

## CLIENT MEMORANDUM

# NAIC Report: 2017 Spring National Meeting

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The 2017 Spring National Meeting of the National Association of Insurance Commissioners was held in Denver, Colorado on April 8-11, 2017. Highlights included a significant focus on technology, cybersecurity and big data; risk management and continued attention at both the NAIC and the IAIS to group capital.

Since the 2016 Fall National Meeting a number of new commissioners have taken office. Additionally, we note that Michael McRaith resigned as Director of FIO as of January 20, 2017 and has not yet been replaced by the new administration.

This report summarizes some of the key activities at the Spring National Meeting and, as indicated, NAIC interim meetings and conference calls leading up to the meeting, that may be of interest to our clients in the insurance industry.

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Definitions used in this Report include:

- “ACLI” means The American Council of Life Insurers.
- “Accreditation Committee” means the NAIC’s Financial Regulation Standards and Accreditation (F) Committee.
- “(C) Committee” means the NAIC’s Property and Casualty Insurance (C) Committee.
- “ComFrame” means the Common Framework for the Supervision of Internationally Active Insurance Groups being developed by the IAIS.
- “Executive and Plenary” means the NAIC’s Executive Committee (EX) and Plenary.
- “Federal Reserve” means the board of Governors of the Federal Reserve System.
- “FIO” means the Federal Insurance Office.
- “FSOC” means the Financial Stability Oversight Council.
- “(G) Committee” means the NAIC’s International Insurance Relations (G) Committee.
- “G-SII” means Global Systemically Important Insurers, as designated by the Financial Stability Board.
- “IAIS” means the International Association of Insurance Supervisors.
- “ICP” means an Insurance Core Principle, as developed by the IAIS.
- “ICS” means the Insurance Capital Standard being developed by the IAIS to apply to internationally active insurance groups including G-SIIs.
- “NAIC” means the National Association of Insurance Commissioners.
- “NCOIL” means the National Conference of Insurance Legislators.
- “NFIP” means The National Flood Insurance Program.
- “NIST” means the National Institute of Standards and Technology.
- “NYDFS” means the New York State Department of Financial Services.
- “ORSA” means Own Risk and Solvency Assessment.
- “P&P Manual” means the Purposes and Procedures Manual of the NAIC Investment Analysis Office.

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- “PBR” means Principle-Based Reserving.
- “PCI” means the Property Casualty Insurers Association of America.
- “RBC” means risk-based capital.
- “ReFAWG” means the Reinsurance Financial Analysis (E) Working Group.
- “SIFI” means a systemically important financial institution, as designated by FSOC.
- “SVO” means the NAIC’s Securities Valuation Office, now part of the NAIC Capital Markets and Investment Analysis Office.
- “Treasury” means the U.S. Department of the Treasury.
- “TRIA” means the federal Terrorism Risk Insurance Act.

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### TOPICS OF GENERAL INTEREST

#### Technology and Innovation

##### 1. Technology and Innovation (EX) Task Force

The NAIC's newly formed Technology and Innovation (EX) Task Force met for the first time at the Spring National Meeting. The Task Force already had more than 25 states as members, and several more volunteered on the spot. This Task Force has become the parent of the Cybersecurity (EX) Working Group, the Big Data (EX) Working Group and the Speed to Market (EX) Working Group. The Task Force's members discussed the Task Force's charge as being a mandate to foster innovation and to create a competitive marketplace for innovation by new and existing companies in the insurance industry, while preserving the principles of consumer protection and company soundness. The goal is to have regulators understand innovations and innovators understand the concerns of regulators. The meeting also served as a brainstorming session, with the Task Force stating that it hopes to involve all types of stakeholders. During the Denver meeting, microinsurance was added to the charges of the Task Force.

##### 2. Cybersecurity

###### a. Model Update

The Cybersecurity (EX) Working Group released a third draft of its Insurance Data Security Model Law (the "NAIC Cyber Model") for comment on February 27, 2017, but Working Group Chairman Roy Farmer of South Carolina began by noting that there is no more consensus on that draft than there had been on the first two, although it was later conceded that there is some consensus around risk-based security requirements. Chairman Farmer firmly stated that the Working Group's goal in Denver was to get a consensus on the next (and hopefully last) step in developing an NAIC Model addressing cybersecurity.

Seemingly in light of this impasse, the Working Group invited Superintendent Maria Vullo of the NYDFS to give a presentation on the cybersecurity regulation promulgated by the NYDFS in February, which became effective on March 1 (the "NY Cyber Regulation"). Superintendent Vullo stated that in her view there is no greater threat to our institutions and citizens than cyber risk, outlined the extensive steps taken by her department in arriving at a final version of the NY Cyber Regulation, and emphasized the underlying risk-based approach, noting that the NYDFS wanted to create an achievable goal that was truly workable in practice. She stated her support for the NAIC in tackling this issue and for uniformity and consistency where possible, and urged the Working Group to consider adopting the NY Cyber Regulation as the NAIC Model on the subject. She also fielded some questions from Working Group members, mostly exploring the notice requirements of the NY Cyber Regulation, but also stating that the NYDFS did not want to rely on the "best practices" guidance of NIST but rather wanted to implement minimum requirements.

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Following the Superintendent's presentation, the Working Group discussed whether to continue to work on the NAIC Cyber Model or to consider adopting the NY Cyber Regulation (or variants thereon) instead. Chairman Farmer asked for any further comments to be provided on the third draft of the NAIC Cyber Model, but also on the NY Cyber Regulation. Comments are due April 17 and the next draft is expected to be released in advance of a May 9 conference call.

A suggestion made by Dave Provost of Vermont seemed to be well-received, namely to bifurcate the NAIC's work between the "prevention" portion of the regulation, upon which he noted there is little disagreement, and the "cure" portion of the regulation, about how to proceed once an incident has occurred, upon which there is significant disagreement. No suggestion was made as to whether such bifurcation would be formalized.

### b. Federal Update

The Task Force also received an update on federal cybersecurity initiatives. On January 10, 2017, NIST issued a draft update to its cybersecurity framework, the "Framework for Improving Critical Infrastructure Cybersecurity" providing new details on managing cyber supply chain risks, clarifying key terms and introducing measurement methods for cybersecurity. This framework is supported under the federal Cybersecurity Enhancement Act of 2014 and serves as a referential standard in many industries. It was noted in Denver that the final version is expected in the fall.

It was reported that there has been no update on timing of the Federal Reserve rulemaking which was the subject of the Advance Notice of Proposed Rulemaking released in 2016, which would apply to SIFIs and insurance savings and loan companies and which proposed a standards-based, tiered approach to establishing a cybersecurity framework with prescriptive standards. The NAIC had submitted a comment letter in February.

It was also reported that the NAIC continues to be engaged with various federal and state regulators, including with the Treasury's Financial and Banking Information Infrastructure Committee (FBIIC), which is working to facilitate coordination regarding the cybersecurity resilience of the insurance industry. It was reported that in the first such meeting under the new administration, Treasury Secretary Mnuchin emphasized a focus on financial stability and incorporating cybersecurity comprehensively into financial stability oversight.

### 3. NAIC/Industry Liaison Committee

The way that technology is changing and must change the insurance industry, as well as how to regulate the changing industry was also discussed at the NAIC/Industry Liaison Committee meeting. At the Committee Meeting there was a thoughtful dialogue conducted through and following a presentation by the ACLI and the American Insurance Association and subsequent remarks by PCI, various stakeholders and a number of regulators on the Committee. Various stakeholders acknowledged that there must be a balance between evolution and regulatory protection. Commissioner McPeak of Tennessee concurred and said that the Technology and Innovation (EX) Task Force will be monitoring technological developments that may influence the regulatory framework, and will develop regulatory guidance as appropriate.

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Most speakers emphasized the importance of maintaining the core principles of the insurance regulatory framework developed over time and proceeding with some caution. However, towards the end of the session Commissioner Franchini of New Mexico brought another perspective to the table that may have been at the back of many stakeholders' minds. Commissioner Franchini acknowledged that the speed with which technological advances can upend a longstanding industry is startling, but slow reactions to these changes could compromise the industry's ability to benefit from technological advances. He stated that regulators cannot take years to adapt to innovation; that younger customers simply do not relate to the way the industry currently delivers policies and regulates them; and that traditional underwriting and rating processes may have become obsolete. He urged his colleagues to see that they must not just protect their investment in past methods, but rather must advance their investment into the future. Commissioner Ridling of Alabama nonetheless cautioned that it will be important to focus on identifying unexpected consequences throughout the process to come.

### 4. Big Data

Earlier this year, the NAIC's "big data" initiative was moved into the sub-committee structure of the Executive (EX) Committee, and is not being considered by the reconstituted Big Data (EX) Working Group. The Big Data (EX) Working Group is continuing the development of a work plan to address its charges relating to the use of big data and predictive analytics by insurance companies, and expects to expose a revised version of the work plan for comment shortly. The current draft of the work plan provides that the Working Group will consider, and may propose to revise, the existing regulatory framework with respect to the regulation of data vendors and brokers, regulatory reporting requirements, and consumer disclosure and other requirements (including consumer education). One item in the work plan that continues to be debated is a reference to "disparate impact" of the use of big data on certain disadvantaged groups of consumers. The industry opposes this wording on the basis that the existing rating standards already protect consumers by mandating that rates may not be unreasonable or unfairly discriminatory, and that such rating standards do not contemplate that an insurance company's rate may be disapproved due to its "disparate impact" on a particular consumer group. As a result—the industry has argued—the reference to "disparate impact" in the work plan could result in the Working Group adopting recommendations that are inconsistent with existing state insurance laws governing insurance rates and rating practices. There was also some discussion as to whether the work plan should address potential cut-backs in regulatory measures that might impede consumers from realizing benefits of innovations relating to big data and predictive analytics. In addition, there was a suggestion that the Working Group could benefit from confidential presentations by particular carriers concerning their use of big data.

The Working Group also received and discussed a presentation from a member of academia focusing on the potential benefits to consumers of the use of big data by insurance companies. Certain aspects of this presentation were challenged by consumer representatives.

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### Group Capital and Group Supervision

#### 1. International Developments

##### a. International Insurance Relations (G) Committee

Among the reports on activities at the IAIS, the (G) Committee heard reports regarding the issuance of a Consultation that revises a number of ICPs and redesigns ComFrame to better integrate it with the ICPs. The goal is to streamline ComFrame and make it more understandable. The comment period for the Consultation ends on June 1, 2017.

##### b. Report from IAIS

The General Counsel for the IAIS made a presentation following the (G) Committee meeting on developments at the IAIS. Highlights included the following:

- The IAIS adopted in late March a stakeholder engagement plan that is designed to improve communication between the IAIS and stakeholders, and to permit enhanced opportunities for input from stakeholders. The plan is available [here](#) on the IAIS website.
- Field testing of ICS 1.0 will begin in May with a select number of volunteer insurers. ICS 1.0 will be formally adopted at the end of June for extended field testing and data calls involving an expanded group of volunteer insurers.
- The IAIS is developing a Systematic Risk Assessment Methodology utilizing an activities based approach. There will be Consultations released on the proposed methodology in both 2017 and 2018. The (G) Committee had heard at its meeting a presentation from MetLife and Allianz on an activities based approach to addressing risk.
- The IAIS intends to address FinTech, defined generally for IAIS purposes as the impact of financial innovation on the insurance industry. The IAIS plans to issue reports and to sponsor seminars and conferences on the topic. The IAIS also proposes to conduct joint research with interested stakeholders.

#### 2. NAIC Group Capital Calculation Tool

##### a. Treatment of Non-Insurers

The Group Capital Calculation (E) Working Group continued work on developing its group capital calculation methodology, which it has said will serve as a “regulatory tool” rather than a requirement. Most of the Working Group’s recent work since the 2016 Fall National Meeting has focused on the treatment of foreign insurance entities in a group that also includes a U.S. insurer. The Working Group had previously proposed to develop a “scalar” to be used in calculations for such non-U.S. insurers, which would entail the multiplication of the local capital requirement by some factor to equate the local requirement to an adjusted required capital level that is comparable to U.S. levels.



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In Denver, the Working Group focused on the separate issue of how to treat unregulated non-insurance entities in a group for purposes of the group capital calculation. The NAIC had initially proposed to apply a flat charge to equity of all such entities not currently subject to a capital requirement, but the Working Group Chairman, Commissioner Altmaier of Florida, noted that there had been some negative reactions to that approach.

The ACLI made a presentation to the Working Group with three different approaches to such entities, one being based on the NAIC's proposal to apply a flat charge to all non-insurance, non-regulated entities not currently subject to a capital requirement, and the other two being variants on a more complex approach with treatment for an entity depending on whether it is a financial services company, whether the entity poses "demonstrable risk" to the group, and how material its assets are to the group. Such analysis would result in different types of entities being evaluated under their local or their parent's local solvency scheme, if applicable (e.g., U.S. Basel III for banks), or simply being given a qualitative assessment if no such scheme is applicable. The ACLI presenters noted that they have concerns that the flat charge approach would be insensitive to actual risk and might penalize well-capitalized companies.

The ACLI presenters emphasized that this work represents their preliminary approach and that field testing will be critical regardless of which approach is chosen. Commissioner Altmaier stated that he expects the Working Group will select one of these three approaches to focus on rather than looking for more alternatives.

The Working Group decided that the next step will be to run some sample company data through the three approaches so that the Working Group can compare the results.

### b. Memorandum on non-RBC U.S. Insurers Exposed

The Working Group also decided to expose a memorandum for 45 days which addresses three topics in relation to the group capital calculation methodology, namely: (i) the treatment of U.S. insurers that do not file RBC and/or do not use statutory accounting (e.g., mortgage guaranty insurers, financial guaranty insurers and title insurers), (ii) the treatment of U.S. captive insurance companies (if such captives are part of a group that has a traditional U.S. insurance company) and (iii) how the calculation tool should account for prescribed and permitted practices. An earlier version of the memorandum had been presented at the 2016 Summer National Meeting but has not been a focus of the Working Group. Comments are due by May 26, 2017. We expect these topics to be discussed in greater detail before or at the Summer National Meeting in August.

### 3. U.S. Federal Regulators

The first meeting of FSOC with officials of the new administration was held in March. Director Hartt of the Division of Insurance of the New Jersey Department of Banking and Insurance, who was appointed in August 2016 to a two-year term as the state insurance commissioner representative on FSOC, noted that a new administration probably means a new approach to FSOC, and that he will try to educate any new members of FSOC. He stated that he continues to have serious concerns about the SIFI designations of AIG and Prudential, and that he will continue to push to have them

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de-designated. He also noted that Roy Woodall, the designated FSOC voting member with insurance expertise, has retained his role on FSOC. As with the other federal regulators, it remains to be seen how the new administration will impact their work.

### 4. Financial Stability Initiative Identifying Macro-Economic Trends

The Financial Stability (EX) Task Force has received a new charge to “[a]nalyze existing post-financial crisis regulatory reforms for their application in identifying macro-economic trends, including identifying possible areas of improvement or gaps, and propose...enhancements and/or additions to further improve the ability of state insurance regulators and industry to address macro-prudential impacts...” In connection with this charge, the Task Force heard an industry panel on macro-prudential monitoring and group supervision, including initial discussions concerning potential enhancements to macro-prudential monitoring and certain related matters. One panelist noted, for instance, that if many actors in the insurance industry are acting in similar ways, their collective action might pose a systematic risk that would not be identified as a major risk particular to any given company. One of the key recommendations was that there needs to be a regulatory function that will look across the industry for systematic problems as opposed to only problematic companies. The presentation dovetailed with the presentation and discussion of an activities-based approach heard in (G) Committee, as referenced above.

This is a relatively fresh topic of discussion for the industry, as it contrasts with the entity- and group-based emphasis of supervisory developments since the Great Recession. Director Hartt, however, noted that he believes the group supervisory powers and processes that regulators have developed currently will provide a natural bridge to and facilitate the macro analysis.

### Form F Guidance

The Group Solvency Issues (E) Working Group suffered a significant setback at the Spring National Meeting in its work on promulgating guidance on regulator expectations regarding the Form F. The NAIC’s legal staff presented their conclusion that the recommendations in the current draft Form F Implementation Guide (which arguably could therefore be perceived to be requirements) go beyond what is supported by the underlying Model Law and Regulation. Accordingly, it was suggested that regulators consider how the laws and regulations of their state allow them to ask for additional information (e.g., whether they can circulate requests for information in the form of a bulletin, or during calls with individual companies) and whether this might allow them to salvage some or all of the work done on the Implementation Guide.

However, the overall effect of this advice seemed to be that the Working Group accepted that it cannot continue working on the Implementation Guide, since regulators did not seriously discuss the possibility of stripping it down.

Kathy Belfi of Connecticut said that this project had been undertaken because of regulator frustration about the quality of the Form F work products that they were receiving, and that she thought they should go back and clarify the underlying Model Law before resuming work on interpretive guidance. Chair Christie Neighbors of Nebraska concurred, stating her

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opinion that the true problem lies in the language of the Model Law (*i.e.*, the limited scope of the definition of “enterprise risk”) and therefore that in order to truly solve this problem the Model Law would need to be reopened, something she is not interested in doing at this time. Ms. Neighbors also seemingly alluded to the possibility that changes in group supervision requirements by the IAIS (*i.e.*, related to its discussions of the scope of a group) would necessitate re-opening the Model Law in the not-too-distant future which would provide an opportunity to make this fix.

After a suggestion by a Working Group member to go ahead with a vote on adopting the current Form F Implementation Guide despite the NAIC’s legal advice was not taken up, Ms. Neighbors seemed to be looking for a new direction. She directed the Working Group to spend some time coming to better understand the function and role of the Form F. She reminded members that the Form F was originally conceived as a first attempt at something that would be accepted internationally as being akin to an ORSA report, and that now that they have an ORSA report requirement and ORSA guide that are accepted internationally, they need to find a way to identify what is useful in the Form F. The Working Group therefore was asked to review and consider a chart which summarizes side-by-side the various aspects of a Form F as opposed to an ORSA report. Further, Ms. Neighbors commissioned a few states that regularly review both ORSA reports and Forms F to request that their senior examiners also provide input on capturing what is uniquely useful about the Form F.

### Reinsurance

#### 1. Covered Agreement

The Reinsurance (E) Task Force heard a report from John Finston of California on the status of the proposed EU/U.S. Covered Agreement. Mr. Finston summarized the terms of the agreement and reported that the agreement is subject to certain conditions before it goes into effect, in both the EU and the U.S. Mr. Finston noted that the Treasury is currently in the process of thoroughly reviewing the Covered Agreement, and that Dodd-Frank permits—but does not require—the U.S. to execute a covered agreement on a date falling 90 days after the delivery of the covered agreement to the U.S. Congress. As a result, it is not clear when this process will be completed. As to the parallel process in the EU, an interested party noted that the European Council’s authorization is required before the Covered Agreement could be executed by the EU, and that the appropriate documents have already been forwarded to the European Council.

The position of the NAIC is that the agreement must be considered in light of potential harm to U.S. policyholders, which is of greater importance than providing economic benefits for international reinsurers. If the agreement is finally adopted, the NAIC will need to consider measures to protect U.S. policyholders, such as requiring additional capital on the part of U.S. cedants for the risk of unsecured reinsurance.

#### 2. Solvency II Related Actions by EU Countries

The Task Force also heard a report from the Qualified Jurisdiction (E) Working Group. The Working Group has produced a Survey on the Effect of Qualified Jurisdictions’ Implementation of Solvency II. The Survey is a report on the EU member

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states' implementation of Solvency II and the potential impact thereof on the Qualified Jurisdiction status of France, Germany, Ireland and the UK. The Working Group reported that no further action will be taken until there is more clarity on the proposed Covered Agreement.

### 3. Update on Implementation of Certified Reinsurer Models

In addition, the Working Group heard a report from the ReFAWG on the issue of whether and under what circumstances the ReFAWG may consider the group rating of a certified reinsurer rather than an individual rating. The report sets forth proposed criteria for the utilization of a group rating. The Task Force agreed to expose the report for a 30-day comment period.

### 4. XXX/AXXX Regulation and Law

Finally, the Task Force heard a status report on the adoption of the latest amendments to the Credit for Reinsurance Model Act and the credit for reinsurance Model Regulation, which establish requirements regarding the reinsurance of XXX/AXXX policies. As of March 27, 2017, 39 states had adopted amendments to their credit for reinsurance law to add certified reinsurer provisions and 31 states had adopted regulations in connection therewith. Nine states have adopted the 2016 amendments to the Model Law regarding the financing of XXX/AXXX reserves. No states have adopted the new XXX/AXXX Model Regulation.

Subsequently, the Accreditation Committee heard a report from the Task Force regarding the adoption of the 2016 revisions to the Models, and voted to expose for 30 days a memorandum from the Task Force recommending that: (i) the 2016 revisions to the Credit for Reinsurance Model Act and the new XXX/AXXX Model Regulation be adopted as a new accreditation standard; and (ii) the Accreditation Committee consider allowing these items to become an accreditation standard effective as of January 1, 2020. The memorandum recommends that any new accreditation standard developed for the XXX/AXXX Model Regulation be adopted by the states in a "substantially similar" manner.

## Valuation of Securities Updates

### 1. Amendments to P&P Manual

The Valuation of Securities (E) Task Force considered those matters, among others, that are of general interest. The Task Force discussed a proposal from the SVO to amend the P&P Manual to modify the filing exempt process, add a verification procedure for securities subject to private letter rulings and add a data quality assessment procedure. The Task Force reported that it has received many comment letters on the proposal. In light of the comment letters, the Task Force decided to delay consideration of the proposal and to produce a concept paper. Once the concept paper is prepared, the Task Force will work on the proposal in a series of conference calls. One issue will be the discretion of the SVO to reject ratings assigned by the rating agencies and perform its own analysis.

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### 2. Life RBC Categories For Bonds

The Task Force also considered a proposal referred to it from the Investment Risk-Based Capital (E) Working Group. The Working Group's proposal is to expand the number of RBC factors for bonds from the current six to twenty (plus the exempt category). The proposal would be implemented through a new electronic-only column in Schedule D. The SVO reported that it can produce the required 20 delineations of credit assessment. The purpose of the expansion would be to provide a more granular evaluation of credit risk. The Task Force agreed to expose the proposal for a 30-day comment period.

### 3. Valuation of Affiliate Securities

In addition, the Task Force heard a report from the SVO raising issues as to whether affiliate securities should continue to be assigned NAIC Designations using the same methodology as used for non-affiliate securities. The Task Force agreed to expose the report for a 30-day comment period. In the interim, the Task Force directed the SVO to continue to value affiliate securities in accordance with historic practices.

#### **Briefly Noted**

##### 1. Frustration over Data Calls

Interested parties again raised their frustration with data calls in several meetings in Denver. PCI noted that based on its review of Department websites there are currently 178 active data calls—127 if those relating to TRIA are excluded.

PCI proposed a list of voluntary "Data Call Principles" that regulators might consider before issuing a data call. The list includes items such as coordinating and standardizing data calls on similar issues across the states and with federal agencies. While the Data Call Principles were not clearly accepted or dismissed out of hand, the presentation did garner a rather sharp rejoinder from California in (C) Committee that costs to insurers are only a fraction of a percent of their premiums.

Additionally, as discussed further below, we note that the industry has spent the last few years petitioning the NAIC and FIO to consolidate their separately conducted data calls pertaining to terrorism risk, with interested parties emphasizing the administrative burden to the industry of having to respond to separate NAIC and federal terrorism risk data calls.

##### 2. ORSA Update

The ORSA Implementation (E) Subgroup reported that it continues to work on recommendations on the review of ORSA Summary Reports for the Accreditation Committee to consider for incorporation into the Accreditation Part B guidelines. The Subgroup recently proposed additions to those guidelines related to the lead state taking the lead on ORSA report analysis, but noted that they have not yet reached a conclusion on how timeliness of review should be incorporated into the guidelines.

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### 3. Producer Licensing Update

The Producer Licensing (D) Task Force is currently engaged in an initiative to enhance uniformity of producer and independent adjuster licensing and continuing education requirements among the states. In furtherance of this initiative, the Task Force has created three working groups that will focus, respectively, on issues relating to producer licensing uniformity, continuing education uniformity, and independent adjuster licensing uniformity.

The Task Force is also currently in the early stages of considering a proposal to remove pet insurance from the list of non-core limited lines and to add it to the list of property and casualty lines of business.

## TOPICS OF INTEREST TO THE LIFE INSURANCE INDUSTRY

### Principle-Based Reserving

#### 1. Update on Implementation and Related Matters

The Principle-Based Reserving Implementation (EX) Task Force received a report on the results of the PBR pilot project, which involved a total of 11 companies volunteering to perform calculations of reserves for their term and/or universal life with secondary guarantee products in accordance with the Valuation Manual. The report includes a number of findings and observations that will be helpful to state insurance regulators in preparing for the roll-out of PBR over the next three years.

It was also reported that Wyoming has adopted the amendments to the Standard Valuation Law providing for a principle-based reserving approach, bringing the total number of U.S. jurisdictions that have adopted PBR to 47.

Separately, the Life Actuarial (A) Task Force has exposed for comment a proposed modification to the VM-20 companywide exemption, which permits an insurer with less than \$50 million of ordinary life premium to be exempt from the requirements of VM-20 regardless of the insurer's risk-based capital ratio.

#### 2. Update on Accreditation

Subsequently, the Accreditation Committee adopted as an accreditation standard the 2009 revisions to the Standard Valuation Law, which authorize the use of the Valuation Manual. The new accreditation standard will be effective as of January 1, 2020 (*i.e.*, at the end of the three-year transitional period for PBR), and will require the adoption of PBR by all states by that date as a condition of remaining accredited.

#### 3. Lost Policy Locator Update

The Life Insurance and Annuities (A) Committee heard a report on the NAIC Life Insurance Policy Locator service, which was launched in November 2016, and which has already helped to return approximately \$17 million to consumers.

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### Annuities

#### 1. Suitability Model Update

The new Annuity Suitability (A) Working Group is charged with reviewing and, if necessary, revising the NAIC's Suitability in Annuity Transactions Model Regulation, as well as considering how to promote greater uniformity across the states. The Working Group heard a presentation on the 2010 revisions to the Model Regulation. The presentation explained that those revisions made it clear that an insurer is responsible for compliance with the Model in the sale of its products upon recommendation to a consumer, requires the review of such sales for suitability, increases the information that must be sought from consumers in order to ensure suitability, and imposes additional training requirements for producers.

This Model is also important with respect to the sale of indexed annuities, since Dodd-Frank voids the regulation of indexed annuities as securities, provided they are sold by an insurer domiciled in a state that has adopted these revisions or they are sold in such a state, and are therefore not regulated as securities by the SEC. It was reported at the Spring National Meeting that around 80% of states have adopted these 2010 revisions.

Discussion at the Working Group meeting included the possibility of addressing annuity suitability issues through federal action as well as through the NAIC, while continued support for uniform adoption of the 2010 revisions was also noted. Comments were heard from regulators, consumers, industry, and agent and broker representatives.

#### 2. Department of Labor Fiduciary Rule

The Working Group also heard an overview of the pending Department of Labor fiduciary rule, which has been the topic of so much discussion over the last two years. It was reported that, although the original applicability date for some provisions was April 10, 2017, the new administration has pushed that date back to June 9, 2017 in order to consider the rule further and seek comments from stakeholders. The date for full implementation, January 1, 2018, remains unchanged so far.

### Briefly Noted

#### 1. Variable Annuities

The Variable Annuities Issues (E) Working Group did not meet in Denver, since the Working Group is currently awaiting the completion of the second quantitative impact study by its outside consultant. The quantitative impact study is being conducted with approximately 15 variable annuity writers in three cycles, and is expected to be completed in or around mid-September 2017. The Working Group will then discuss the results of the quantitative impact study, with the goal of adopting a proposal addressing the Working Group's charges relating to variable annuity captive transactions before the end of the year.

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In addition, the Statutory Accounting Principles (EX) Working Group is continuing the development of statutory accounting guidance for certain limited derivative contracts hedging variable annuity guarantees. An updated draft of an issue paper relating to this topic is expected to be released by the Working Group shortly, with comments being solicited from regulators on certain key areas addressed in the issue paper.

### **2. Unclaimed Benefits Update**

The Life Insurance and Annuities (A) Committee heard a report from the Unclaimed Life Insurance Benefits (A) Working Group that the Working Group's effort to adopt a new Unclaimed Life Insurance and Annuities Model Act has stalled because the Working Group has not been able to reach consensus on a number of major issues, including the retroactive application of the Model Act and the length of the Death Master File look-back period. Due to these disagreements, the Working Group had adopted a motion to suspend its work pending further guidance from the Committee. The Committee instructed the Working Group to develop a concise list of key issues on which the Working Group has not been able to reach a consensus, which the Committee will review before making a recommendation to the Executive and Plenary. Consumer representatives and certain regulators stated that they would be disappointed if these developments resulted in the Working Group being disbanded without finishing its work on the Model Act.

## **TOPICS OF INTEREST TO THE P/C INSURANCE INDUSTRY**

### **Flood Issues**

The future of flood insurance was a significant topic of discussion in Denver, being discussed in meetings and serving as the subject of the Spring National Meeting's NAIC's Center for Insurance Policy and Research (CIPR) session. The (C) Committee heard reports from certain regulators whose states have been affected by flood issues, including Commissioner Theresa Miller of Pennsylvania who announced that she would be sending a letter to Congress on regulation of the subject, which others expressed interest in joining. It was also noted that a visit to meet with members of Congress is being planned. Commissioner Miller in particular also spoke about her Department's efforts to educate the public on the growing availability of private flood insurance, and a representative of an admitted carrier currently writing private flood insurance provided some perspective on the realities of the market in one of the segments of the CIPR program.

The (C) Committee also heard a report that Congress is gearing up to reauthorize the NFIP, which is due to expire on September 30, 2017. It was reported that multiple Congressional hearings on the subject have already been held, and that reauthorization is said to have bipartisan support. Additionally, the NAIC endorses the Flood Insurance Market Parity and Modernization Act which was reintroduced in March and requires applicants to federal agencies for financial assistance for acquisition or construction purposes, or mortgages, to have flood insurance coverage on the underlying property if it lies in an area of special flood hazard where NFIP insurance is available, in order for such assistance or mortgage to be approved. The bill recognizes both the NFIP and also private insurance as flood insurance. Separately, it



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was reported that federal banking regulators are still working on persuading banks to accept private flood insurance as opposed to NFIP coverage.

Apart from these substantive updates, the majority of the discussion in Denver centered on the existence of a private market for flood insurance, related considerations, and its potential to take on a greater share of the flood insurance market and function alongside the NFIP.

### Travel Update

The Travel Insurance Working Group is charged with considering development of a model law or guideline (the “NAIC Travel Model”) to establish appropriate regulatory standards for the travel and tourism insurance industry. At the Fall National Meeting, the Working Group decided to use the relevant “Limited Lines Travel Insurance Model Act” developed by NCOIL (the “NCOIL Travel Model”) as a framework upon which to begin discussion of drafting the NAIC Travel Model. In Denver, the Working Group adopted a presentation of draft amendments to the NCOIL Travel Model presented by Tom Considine, the CEO of NCOIL (not to be confused with Michael Considine, the CEO of the NAIC). In addition, the Working Group received comments from interested parties on the NCOIL Travel Model with respect to travel insurance and the travel services industry, offerings to consumers and competitiveness, and the bundling of travel insurance services. Commissioner Redmer of Maryland, as Chair, stated that the Working Group will use the NCOIL Travel Model as the template going forward, and will convene bi-monthly calls through the NAIC Summer National Meeting in Philadelphia.

### Briefly Noted

#### 1. Creditor-Placed Model Delay

The Creditor-Placed Insurance Model Act Review (C) Working Group received approval of an extension of its deadline to complete work revising the Creditor-Placed Insurance Model Act. The Working Group hopes to finish that work this year, and a new draft is anticipated shortly.

#### 2. Modernization of Commercial Lines Rates and Forms Regulation

The (C) Committee also discussed the possibility of modernizing commercial lines rates and forms regulation. In June 2015, the Commercial Lines (EX) Working Group had adopted a recommendation that the NAIC not pursue the development of an interstate compact for commercial lines, which had been suggested in FIO’s December 2013 report “How to Modernize and Improve the System of Insurance Regulation in the United States.” However, the Working Group’s adopted recommendation further states that the NAIC should review the issue within five years to determine whether conditions have changed enough to support them proceeding with an interstate compact. In Denver, the Committee decided to form an ad hoc group of states to consider the issue.

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### 3. TRIA Update

The Terrorism Insurance Implementation (C) Working Group received an update on the final rule promulgated by the Treasury under TRIA, which generally incorporates the financial and operational provisions contained in the most current reauthorization of TRIA that was signed into law by President Obama in 2015. The update received by the Working Group also noted that the Treasury had released additional guidance that expressly advises—for the first time—that the requirements of TRIA apply to certain stand-alone cyber insurance policies. The Working Group also heard a brief update on the report released by the U.S. Government Accountability Office (“GAO”) in January 2017, which discusses alternatives to TRIA’s current funding structure, such as a pre-event federal terrorism risk insurance charge on insurers or policyholders or a set-aside of insurer funds in the form of additional reserves, capital or single-purpose assets that could be used solely for payment of future terrorism losses. The GAO report found a number of problems with each of these alternatives, noting that the implementation thereof would require trade-offs among various policy goals and/or would involve certain complexities—e.g., due to implications relating to currently effective accounting practices and state laws.

In addition, interested parties once again petitioned the Working Group to coordinate its terror risk data call effort with FIO, so that insurance companies would no longer need to respond to separate terror risk data calls conducted by FIO and the NAIC.

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