional federal charter, a proposal debated for many years that would allow insurance companies to opt voluntarily to be regulated at a federal level), the NAIC responded that the troubles relate to AIG's non-insurance parent holding company, which is federally regulated, not its U.S. insurance companies.³ Rather, the NAIC emphasized that it is the core value of AIG's insurance company subsidiary assets (which has been protected by the state-based insurer solvency requirements) that served as a foundation for justifying the \$85 billion federal credit facility to provide AIG with the liquidity it needs. The panel acknowledged that they are in favor of a coordinated effort and communications between state and federal regulators, but stressed that the current state-based system of insurance regulation is very solid.
- The \$85 billion loan explicitly did not place a lien on the insurance company subsidiaries or the insurance assets. Additionally, no extraordinary dividends are contemplated. However, if AIG sells one or more insurance companies at a profit, the parent company could use those proceeds to pay off the loans, but not at the expense of policyholder interests. Such policyholders would be protected by the solvency of the insurance companies sold, even if the company name on their policies should change.
- Superintendent Eric R. Dinallo noted that the New York Insurance Law prohibits making untrue derogatory statements about the solvency or financial standing of an insurer, and, therefore, agents and insurers are prohibited from making such statements in order to take advantage of the recent news (*e.g.*, in order to pressure consumers to switch carriers or place their insurance with insurers other than AIG).
- Nineteen domiciliary states act as the primary regulators of the AIG insurance companies. A Form A Working Group (described in further detail below) was set up among the regulators of these 19 states. In the event that any of AIG's U.S. insurance company subsidiaries are sold, this working group will coordinate the Form A application processes (the application to an insurance company's domestic regulator for approval of a change of control of such insurance company).

³ The NAIC's press release responding to critics of state-based regulation, titled "AIG: CONVERSATION SHOULD STAY FOCUSED ON THE FACTS" (Sept. 18, 2008), is available at http://www.naic.org/Releases/2008_docs/AIG_facts.htm.

NAIC Response to AIG crisis

The NAIC has established an AIG Special Task Force under the Financial Condition (E) Committee, including all NAIC member states, with New York State Insurance Superintendent Eric Dinallo as chair and Pennsylvania Insurance Commissioner Joel Ario as vice-chair. The purpose of this task force is to oversee AIG insurance interests, protect policyholder interests and coordinate with federal and international regulators.⁴ The Task Force also will oversee (a) a Form A Working Group comprised of the 19 domestic insurance regulators described above and (b) an AIG Life Working Group to address any issues that may arise specific to AIG's life insurance subsidiaries. The goal of the Form A Working Group is to streamline and facilitate the regulatory approval process and create a standard template to be used for the Form A filings in connection with acquisitions of control of any of AIG's insurance subsidiaries.

Additionally, the NAIC and state regulators have issued press releases to reassure insurance consumers, respond to critics and clear up misconceptions. Regulators are warning consumers to beware of possible misinformation being provided by producers in an attempt at "churning" business (a practice involving pressuring clients to switch insurance carriers in order to generate increased producer commissions). The NAIC and state regulators are issuing consumer alert bulletins and Frequently Asked Questions documents to consumers in order to restore confidence and to alert consumers to the potential costs and risks of switching carriers.⁵ On September 24, 2008, at the Joint Executive/Plenary Committee meeting of the NAIC, President Praeger pointed to some model consumer bulletins (*e.g.*, alerts by Wisconsin, Kansas and New York regulators) encouraging consumer confidence and warning against churning and false information, and urged all other states to issue similar consumer alerts.

Reinsurance

Reinsurance Regulatory Modernization Framework

As discussed in our memoranda, dated April 8, 2008 titled "NAIC Highlights - Spring 2008 National Meeting"⁶ and June 12, 2008 titled "NAIC Highlights - Summer 2008 National

⁴ News Release, NAIC, "STATE REGULATORS: AIG INSURERS ABLE TO PAY CLAIMS - State Solvency Standards Protect Policyholders" (Sept. 17, 2008), available at http://www.naic.org/Releases/2008_docs/AIG_pay_claims.htm.

⁵ *See, e.g., id.*; http://www.naic.org/index_AIG_consumer_FAQ.htm; <http://www.ins.state.ny.us/press/2008/p0809222.htm>; and http://www.ins.state.ny.us/faqs/faqs_aig.htm. Additionally, the New York State Insurance Department has set up an AIG hotline to respond to consumer questions; details are available at <http://www.ins.state.ny.us/>.

⁶ A copy of this client memo is available at http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2582/NAIC_Spring_2008.pdf

Meeting,”⁷ the NAIC has developed a modernization framework (the “Framework”) to reform reinsurance regulation for both domestic and foreign reinsurers. Since the Summer National Meeting, the Reinsurance Task Force has held several regulator-to-regulator and open meetings and conference calls. As a result, the NAIC staff developed a revised memorandum, dated September 12, 2008 (the “Revised Framework Memorandum”),⁸ which the Reinsurance Task Force adopted on September 22nd. On September 24, 2008, the Revised Framework Memorandum was subsequently adopted by the Financial Condition (E) Committee.

The Framework, as reflected in the Revised Framework Memorandum, would create a single-state system of licensure for U.S. reinsurers and a single-state system of certification for non-U.S. reinsurers.⁹ Such licensure or certification would be granted by a U.S. jurisdiction qualified as a “Home State” or port of entry state (“POE State”), respectively. In order to qualify for Home State or POE State authority, a U.S. jurisdiction would be required to meet standards established by a department of the NAIC to be called the Reinsurance Supervision Review Department (“RSRD”).

Each qualifying U.S. reinsurer would be designated a “National Reinsurer” and would be authorized to transact assumed reinsurance business across the United States while submitting solely to the regulatory authority of its Home State supervisor for purposes of its reinsurance business.¹⁰ Each qualifying non-U.S. reinsurer would be designated a “POE Reinsurer.” However, certification by a POE State would not provide independent authority to transact the business of insurance in the United States.¹¹ In addition to licensing or certifying a reinsurer, the

⁷ A copy of this client memo is available at http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2616/NAIC_Summer_2008.pdf

⁸ Framework Memorandum from Ryan Couch, NAIC Staff, to Reinsurance (E) Task Force Members, Interested Regulators and Interested Parties regarding Reinsurance (E) Task Force Activities (Sept. 12, 2008) (the “September 12th Memo”), available at http://www.naic.org/documents/committees_e_reinsurance_080912_rtf_mod_prop.pdf.

⁹ The Framework would not eliminate the current credit for reinsurance regulatory system employed by the states. U.S.-licensed insurers that do not choose to become National Reinsurers (as defined herein) and non-U.S. reinsurers that do not choose to become POE Reinsurers (as defined herein) would continue to operate under the current credit for reinsurance system of multi-state licensing, accreditation, approval or required collateralization.

¹⁰ September 12th Memo at 1, 3. “Other aspects of this single state regulatory system for national reinsurers include: (a) A host state will be required to grant credit for reinsurance ceded by one of its domestic insurers to a national reinsurer; and (b) The host state supervisor retains the same authority it has under existing law to determine whether the contract transfers risk.” *Id.* at 2 (emphasis added).

¹¹ *Id.* at 1. “Other aspects of this single state regulatory system for POE reinsurers include: (a) A host state will be required to grant credit for reinsurance ceded by one of its domestic insurers to a POE reinsurer; (b) The host state supervisor retains the same authority it has under existing law to determine whether the contract transfers risk; and (c) In order to be certified as a POE reinsurer, a company/reinsurer must be organized in and licensed by a non-U.S. jurisdiction recommended as eligible for recognition by the RSRD.

Home State or POE State would assign a rating to the National Reinsurer or POE Reinsurer, which, as described below, translates into certain minimum reinsurance collateral requirements applicable to such reinsurer in connection with reinsurance assumed from U.S. cedents. The domestic insurance regulator of a U.S. cedent (the “Host State”) would be required to grant such cedent credit for reinsurance ceded to a National Reinsurer or POE Reinsurer.

In addition to establishing qualification criteria for Home State or POE State status, the RSRD would be charged with evaluating the supervisory regimes of non-U.S. jurisdictions and determining the appropriate supervisory recognition approach for such jurisdictions. This authority would include developing a protocol for supervisory recognition, information sharing and regulatory cooperation agreements between such jurisdictions and the U.S. Home State or POE State. The RSRD’s functions would also include developing a purposes and procedures manual for U.S. regulators and acting as a repository for relevant data concerning reinsurers and the reinsurance markets. The Framework, as revised, recommends federal enabling legislation for the establishment and authorization of the RSRD, the incorporation of concepts of mutual recognition and reciprocity between Home States or POE States and non-U.S. jurisdictions, and potential changes to state insurance laws to implement the Framework.

Some of the additional key points in the Framework, as revised, are as follows:

1. National Reinsurers or POE Reinsurers shall have a minimum capital requirement of \$250 million.
2. The POE or Home State supervisor will assign a reinsurer one of five ratings (Secure-1, Secure-2, Secure-3, Secure-4 or Vulnerable-5) based on certain factors, including ratings assigned by an SEC-approved rating agency (the lowest of which shall determine the maximum rating that a reinsurer may be assigned or, if just one rating is maintained, a Vulnerable-5 rating shall be assigned); compliance with reinsurance contractual terms and obligations (including mandatory contractual clauses); the business practices of the reinsurer in dealing with its ceding insurers; a review of

Once the non-U.S. jurisdiction has been recommended as eligible by the RSRD, and so long as it maintains that status, the reinsurer could then be certified by the POE state to provide creditable reinsurance to the U.S. market through the POE state.” *Id.* at 2 (emphasis added). Among other things, the September 12th Memo also provides the following:

The POE supervisor shall be responsible for . . . certifying a reinsurer as a POE reinsurer which shall include, but not be limited to, the receipt by the supervisor of a properly executed Form AR-1, which is a certificate of assuming insurer, that stipulates that the reinsurer submits to the jurisdiction of U.S. courts, appoints an agent for service of process in the United States, and agrees to post 100% collateral for its United States liabilities if it resists enforcement of a final U.S. judgment. The Form AR-1 will not be accepted from any reinsurer which is domiciled in a country or state which the POE supervisor or RSRD has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

Id. at 5.

- certain NAIC Filing Blanks and Schedules; the reinsurer's reputation for prompt payment of valid claims; regulatory actions; an independent audit opinion; audited financial statements; the liquidation preference of obligations to a ceding company in the reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; a reinsurer's participation in any solvent scheme of arrangement or similar proceeding that involves U.S. cedents (and entry into such an arrangement or proceeding involving one or more U.S. cedents will result in an assignment of a Vulnerable-5 rating); and any other information deemed relevant by the Home State or POE State supervisor.
3. National Reinsurers and POE Reinsurers will be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate, for purposes of establishing their collateral requirements.
 4. The ratings, ranking a POE Reinsurer from 1-5, would correspond to the following collateral requirements, respectively: 0%, 10%, 20%, 75% and 100%. For a National Reinsurer, no collateral would be required for ratings of Secure-3 and better. For National Reinsurers rated Secure-4, 75% collateral would be required, and for those rated Vulnerable-5, 100% collateral would be required.

The Framework, as revised, reflects the following recent revisions from prior proposals, among others:

- As indicated above, National Reinsurers rated by their Home State supervisors as Secure-3 or better would not need to post any collateral.
- In its ongoing evaluation of the reinsurance supervisory regimes of non-U.S. jurisdictions, the RSRD will consider the rights and benefits and the extent of reciprocal recognition afforded by such jurisdictions to U.S. reinsurers.
- In addition to evaluating the risk transfer of each ceding insurer's reinsurance agreements, a Host State supervisor will verify that such agreements are properly accounted for and reported by the ceding insurer.
- As indicated above, for purposes of establishing their collateral requirements, National Reinsurers and POE Reinsurers will be evaluated on a legal entity basis, with due consideration being given to the group rating where appropriate.
- Within two years after the first full year with the new collateral requirements set forth in the Framework, the RSRD will reexamine the collateral requirements and make appropriate recommendations.
- Due to life insurance reserve reforms currently in process, the collateral modernization reforms in the Framework would not apply to life reinsurance contracts until the earlier of 24 months from the effective date of the Framework or the implementation of U.S. principles-based reserving standards for life insurance.

During the Reinsurance Task Force meeting held on September 22nd, interested parties representing international reinsurance markets generally supported the Framework, as revised, and encouraged its adoption. The Reinsurance Association of America also supported adoption, noting changes to the revised Framework (a) to limit collateral requirements applicable to U.S. reinsurers and (b) to require the RSRD, when evaluating the regulatory regimes of non-U.S. jurisdictions, to consider such jurisdictions' reciprocal recognition and treatment of U.S. insurers. On the other hand, some speakers questioned any approach to reinsurance regulation that would reduce the collateral requirements currently applicable to non-U.S. reinsurers, especially in light of current financial market conditions. Insurance regulators acknowledged current circumstances affecting the financial markets and emphasized that the role of insurance regulators is to monitor the financial solvency and conduct of insurers, rather than to eliminate all credit risk presented by reinsurance arrangements. With respect to the Framework, the NAIC stated:

This approach would facilitate cross-border reinsurance transactions and supervision in a rapidly evolving international marketplace. . . . State insurance regulators have carefully evaluated the current unsettled state of the financial markets and the insurance industry, and feel confident that the proposal is a prudent step that protects the interests of U.S. insurers and policyholders against the risk of insolvency, while modernizing the reinsurance regulatory structure.¹²

The entire NAIC membership is scheduled to consider adopting the Revised Framework Memorandum during the 2008 Winter National Meeting.¹³ In order to preserve state-based regulation of reinsurance and promote uniformity of regulation throughout NAIC member jurisdictions and in light of the opportunity presented by certain proposed legislation (*i.e.*, H.R. 1065 and S.B. 929, the Nonadmitted and Reinsurance Reform Act of 2007), the Reinsurance Task Force recommends federal enabling legislation, which would provide appropriate authority to the RSRD and eliminate certain legal concerns, allowing POE State supervisors or the RSRD to negotiate reciprocal recognition for reinsurers licensed and domiciled in the U.S. State insurance laws also may need to be revised to allow for implementation of the Framework.

¹² News Release, NAIC, "NAIC REINSURANCE PROPOSAL ADVANCES TOWARD FULL ADOPTION - State Insurance Regulators Carefully Consider Steps to Strengthen Reinsurance Regulation" (Sept. 25, 2008), available at http://www.naic.org/Releases/2008_docs/reinsurance_advances.htm (quoting New Jersey Banking and Insurance Commissioner Steven M. Goldman, Chair of the NAIC Reinsurance Task Force).

¹³ News Release, NAIC, "NAIC REINSURANCE PROPOSAL ADVANCES TOWARD FULL ADOPTION - State Insurance Regulators Carefully Consider Steps to Strengthen Reinsurance Regulation" (Sept. 25, 2008).

Federal Initiatives

Although the U.S. federal government typically does not regulate the business of insurance, in certain circumstances the federal government has stepped in to address issues of national concern (e.g., the Terrorism Risk Insurance Act and the National Flood Insurance Program). Certain broad-reaching federal initiatives also could have a significant impact on the insurance industry.

The Government Relations Leadership Council Task Force (the “GRLC Task Force”) met on September 24, 2008. Its charges include to “[m]onitor and analyze federal and state legislative/regulatory actions regarding financial services and other issues of importance to the NAIC membership.”¹⁴ Given recent events and the limited time left to this Congressional session, the GRLC indicated that most of the proposed insurance bills are unlikely to progress before the end of the session. If they do not, legislation would need to be reintroduced in the next Congress. Additional details regarding certain federal initiatives are provided below.

Federal Regulation of Insurance

For some time, critics of the current state-based insurance regulatory system have argued that the system is unduly burdensome on U.S. and non-U.S. insurers that wish to do insurance or reinsurance business in the U.S. on a national level. The NAIC, on the other hand, historically has countered that although there are instances when federal government involvement or a national standard are necessary, the state-based insurance regulatory system provides better regulatory oversight and protection for consumers.

As discussed in “NAIC Spring 2008 Meeting Highlights,” the U.S. Treasury Department released a blueprint for a modernized federal structure for oversight and regulation of all financial services, including insurance. The blueprint included a proposal for the creation of an optional federal charter (“OFC”) to streamline insurance regulatory requirements for industry participants doing business on a national basis.

As discussed in “NAIC Summer 2008 Meeting Highlights,” H.R. 5840, the Insurance Information Act of 2008, was introduced in the House of Representatives in April. If enacted, this bill would establish an Office of Insurance Information (the “OII”) within the Department of the Treasury. Some viewed this as a compromise for federal coordination on national and international issues while maintaining a state-based system, whereas others viewed this as a possible first step toward the enactment of the Treasury blueprint or the enactment of the OFC, which has been debated for years. On September 12, 2008, the NAIC offered support for an amended version of the bill reflecting NAIC requests that would (a) “enhance[] the ability of the states to send and receive confidential data with the federal government” and (b) specif[y] that [the bill] does not establish supervisory or regulatory authority by the [OII] or the Treasury over

¹⁴ 2008 Charges, Government Relations Leadership Council Task Force, http://www.naic.org/committees_ex_gov_rel_leadership_council.htm.

the business of insurance.”¹⁵ However, although the bill appeared to be on the fast track, it did not make it to a floor vote. The GRLC Task Force indicated that an OII proposal might be reintroduced in the next session or it could be incorporated into broader sweeping reforms.

Flood Insurance

Unless it is reauthorized, the National Flood Insurance Program (the “NFIP”) is due to expire on September 30, 2008. The GRLC Task Force reported that the conflicting House and Senate bills (as discussed in “NAIC Summer 2008 Meeting Highlights”) were not resolved. However, Congress has extended the NFIP in its current form through March 6, 2009 via a continuing resolution, which was approved by the President.

Surplus Lines

As discussed in “NAIC Summer 2008 Meeting Highlights,” there appears to be some consensus that surplus lines (also known as excess lines) insurers and brokers doing business in multiple states or nationwide would benefit from uniform licensing and regulatory requirements. Also, licensees and the states would benefit from a clear and uniform method for the allocation of premium taxes among states for insurance covering multi-state risks.

However, the best approach to achieving uniform standards has been debated for many years. Accordingly, the Surplus Lines Task Force’s mission is “to monitor the surplus lines market and its operation and regulation, including the activity and financial condition of U.S. and non-U.S. surplus lines insurers by providing a forum for discussion of issues and to develop or amend model regulation.”¹⁶ In addition, the Surplus Lines Task Force was instructed to “[c]onsider a uniform method of allocating surplus lines and independently procured insurance premium tax on multi-state risks and any other surplus lines issues,” and this task was deemed “essential.”¹⁷

The “Nonadmitted and Reinsurance Reform Act of 2007” (the “NRRA”) is an act created to streamline the regulation of nonadmitted insurance, surplus lines insurance and reinsurance by setting forth certain federal standards and certain limits on state regulations. The GRLC Task Force and Surplus Lines Task Force both explained that although the NRRA was adopted by the House, the NRRA is unlikely to pass the Senate this session. (There is another version of the bill pending in the Senate, which also is not expected to progress this session.) The Surplus Lines Task Force has been discussing the possibility of setting up a “clearinghouse,” including a web interface to allocate the premium for a surplus lines broker placing a policy, collect information,

¹⁵ News Release, NAIC, “STATE INSURANCE REGULATORS SUPPORT OFFICE OF INSURANCE INFORMATION - Legislation Reflects ‘Good Faith Effort to Reach Consensus’” (Sept. 12, 2008), available at http://www.naic.org/Releases/2008_docs/office_ins_info.htm.

¹⁶ Surplus Lines Task Force, http://www.naic.org/committees_c_surplus_lines.htm.

¹⁷ 2008 Proposed Charges (Adopted by Plenary on 12/4/07; Amendments Adopted by Plenary 6/2/08), 23 (July 30, 2008), available at http://www.naic.org/documents/committees_Charges.pdf.

and provide reports to the parties and the states so that all parties would know what premium tax is owed to each state. The Surplus Lines Task Force decided to continue with an ongoing study of the practicability of such a clearinghouse and revisit the idea during an interim meeting next quarter (taking into consideration whether any enabling federal legislation, such as the NRRA or a similar bill, has been enacted by such time).

NARAB II

H.R. 5611, the National Association of Registered Agents and Brokers Reform Act of 2008 (“NARAB II”) is an updated version of a prior proposal to establish a national board to oversee licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions that may be adopted and applied on a multi-state basis. Although NARAB II passed the House, the GRLC Task Force predicted that it is unlikely to pass the Senate this session; however the legislation is expected to be reintroduced in the next session of Congress.

International Issues

The NAIC has been tracking international developments and endeavoring to harmonize U.S. and international standards to facilitate cross-border business (*e.g.*, the reinsurance regulatory modernization framework discussed above).

On September 24, 2008, the Financial Condition (E) Committee met. Among other issues, it received a speech from Cathy Cole (Associate Chief Accountant in the Office of the Chief Accountant at the U.S. Securities and Exchange Commission (“the “Commission”), who noted that she was not officially representing the Commission. Ms. Cole described that in recent years there has been an international convergence toward uniform accounting standards. Specifically, use of International Financial Reporting Standards (“IFRS”) has become widespread (used by over 100 countries), and the Commission no longer requires non-U.S. issuers to restate their financial statements from IFRS to U.S. Generally Accepted Accounting Principles (“GAAP”). Ms. Cole indicated that the Commission has been conducting roundtable discussions and receiving comment letters; the Commission may release a road map in the near future allowing U.S. issuers to begin submitting their financial statements under IFRS rather than U.S. GAAP. (Eventually, this may lead to a phase-out of U.S. GAAP in favor of the application of IFRS to all issuers.)

On September 22, 2008, the International Solvency and Accounting Working Group (the “ISA Working Group”) met. Its charges provide that it shall (i) monitor the developments of the International Association of Insurance Supervisors (the “IAIS”) and the International Accounting Standards Board (the “IASB”) as they relate to insurance accounting issues and (ii) monitor the joint convergence projects of the IASB and the Financial Accounting Standards Board (the “FASB”), which include efforts to bring U.S. and international accounting standards into

accord.¹⁸ At its meeting, the ISA Working Group emphasized that adoption of IFRS by the states in lieu of statutory accounting principles is not a foregone conclusion. Rather, the ISA Working Group asked the Statutory Accounting Principles Working Group to accumulate information from regulators, industry, auditors and others in order to (a) summarize the differences between IFRS and U.S. statutory accounting principles (at a high level view, rather than reviewing each individual Statement of Statutory Accounting Principles) and (b) describe the more significant issues involved in implementing a change from statutory accounting reporting to IFRS.

The ISA Working Group also discussed the Solvency Modernization Initiative (the “SMI”), which involves studying solvency initiatives in other jurisdictions (e.g., the EU, Canada, Australia and Switzerland).¹⁹ To further the SMI, the ISA Working Group directed the NAIC staff to contact Australian, Canadian and Swiss regulators to request information so that U.S. regulators can better understand their solvency systems (referencing prior work performed by the Reinsurance Task Force to reduce duplication). Additionally, the working group asked that the Financial Condition (E) Committee to draft a single comprehensive document describing the U.S. regulatory framework (e.g., risk-based capital, the market conduct and financial examination processes, etc.).

Climate/Catastrophe Issues

Climate Change White Paper

On September 23, 2008, the Catastrophe Insurance Working Group met. The Working Group’s charges include, among other things: (a) to “[m]onitor and recommend measures to improve the availability and cost of insurance and reinsurance related to catastrophe perils for personal and commercial lines”; (b) to “[e]valuate potential state, regional and national programs to increase capacity for insurance and reinsurance related to catastrophe perils”; (c) to “[m]onitor and assess proposals that address disaster insurance issues, both at the federal and state levels; assess concentration of risk issues and whether a regulatory solution is needed”; and (d) to “[f]inish work on the NAIC Natural Catastrophe Risk Plan by the 2008 Summer National Meeting.”²⁰

¹⁸ 2008 Charges, International Solvency and Accounting Working Group, http://www.naic.org/committees_e_isawg.htm.

¹⁹ The SMI work plan is available at http://www.naic.org/documents/committees_e_080903_solvency_2_work_plan.pdf. Additionally, the International Solvency and Accounting (E) Working Group has posted a document comparing the U.S. and EU solvency systems, which has been exposed for comment until October 31, 2008 at http://www.naic.org/documents/committees_e_isawg_us_eu_solvency_comparison.doc.

²⁰ 2008 Charges, Catastrophe Insurance (C) Working Group, http://www.naic.org/committees_c_catastrophe.htm.

The Catastrophe Insurance Working Group heard panel discussions from interested parties regarding natural catastrophe risk proposals and scientific research developments (including new construction, retrofitting and developing multi-peril simulations). Among other issues, the working group and interested parties discussed the possibility of enacting stronger building codes, the creation of a federal or state backstop (or a combination thereof) for extreme natural catastrophes, and an enhanced homeowners' policy that would combine wind and flood insurance into a single policy and thereby spare policyholders from conflicts concerning the cause of damages and thus whether their policies apply. Additionally, the Catastrophe Insurance Working Group considered a revised draft of a white paper titled "Natural Catastrophe Risk: Creating a Comprehensive National Plan."²¹ The white paper discusses recent legislative efforts to address catastrophe issues, mitigation programs, enhancing insurance contracts (to provide the consumer's full desired coverage without the need for multiple policies), and the potential roles of state and national government involvement (including catastrophe funds and the formation of a federal Natural Catastrophe Commission). The working group exposed the white paper for comments until October 14, 2008, with the plan to discuss comments on an interim conference call in early November and then complete the white paper by December.

Earthquake Study Group

On September 22, 2008, the Earthquake Study (C) Group met for the first time. During the meeting, the Working Group reviewed its plans, which include (a) reviewing and updating the work of a previous study group in 2000, (b) working with seismologists and actuarial experts on loss mitigation, (c) reviewing earthquake modeling assumptions, (d) helping states with the availability and affordability of earthquake coverage, and (e) identifying strategies to communicate earthquake risk awareness, mitigation and recovery measures to potentially affected persons.

Upcoming NAIC Activities

The NAIC's Winter 2008 National Meeting is scheduled to be held in Grapevine, Texas from December 4 through December 8, 2008. 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.

* * * * *

²¹ The September 3, 2008 draft of the white paper is available at the Catastrophe Insurance Working Group's website at http://www.naic.org/documents/committees_c_catastrophe_naic_plan.pdf.

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

This memorandum was authored by Leah Campbell and Marshal Bozzo.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

October 3, 2008

IRS Circular 230 disclosure:

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Copyright © 2008 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York's Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.