

CLIENT MEMORANDUM

NAIC Report: 2015 Spring National Meeting

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AUTHORS

Leah Campbell | **Michael Groll** | **Donald Henderson, Jr.** | **Allison Tam**

The NAIC's 2015 Spring National Meeting was held in Phoenix, Arizona from March 27 to 31, 2015. Work continued on important initiatives from past meetings, including progress on the regulation of certain captive transactions and discussions of policy regarding the collateralization requirements for international reinsurers. Additionally, some of the highlights of the Spring National Meeting were sessions on the relatively new issues of cybersecurity and ride-sharing.

This report summarizes some of the key activities at the Spring National Meeting that may be of interest to our clients in the insurance industry, as well as developments from NAIC interim meetings and conference calls as noted in this report.

NAIC Report: 2015 Spring National Meeting

Continued

I. <u>TOPICS OF GENERAL INTEREST</u>	4
A. <u>Cybersecurity Takes the Spotlight</u>	4
1. <u>Task Force Meeting</u>	4
2. <u>New York Takes Action</u>	4
3. <u>Presentation on Writing Cyber Coverage</u>	5
B. <u>Group Capital Updates</u>	5
C. <u>Reinsurance Update</u>	5
1. <u>Covered Agreements and Credit for Reinsurance</u>	5
2. <u>Qualified Jurisdictions Update</u>	6
3. <u>Reinsurance Financial Analysis Working Group (the “Reinsurance-FAWG”) Continues “Passporting” Work on Certified Reinsurers</u>	6
4. <u>Proposal for the Amended Credit for Reinsurance Model Act to Become an Accreditation Standard</u>	6
5. <u>Reinsurance Collateral and SVO Approvals</u>	7
D. <u>Other International Updates</u>	7
1. <u>FSAP Update</u>	7
2. <u>G-SII Methodology Update</u>	8
3. <u>ComFrame Update</u>	8
4. <u>Joint Forum</u>	8
E. <u>Update on Group Supervision Initiatives</u>	8
F. <u>ORSA Confidentiality Concerns Raised at the Accreditation Committee</u>	9
G. <u>NAIC Governance Update</u>	10
1. <u>Corporate Governance Review</u>	10
2. <u>Officer Special Election</u>	10
II. <u>TOPICS OF INTEREST TO THE LIFE INSURANCE INDUSTRY</u>	10
A. <u>Captive Update</u>	10
1. <u>XXX/AXXX Framework</u>	10
2. <u>Formation of New Working Group to Review Variable Annuities</u>	11
3. <u>Update on Accreditation</u>	12
B. <u>Private Equity Issues Working Group Completes its Charge</u>	12

NAIC Report: 2015 Spring National Meeting

Continued

C. <u>PBR Update</u>	13
D. <u>Unclaimed Life Insurance Benefits</u>	14
III. <u>TOPICS OF INTEREST TO P&C INSURERS</u>	14
A. <u>Rapid Progress on Ride-sharing Issues</u>	14
1. <u>Model Legislation</u>	14
2. <u>Background</u>	14
3. <u>Compromise Between Industry and TNCs</u>	15
4. <u>White Paper on TNC Issues Adopted</u>	15
B. <u>TRIA</u>	15
C. <u>Mortgage Guaranty Insurance Reform Work Continues</u>	16
D. <u>RBC Treatment of Catastrophe Bonds</u>	16

NAIC Report: 2015 Spring National Meeting

Continued

I. TOPICS OF GENERAL INTEREST

A. Cybersecurity Takes the Spotlight

1. Task Force Meeting

The Cybersecurity (EX) Task Force, formed at the 2014 Fall National Meeting, held its first public meeting at the Spring National Meeting. Chaired by former President of the NAIC, North Dakota Commissioner Adam Hamm, the Task Force focuses on both potential cyber threats to insurers and their customers as well as the regulation of insurers providing cyber insurance. Its goals are to: monitor developments in the area of cybersecurity; report and make recommendations to the Executive (EX) Committee (the “Executive Committee”); coordinate activities with NAIC committees regarding cybersecurity issues; and represent the NAIC in communicating with other groups on cybersecurity issues.

At the meeting, Anthem discussed the cyber attack it underwent that led to a data breach, announced in February 2015, in which personal information of up to 80 million customers was stolen. Anthem and its security expert described the problems they encountered and the steps taken in response to their recent data breach, as well as answered a variety of questions. The speakers described the measures in place at the time of the attacks, the process of detection of the breach, the immediate steps taken to secure the system, and their follow-up – including notices sent to policyholders and the offer to pay for a service that provides identity theft monitoring for two years for those involved.

The Draft Principles for Effective Cybersecurity Insurance Regulatory Guidance, a paper revised by certain regulators and exposed for public comment in March 2015, was discussed. Among the 18 core principles in the draft regulatory guidance are that (i) insurance regulators have a significant responsibility in protecting consumers from cybersecurity risks; (ii) effective cybersecurity guidance must be “risk-based and threat-informed”; (iii) cybersecurity risks should be assessed as part of an insurer’s enterprise risk management (“ERM”) process and discussed with its board of directors; and (iv) enhanced solvency oversight is needed for insurers selling cyber insurance. The Task Force has scheduled a conference call for April 16th to further discuss and hopefully adopt the draft regulatory guidance for reference by various regulators. The Task Force also introduced an Annual Statement Supplement blank on the topic, which has also garnered a few comment letters. The Cybersecurity Insurance Coverage Supplement would require reporting entities that provide cybersecurity coverage (in a standalone policy or as part of a commercial multi-peril policy) to report certain information as to the coverage offered.

2. New York Takes Action

In the last several months, the New York Department of Financial Services (the “NYDFS”) has expressed particular interest in cybersecurity issues, and on March 26, 2015 sent a letter to a sizable group of insurers, asking them “to view cyber security as an integral aspect of their overall risk management strategy, rather than solely as a subset of information technology.” The letter further requests a report from them, due April 27th, on a variety of items relating to their

NAIC Report: 2015 Spring National Meeting

Continued

institutional cyber risk, and notes the NYDFS' intention to "schedule IT/cyber security examinations after conducting a comprehensive risk assessment of each institution."

3. Presentation on Writing Cyber Coverage

Industry trade associations joined together to give an interesting presentation to the NAIC/Industry Liaison Committee on cyber insurance coverage. They stated that gross written premium is expected to hit \$2 billion next year. After the industry saw 35% growth in each of 2011 and 2012, it increased to 52% growth in 2013 and likely has increased further since. There has been a 30% increase in new buyers of coverage, and a 20% increase in additional limits purchased by existing buyers. Coverage used to be bundled with other tech coverages, and has been written as a separate coverage since 2000. They noted that the constantly evolving exposures in this area create a very dynamic underwriting environment.

B. Group Capital Updates

The Draft NAIC Position Statements on the IAIS ComFrame and International Capital Proposals initiatives were exposed by the ComFrame Development and Analysis (G) Working Group prior to the Spring National Meeting. The purpose of the Draft Position Statements is to articulate the views of U.S. state regulators toward ComFrame and group capital standards as may be applied for internationally active insurance groups ("IAIGs") and global systemically important insurers ("G-SIIs"). The NAIC's primary objective with regard to international capital standards, as stated in the Draft Position Statements, is to ensure that, should a global capital standard be implemented, "it appropriately reflects the risk characteristics of the underlying business and does not undermine legal entity capital requirements in the U.S."

State and federal regulators will now resume their work on developing a suggested group capital standard for U.S. IAIGs that could be presented to the International Association of Insurance Supervisors (the "IAIS") as equivalent supervisory and capital standards, thereby avoiding the necessity of complying with IAIS global capital standards.

C. Reinsurance Update

1. Covered Agreements and Credit for Reinsurance

At the Spring National Meeting, the Reinsurance (E) Task Force referenced public comments by the Federal Insurance Office ("FIO") with respect to a covered agreement on reduced collateral for reinsurance. In its December 2014 report on the Global Reinsurance Market FIO said that the U.S. Treasury and the U.S. Trade Department were considering a covered agreement with respect to collateral requirements for reinsurers. In July 2014, the EU/U.S. Dialogue updated "The Way Forward" stating that the EU and Treasury/FIO, with the consultation of state insurance regulators, should take initial steps toward a covered agreement that, for the United States, would be based on the NAIC Credit for Reinsurance Model Law.

State insurance regulators question whether a bilateral or multilateral covered agreement is in the best interests of U.S. insurers and consumers and, while recognizing the authority of the U.S. Treasury and U.S. Trade Representative, stress

NAIC Report: 2015 Spring National Meeting

Continued

the importance of NAIC input regarding any reinsurance-related covered agreement. At the Reinsurance Task Force meeting some regulators questioned whether a covered agreement on reinsurance collateral was necessary at this time, given the states' significant progress in adopting the amended Credit for Reinsurance Models. In response, several representatives of the U.S. reinsurance industry urged the NAIC to remain open to, if not supportive of, a covered agreement. The U.S. insurance industry stressed that a covered agreement which afforded recognition/equivalence to U.S. reinsurers accepting business from EU cedents would be a good outcome. Speakers identified barriers they already face in other countries and anticipate facing greater barriers to trade in the EU once Solvency II takes effect in 2016.

2. Qualified Jurisdictions Update

The Qualified Jurisdiction (E) Working Group reported that whereas 2014 was a busy year, resulting in the approval of seven qualified jurisdictions, the Working Group had not met in 2015. They have received inquiries from several jurisdictions regarding the qualified jurisdiction review process but none have formally requested to be added to the NAIC List of Qualified Jurisdictions. However, several unnamed jurisdictions have inquired about the approval process, and the Working Group has calls scheduled with them to discuss the requirements for a jurisdiction being added to the NAIC List of Qualified Jurisdictions.

3. Reinsurance Financial Analysis Working Group (the "Reinsurance-FAWG") Continues "Passporting" Work on Certified Reinsurers

The Reinsurance-FAWG is continuing its work on "passporting" certified reinsurers, and will also in the near future propose revisions to the "passporting" application requirements pertaining to unpaid reinsurance balances. In addition, in its report to the Reinsurance Task Force, the Reinsurance-FAWG noted that the "passporting" process is not being applied by the states as consistently as the Reinsurance-FAWG would like. The Reinsurance-FAWG urged state regulators to reconsider applying inconsistent requirements to "passporting" reinsurers, and noted that the imposition of such inconsistent requirements could be cited as yet another reason for the necessity of an entry by the federal authorities into a covered agreement.

4. Proposal for the Amended Credit for Reinsurance Model Act to Become an Accreditation Standard

Currently, the Amended Credit for Reinsurance Model Act is an optional accreditation standard, meaning that a state can choose whether or not to adopt reduced collateral provisions, but that if it does, it must adopt provisions that are substantially similar to the Amended Credit for Reinsurance Model Act. At the time that the Amended Credit for Reinsurance Model Act was being amended, it was generally agreed that adoption would not be mandatory for all states for accreditation purposes.

At the meeting of the Financial Regulation Standards and Accreditation (F) Committee (the "Accreditation Committee") at the Spring National Meeting, this issue of accreditation was re-opened. Interested parties indicated that uniformity among the states is very important, particularly if the passporting process is to work as intended. Superintendent Torti agreed

NAIC Report: 2015 Spring National Meeting

Continued

that uniformity is important and that this issue should be considered again by the Accreditation Committee at a future meeting. It remains to be seen how the possibility of a covered agreement would influence that discussion.

5. Reinsurance Collateral and SVO Approvals

The Amended Credit for Reinsurance Model Act provides that a cedent may take credit for reinsurance where, *inter alia*, the reinsurer has collateralized its obligations under the reinsurance agreement with “securities listed by the SVO.” The Valuation of Securities (E) Task Force (“VOSTF”) has been considering the meaning of the phrase “securities listed by the SVO,” as the SVO’s function has changed significantly since the adoption of this language, and the meaning of the phrase in light of the SVO’s changed responsibilities (which now include a compilation function) has become unclear.

During a conference call in February 2015, the SVO proposed that the phrase “securities listed by the SVO” be defined in the Purposes and Procedures Manual of the NAIC Investment Analysis Office. Once the SVO compilation function was fully described, those sub-lists of securities used in the compilation that would be deemed appropriate for use as reinsurance collateral could then be identified as “securities listed by the SVO.” This proposal, which had also been exposed for comment in February 2015, was adopted by the Reinsurance Task Force at the Spring National Meeting. VOSTF will now begin the process of revising the Purposes and Procedures Manual to reflect the SVO’s proposal.

The Reinsurance Task Force also participated with the VOSTF to discuss the “bank list” prepared by the SVO and whether the Amended Credit for Reinsurance Model Act reference to a “qualified financial institution” in connection with reinsurance collateral was satisfied by the SVO’s NAIC Bank List. The issue presented to the Reinsurance Task Force was whether it authorized the SVO to begin listing qualified U.S. non-bank financial institutions in addition to banks, for reinsurance collateral purposes. Noting that certain non-bank financial institutions conceptually belong on the NAIC Bank List, the Reinsurance Task Force unanimously adopted a recommendation to direct the SVO to develop criteria for listing non-bank issuers of LOCs. The SVO’s work will be overseen by the VOSTF and once developed, the criteria would be sent to the Reinsurance Task Force for approval.

D. Other International Updates

1. FSAP Update

The International Insurance Relations (G) Committee received an update on the Financial Sector Assessment Program (the “FSAP”) of the United States, which is underway. The FSAP is an evaluation conducted every five years by the International Monetary Fund, which analyzes the strength and scope of an insurance regulatory scheme under the standards of the Insurance Core Principles (the “ICPs”) promulgated by the IAIS.

State regulators have been working on the FSAP for the last year, and have been coordinating with the Department of Treasury, FDIC and the Federal Reserve Board. They are wrapping up the “first mission” of that process, which includes considering compliance with the ICPs. A report was published April 2, 2015 on the results of the first mission, which was

NAIC Report: 2015 Spring National Meeting

Continued

expected to reflect broad compliance by the United States with the ICPs, and overall found a “reasonable” level of compliance with the ICPs. The “second mission” process involves techniques such as stress testing. Results will become public in the summer. It is expected that state regulators will not agree with all of the comments made, but that they will all review them and continue to discuss them in the future.

2. G-SII Methodology Update

In 2013 and 2014, the IAIS announced which primary insurers had been designated as G-SIIs. At the time of the 2014 announcement, in November 2014, the IAIS was expected to also announce which reinsurers would be designated as G-SIIs. Instead, it was announced that they needed to work on refining their determination methodology. At the Financial Stability (EX) Task Force meeting, vice chair Superintendent Lawsby reported that a working group to finalize the methodology has been established, and that New Jersey Commissioner Kobylowski is a member. He expects they will release a revised methodology next year.

3. ComFrame Update

Field testing of the IAIS’s draft Common Framework for the Supervision of Internationally Active Insurance Groups (commonly referred to as “ComFrame”) continues. ComFrame is a proposed regulatory framework for supervision of IAIGs that the IAIS has been developing for the last few years. In 2014 qualitative questionnaires covering group structure and group corporate governance issues were developed and sent out to IAIG volunteers and supervisors. The preliminary review of the results indicates that the ComFrame requirements have largely been implemented or are being used in practice both by the volunteers and the supervisors. The next phase of testing is underway, with questionnaires covering group enterprise risk management due at the end of April. Additionally, the second round of quantitative testing is starting in April, with responses due in June. This round will use a template again, but has enhanced it to reflect more information, including with regard to capital resources, valuation, and stresses.

4. Joint Forum

The Joint Forum gave its last update at an NAIC National Meeting in Phoenix, as its disbandment followed shortly thereafter. The Joint Forum was an international group whose parent committees were the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, and the IAIS, and as such was a place where cross-sectoral issues could be addressed. Superintendent Lawsby, the NAIC member designated to participate in the Joint Forum, reiterated his regret that this decision to disband has been made as he viewed it as a valuable way to address cross-sectoral issues, and noted that the IAIS shares his view.

E. Update on Group Supervision Initiatives

The Group Solvency Issues (E) Working Group has been considering revisions to the Financial Analysis Handbook (the “Handbook”) regarding the instructions for Holding Company Act Analysis and Supervisory Colleges, which follows from

NAIC Report: 2015 Spring National Meeting

Continued

their work in 2014 in amending the Holding Company Act to provide authority for a U.S. state regulator to be the group-wide supervisor of certain international insurance groups. The substantive changes include increased detail on conducting supervisory colleges, as well as adding a procedure for the analysis of group-wide risk and for identifying specific entities for closer attention in order to focus the analysis. At the Spring National Meeting the Working Group adopted some of the changes, while agreeing to tweak and re-expose the changes regarding supervisory colleges for comment. The changes that were adopted will now go to the Financial Analysis Handbook Working Group for incorporation into the Handbook.

F. ORSA Confidentiality Concerns Raised at the Accreditation Committee

At the Spring National Meeting, the Accreditation Committee heard comments relating to the Risk Management and Own Risk Solvency Assessment Model Act (“ORSA Model Act”) possibly becoming an accreditation standard. The ORSA Model Act requires insurers or an insurance group to maintain a risk management framework, regularly perform an own risk solvency assessment (“ORSA”) and annually file an ORSA summary report.

The proposal for the ORSA Model Act to be an accreditation standard was exposed for comment in 2013 and then again in 2014. The Accreditation Committee received one comment from a group of trade associations in response to the most recent exposure. Their comment was that if ORSA is included as an accreditation standard, it should be clear that the states are required to enact the strong confidentiality protections in the ORSA Model Act. Interested parties spoke at the Accreditation Committee meeting to echo this concern. One interested party said at least five states have adopted weakened confidentiality provisions, such as failing to include provisions that an ORSA will not be subject to a subpoena, not be admissible in evidence and not be discoverable in a litigation. The interested parties asked the Accreditation Committee to help to make sure the ORSA Model Act is enacted in the states as intended, including the strong Model confidentiality provisions.

The Accreditation Committee’s chair indicated that the committee will be considering whether to formally adopt the ORSA Model Act accreditation standard at the Summer 2015 National Meeting and that this was a good update of the issues they should be considering. If adopted, the ORSA Model Act would likely be required as an accreditation standard by January 1, 2018. One regulator said that if the confidentiality provisions are not enacted by the states, it will likely result in receiving ORSAs that are not meaningful.

We note that it was reported in the Group Solvency Issues (E) Working Group meeting that the ORSA pilot project is wrapping up shortly, and that participants from 26 states joined this round – a significant increase. It was noted that they have been finding that the ORSA reports have been fairly reflective of the actual ERM practices in place at the companies, and that one of the remaining questions is still on how much is the “right” amount of disclosure. Deputy Commissioner Steve Johnson of Pennsylvania stated his view that there has been a huge improvement in the reports since the first year of the pilot program, demonstrating an improved ability to work with the business side at the companies as well as improved integration of the principles into the operations of the companies.

NAIC Report: 2015 Spring National Meeting

Continued

G. NAIC Governance Update

1. Corporate Governance Review

The Executive Committee approved the National Association of Corporate Directors (the “NACD”) as the consultant on the NAIC Governance Review project, which was fortunate as their presentation at the Governance Review (EX) Task Force meeting showed that they have already done significant work on reviewing the corporate governance practices of the NAIC.

NACD’s report indicated they have reviewed the NAIC’s organizational structure and key documents, have sent out a written survey to the state commissioners including the topic of governance review and have an 80% response rate, and have already interviewed over 35 commissioners. They stated that the responses have been transparent and detailed, and that they have not seen too many sparks. They planned to continue interviewing commissioners, interview 5-7 key staff members of the NAIC, and provide a draft report including their observations and recommendations. While they projected they could provide the report in 30-45 days, several Task Force members urged them not to rush to finish but rather to be sure they do a thorough job.

2. Officer Special Election

With the Honorable Teresa Miller appointed as Acting Insurance Commissioner to take over from Michael Consedine in Pennsylvania, an NAIC special election was held in February and Director John Huff of Missouri was elected to serve as the current President-Elect of the NAIC, behind current President Monica Lindeen of Montana.

II. TOPICS OF INTEREST TO THE LIFE INSURANCE INDUSTRY

A. Captive Update

1. XXX/AXXX Framework

Over the last two years, state insurance regulators and the NAIC have devoted significant energy to reassessing their regulation of captive XXX and AXXX transactions, leading to the adoption of a new regulatory framework for such transactions, the XXX/AXXX Reinsurance Framework (the “Framework”), in August 2014. The Framework is the NAIC’s action plan for developing further regulatory requirements specific to XXX and AXXX transactions.

On December 16, 2014, the Executive Committee and Plenary of the NAIC (the “Executive and Plenary”) adopted Actuarial Guideline 48 (“AG48”), an important component of the Framework. The purpose of AG48 is to implement the substantive requirements of the Framework effective as of January 1, 2015, pending the development and adoption by the states of the new Term Life and Universal Life with Secondary Guarantees (XXX/AXXX) Credit for Reinsurance Model Regulation (the “XXX/AXXX Model Regulation”). AG48 generally requires the opining actuary of the ceding insurer to issue a qualified opinion if the requirements outlined in the Framework are not followed.

NAIC Report: 2015 Spring National Meeting

Continued

Late in the fall of 2014, the NAIC established the XXX/AXXX Captive Reinsurance Drafting (E) Subgroup (the “XXX/AXXX Drafting Subgroup”) for the purpose of drafting the XXX/AXXX Model Regulation and amendments to the Amended Credit for Reinsurance Model Law necessary for the implementation of the XXX/AXXX Model Regulation. The XXX/AXXX Drafting Subgroup’s drafting process is closed to the public. During the Spring National Meeting, the Statutory Accounting Principles (E) Working Group reported that the XXX/AXXX Drafting Subgroup had heard a summary of the XXX/AXXX Model Regulation and related documents as developed by Neil Rector and Associates on March 10, 2015, and that the definition of “Primary Security” (*i.e.*, the types of “hard assets” required to collateralize the portion of the total statutory reserve approximately equal to the Principle Based Reserving (“PBR”) level) in the current draft of the XXX/AXXX Model Regulation is consistent with the corresponding definition in AG48. During the meeting of the Reinsurance Task Force, it was reported that the initial draft of the XXX/AXXX Model Regulation will likely be prepared by the 2015 Summer National Meeting.

Separately, the Life Risk-Based Capital (E) Working Group (the “Life RBC Working Group”) has been developing several proposals relating to the Framework. First, the Life RBC Working Group is considering a proposal to eliminate the impact of a qualified opinion with respect to life insurance products covered by AG48 by the ceding insurer’s actuary on the ceding insurer’s other lines of business. Interested parties have generally supported this proposal, which would avoid the imposition of additional capital requirements on products outside the scope of AG48. Second, the Life RBC Working Group is considering a proposal with respect to the shortfall in Primary Security, which would increase an insurer’s authorized control level RBC by any such aggregate shortfall. Several interested parties stated during the Life RBC Working Group’s session at the Spring National Meeting that it would be more appropriate from an actuarial perspective for the proposal to require an adjustment not to the insurer’s authorized control level RBC, but to the insurer’s total adjusted capital. Third, the Life RBC Working Group has been considering a proposal with respect to the “RBC cushion” – *i.e.*, an adjustment to the ceding insurer’s total adjusted capital to account for any RBC shortfall at any captive that reinsures the ceding insurer’s policies that are subject to AG48. The discussion of this proposal at the Life RBC Working Group’s session during the Spring National Meeting was limited, since the comment period with respect to the proposal had not yet expired.

2. Formation of New Working Group to Review Variable Annuities

At the Spring National Meeting, it was announced that a new working group of the Financial Condition (E) Committee (the “(E) Committee”) would be established by the NAIC to address the use of captives for variable annuity risks. The working group will be chaired by Iowa Insurance Commissioner Nick Gerhart. The NAIC is also planning to hire a consultant to assist with the work of the group. Superintendent Torti indicated that the working group would look at a variety of factors when assessing captives/variable annuities, including why they are established, the RBC and statutory accounting treatment and use of hedging.

NAIC Report: 2015 Spring National Meeting

Continued

3. Update on Accreditation

The Accreditation Committee has been considering proposed changes to the preambles to Part A and Part B of the NAIC Accreditation Program Manual (the “Accreditation Manual”) relating to “multi-state reinsurers.” The initial draft of these revisions was very broad and would have required every state to subject entities defined as multi-state reinsurers to the same NAIC accreditation standards as those imposed on traditional insurers (the “Accreditation Program”). The initial definition was broad enough to encompass captives assuming XXX/AXXX risks, but also other reinsurers licensed in only one state but assuming risks originating in multiple states.

Based on the comments received, the NAIC revised the preambles to only include in the scope of the Accreditation Program those captive insurers and special purpose vehicles that reinsure the following business: XXX, AXXX, variable annuities and long-term care. The Delaware Insurance Department’s Captive Director expressed concern with moving forward with these accreditation rules before work is done by the new Working Group established to review captives for variable annuity risks. The Accreditation Committee decided to move forward and asked staff to revise the preamble language to make some clean-up changes and then it would be considered shortly for further action.

B. Private Equity Issues Working Group Completes its Charge

The Private Equity Issues (E) Working Group was responsible for developing procedures that insurance regulators could use when considering ways to mitigate or monitor risks associated with private equity/hedge fund ownership or control of insurance company assets. The Working Group had been gathering information from interested parties and other regulators regarding the ownership of insurance companies by private equity groups and hedge funds.

The Working Group’s primary focus was to develop a new section of the Handbook to set forth more detailed guidance for insurance regulators reviewing Form A applications submitted by those seeking to acquire control of an insurer. The guidance is not specifically directed at private equity and hedge fund acquirors but is designed to assist the insurance regulator in assessing different risks that can be associated with an acquisition of control of an insurer by any type of acquiror.

The Working Group received multiple rounds of comments on the Handbook revisions, and at the Spring National Meeting the Handbook revisions were formally adopted by the Working Group.

Some highlights of the revisions include:

- a regulator should consider risks of the acquiring entity and the entire group of affiliated insurers and non-insurers under its control, including credit, market, pricing, reserving and liquidity risks, when reviewing Form A applications;
- a regulator should consider requiring more detailed information on the target insurer’s proposed investments and the strategy on investments, including any fees to be charged to the insurer; and

NAIC Report: 2015 Spring National Meeting

Continued

- a regulator may impose certain conditions on the acquiring entity when approving a Form A application, such as:
 - the insurer's RBC level shall be maintained at a specified level above company action level/trend test level;
 - requiring that all affiliated agreements or affiliated investments involving the insurer be reviewed even if below materiality thresholds set forth in the law; and
 - requiring that a capital maintenance agreement or prefunded trust account be established by the acquiring entity.

The revisions to the Handbook are now to be reviewed by the NAIC's Financial Analysis (E) Working Group for adoption. At the end of the meeting, the Working Group indicated that it believes it has completed its sole assigned charge, but no formal movement was yet made to disband the group.

C. PBR Update

The Principle-Based Reserving Implementation (EX) Task Force (the "PBR Implementation Task Force") held a generally uneventful session during the Spring National Meeting, with much of the discussion focused on certain technical items and the status of outreach efforts to industry members and regulators.

Much of the heated discussion that took place during last year's meetings of the PBR Implementation Task Force involved the so-called "small company exemption" from PBR, which had originally been proposed by The American Council of Life Insurers ("ACLI"). In particular, representatives of the NYDFS had consistently utilized discussions of the small company exemption as an opportunity to express the NYDFS's continued opposition to PBR and to assert that the small company exemption had been a politically driven proposal aimed to encourage states to move forward with adopting PBR. Notwithstanding the controversy surrounding the small company exemption, the PBR Implementation Task Force adopted the addition of the small company exemption to the NAIC Valuation Manual on February 11, 2015, during a conference call. The small company exemption, as adopted, included the Life Actuarial (A) Task Force's previous proposal of a premium ceiling of \$300 million of ordinary life premiums (or \$600 million of ordinary life premiums within the holding company) that an insurer would have to meet to qualify as a "small company." The insurer qualifying as a "small company" under the adopted proposal will be required to utilize the "CARVM" reserving method. With the small company exemption duly adopted by the PBR Implementation Task Force during a conference call in February, the Executive Committee conceptually approved it at the Spring National Meeting with the hope that the Executive and Plenary will issue final approval with respect to the small company exemption at the Summer National Meeting.

We understand that as of March 1, 2015, 20 states had adopted the amendments to the Model Standard Valuation Law (the "SVL"), which is the main governing law to effectuate PBR, with 13 additional states having introduced legislation to adopt these amendments. If legislation adopting these amendments is adopted in these 13 states, the combined total of

NAIC Report: 2015 Spring National Meeting

Continued

the states that have adopted these amendments will represent at least 60% of total U.S. premium volume. In order for PBR to be implemented, at least 42 states representing 75% of total U.S. premium volume must adopt these amendments to the SVL.

The Accreditation Committee discussed the PBR accreditation process at the Spring National Meeting. The Accreditation Committee indicated that the significant elements of the SVL were exposed for comment in 2011 and 2012. The significant elements are those that have to be enacted in a state in order to maintain accreditation by the NAIC. Members of the Accreditation Committee explained that since PBR has not yet gone into effect and the significant elements were exposed before work was completed on the Valuation Manual, that these significant elements should be revisited by the NAIC. The Accreditation Committee agreed with that recommendation and decided to send the SVL significant elements to the PBR Implementation Task Force to review to determine if revisions are needed. After that, the PBR Implementation Task Force will present its recommendations to the Accreditation Committee. Interested parties who commented seemed to support this approach, and the ACLI indicated it believes PBR will be in effect by January 1, 2017.

D. Unclaimed Life Insurance Benefits

The Executive Committee adopted a Model Law Development Request to develop a model Unclaimed Life Insurance Benefits Act. Committee members discussed and will continue to consider whether to use the National Conference of Insurance Legislators (NCOIL) law as the base for the draft.

III. TOPICS OF INTEREST TO P&C INSURERS

A. Rapid Progress on Ride-sharing Issues

1. Model Legislation

The meeting of the Shared Economy (E) Working Group was essentially hijacked by the breaking news announced March 26th that Uber had led a coalition of Transport Network Companies (“TNCs”) and auto insurers to reach a compromise on a model law drafted by the parties regarding insurance parameters for ride-sharing companies. Members of the coalition include the TNC Lyft, as well as “virtually all” of the personal lines carriers writing relevant coverage. The draft model law is being referred to by the parties as the TNC Insurance Compromise Model Bill.

2. Background

The discussion of ride-sharing issues has distinguished between various periods of time and the appropriate accompanying insurance. When a driver that provides its own car to work on a TNC’s network wants to take on a passenger, it activates the TNC’s online application or “app” to indicate that he is available. Subsequently, a passenger accepts his offer and provides the information for pick-up. The driver picks up the passenger, and then delivers the passenger to his destination. For the purposes of the insurance discussion, the time between when the driver activates the app and when he agrees to pick up a particular passenger is called “Period 1,” the time between when he agrees to

NAIC Report: 2015 Spring National Meeting

Continued

pick up the passenger and when he actually picks up the passenger is called “Period 2,” and the duration of the ride with the passenger in the car is called “Period 3.”

Previously, some TNCs provided drivers of their own cars with certain coverage for Periods 2 and 3. However, they generally did not provide similar coverage for Period 1. At the same time, drivers with personal auto insurance were often not aware of whether their own personal auto insurance covered them during Period 1 (or 2 or 3) or whether their intended “commercial” use of the vehicle would mean that such period would be excepted from the terms of their personal auto insurance, essentially leaving them uncovered by either coverage during Period 1.

3. Compromise Between Industry and TNCs

The terms of the compromise as set out in the draft model law provide that, among other things, drivers must have primary insurance coverage during Period 1, to be maintained either by the TNC, the driver, or a combination of the two, with minimum liability limits of \$50/\$100/\$25K in addition to any other state compulsory coverage. Further, they must have primary insurance coverage during Periods 2 and 3, also to be maintained either by the TNC, the driver, or a combination of the two, with minimum liability limits of \$1,000,000 plus any other compulsory coverage mandated of limos. Uber has urged policymakers in the various states to use the TNC Insurance Compromise Model Bill to address TNC issues in their states. The role to be played by the NAIC in this, if any, is unclear at this time.

4. White Paper on TNC Issues Adopted

The Working Group also adopted the white paper it had developed on these issues, the *Transportation Network Company Insurance Principles for Legislators and Regulators*, as amended in order to acknowledge the recent developments. The white paper was then adopted by the Executive and Plenary at the close of the Spring National Meeting.

B. TRIA

The adoption of the Terrorism Risk Insurance Program Reauthorization Act of 2015 on January 12, 2015 was welcomed by regulators and industry alike. The law includes a requirement that the Treasury Secretary arrange for data to be collected on terrorism coverages written in the United States, and at the Spring National Meeting the Terrorism Insurance Implementation (C) Working Group discussed how it could best comply with the requirements should the state insurance regulators be asked to spearhead the collection. The Working Group circulated a rough draft of a possible blank to be included in the NAIC Annual Statement blank, and the group and industry discussed how to best comply with the statutory requirements while being as reasonable as possible in the demands on the industry. The draft under discussion was in the form of a table with columns including direct premiums written, number of policies, and reinsurance ceded. One difficulty discussed is that the law requires retrospective reporting of premiums earned since January 1, 2003 (*i.e.*, following the initial passage of TRIA legislation in 2002), and the industry has not been collecting this data. The Working Group agreed that the statute calls for reporting to begin in 2016 and that therefore the first year of full data required will be calendar year 2015, so time is of the essence in deciding how to proceed. The Working Group continues to invite

NAIC Report: 2015 Spring National Meeting

Continued

comment on the rough draft while refraining from officially exposing it for comment, and will also consider reaching out to the federal authorities regarding their interpretation of the requirements and on plans to coordinate.

C. Mortgage Guaranty Insurance Reform Work Continues

The Mortgage Guaranty Issues (E) Working Group continued to refine its revisions to the Mortgage Guaranty Insurance Model Act. At this point in the process, it seemed that participants in the session were most interested in addressing how the Model Act will handle reinsurance, and it was this section of the Model Act that the revising regulator had not yet had a chance to revise, unfortunately. As the Working Group had needed to request (and did receive) additional time to finish their work from the (E) Committee, John Finston of California urged the Working Group to focus their attention to conclude their work by the Summer National Meeting. The group also continues to work on the Mortgage Guaranty Insurance Standards Manual.

D. RBC Treatment of Catastrophe Bonds

At the 2014 Fall National Meeting, several NAIC working groups and committees heard a presentation from an interested party that argued for special treatment of catastrophe bonds for RBC purposes. The current treatment of catastrophe bonds for these purposes is generally similar to the treatment for the same purposes of other corporate obligations. The interested party noted that this approach does not necessarily make sense, given the special risk profile of catastrophe bonds. The interested party noted that, while returns on corporate obligations may be affected by economic cycles, the returns on catastrophe bonds are largely uncorrelated with developments in the global economy. Thus, the insurance industry – including both property/casualty and life insurers – would benefit from diversification if investment by insurers into catastrophe bonds were encouraged via a different RBC treatment for such bonds.

During the session of the VOSTF at the Spring National Meeting, it was noted that this proposal had been referred to the Statutory Accounting Principles (E) Working Group. At the same time, the ACLI has been asked to poll its members to determine the level of interest with respect to the NAIC potentially going forward with this proposal.

If you have any questions regarding this memorandum, please contact one of the following members of our Insurance Transactional and Regulatory Practice Group or the Willkie attorney with whom you regularly work.

Name	Phone	Email
New York		
Leah Campbell	212-728-8217	lcampbell@willkie.com

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NAIC Report: 2015 Spring National Meeting

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Name	Phone	Email
Michael Groll	212-728-8616	mgroll@willkie.com
Donald B. Henderson, Jr.	212-728-8262	dhenderson@willkie.com
Allison J. Tam	212-728-8282	atam@willkie.com
Rajab S. Abbassi	212-728-8522	rabbassi@willkie.com
Gregory B. Astrachan	212-728-8608	gastrachan@willkie.com
Scott D. Avitabile	212-728-8279	savitabile@willkie.com
Serge Benchetrit	212-728-8798	sbenchetrit@willkie.com
David K. Boston	212-728-8625	dboston@willkie.com
Thomas M. Cerabino	212-728-8208	tcerabino@willkie.com
Henry M. Cohn	212-728-8209	hcohn@willkie.com
Laura L. Delanoy	212-728-8662	ldelanoy@willkie.com
Alexander M. Dye	212-728-8642	adye@willkie.com
Mark Getachew	212-728-8647	mgetachew@willkie.com
William H. Gump	212-728-8285	wgump@willkie.com
Jeffrey Hochman	212-728-8592	jhochman@willkie.com
Arthur J. Lynch	212-728-8225	alynch@willkie.com
Leslie M. Mazza	212-728-8245	lmazza@willkie.com
Vladimir Nicenko	212-728-8273	vnickenko@willkie.com
Benjamin Nixon	212-728-8532	bnixon@willkie.com
Jeffrey R. Poss	212-728-8536	jposs@willkie.com
Robert S. Rachofsky	212-728-8088	rrachofsky@willkie.com

NAIC Report: 2015 Spring National Meeting

Continued

Name	Phone	Email
Richard L. Reinhold	212-728-8292	rreinhold@willkie.com
John M. Schwolsky	212-728-8232	jschwolsky@willkie.com
Steven A. Seidman	212-728-8763	sseidman@willkie.com
Robert B. Stebbins	212-728-8736	rstebbins@willkie.com
Adam M. Turteltaub	212-728-8129	aturteltaub@willkie.com
London		
Nicholas Bugler	+44 203 580 4704	nbugler@willkie.com
Joseph D. Ferraro	+44 203 580 4707	jferraro@willkie.com
Judith Harger	+44 203 580 4705	jharger@willkie.com
Jon J. Lyman	+44 203 580 4701	jlyman@willkie.com
Brussels		
Xavier Dieux	+32 2 290 1840	xdieux@willkie.com
Paris		
Christophe H. Garaud	+33 1 53 43 4513	cgaraud@willkie.com
Daniel Hurstel	+33 1 53 43 4523	dhurstel@willkie.com
Daniel Payan	+33 1 53 43 4504	dpayan@willkie.com
Washington, D.C.		
Christopher S. Petito	202-303-1117	cpetito@willkie.com

NAIC Report: 2015 Spring National Meeting

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Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

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