

CLIENT ALERT

NAIC Report: 2020 Fall National Meeting

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The 2020 Fall National Meeting of the National Association of Insurance Commissioners (the “Fall National Meeting”) was held from December 3, 2020 through December 9, 2020. The Fall National Meeting was the NAIC’s third meeting of 2020 held in a virtual format, and responding to the COVID-19 pandemic was a continued focus of the NAIC. The meeting also included updates on two new executive-level task forces created in 2020 to address racial inequalities in the insurance industry and climate risk and resiliency, respectively. In addition, the NAIC took steps to advance key ongoing workstreams, including finalizing its group capital calculation tool, adopting amendments to modernize anti-rebating language in the Model Unfair Trade Practices Act, and completing a liquidity stress test framework for large U.S. life insurers and insurance groups.

NAIC members also elected the following officers for 2021:

President: Florida Insurance Commissioner David Altmaier

President-Elect: Idaho Insurance Director Dean L. Cameron

Vice President: Missouri Insurance Director Chlora Lindley-Myers

Secretary-Treasurer: Connecticut Insurance Commissioner Andrew Mais

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

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GLOSSARY

Definitions used in this report include:

“ComFrame” means the Common Framework for the Supervision of Internationally Active Insurance Groups being developed by the IAIS.

“Covered Agreements” means the U.S./E.U. Covered Agreement and the U.S./U.K. Covered Agreement, both as defined below.

“Credit for Reinsurance Model Law” means the NAIC Credit for Reinsurance Model Act (#785).

“Credit for Reinsurance Model Regulation” means the NAIC Credit for Reinsurance Model Regulation (#786).

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

“Federal Reserve” means the Board of Governors of the Federal Reserve System.

“FSB” means the Financial Stability Board, a nonprofit international body, currently composed of 59 representatives from 25 jurisdictions, as well as representatives from international financial institutions and international standard-setting, regulatory, supervisory and central bank bodies, that monitors and makes recommendations about the global financial system.

“Holistic Framework” means the framework developed by the IAIS to assess and mitigate systemic risk in the global insurance sector.

“IAIG” means an internationally active insurance group.

“IAIS” means the International Association of Insurance Supervisors.

“ICS” means the Insurance Capital Standard being developed by the IAIS to apply to IAIGs.

“Macroprudential Initiative” means the NAIC’s initiative to enhance risk identification efforts in the insurance sector by building on the state-based regulation system.

“NAIC” means the National Association of Insurance Commissioners.

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“Qualified Jurisdiction” means a non-U.S. jurisdiction listed on the NAIC list of “Qualified Jurisdictions” established pursuant to the NAIC Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions. A Qualified Jurisdiction-domiciled reinsurer that satisfies financial, rating and other standards may qualify as a “certified reinsurer,” and depending on its rating, may be approved by state regulators to post reduced or zero collateral under state credit for reinsurance laws.

“Reciprocal Jurisdiction” means a jurisdiction in which an eligible reinsurer is required to be domiciled in order to qualify for zero reinsurance collateral pursuant to the 2019 amendments to the NAIC Credit for Reinsurance Model Law and Model Regulation.

“U.S./E.U. Covered Agreement” means the Bilateral Agreement Between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on September 22, 2017.

“U.S./U.K. Covered Agreement” means the Bilateral Agreement Between the United States and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance entered into by such parties on December 11, 2018.

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I. Topics of General Interest

A. NAIC Continues to Focus on COVID-19 Pandemic

At the Opening Session of the Fall National Meeting, NAIC President and Director of the South Carolina Department of Insurance Raymond G. Farmer highlighted efforts of NAIC members that “saved lives and businesses” in 2020, including insurance premium relief (returning about \$10.5 billion to policyholders), working with Congress on business interruption coverage issues and coordinating with federal agencies on health insurance coverage, and creating enhanced market surveillance, accounting and reporting guidance focused on the financial impacts of COVID-19. Certain of these topics were covered in dedicated sessions during the Fall National Meeting.

a. CIPR Session on Business Interruption Insurance

At the Fall National Meeting, the NAIC Center for Insurance Policy and Research (“CIPR”) hosted a special session on pandemic business interruption (“BI”) insurance, which focused on questions related to the insurability of pandemic BI risk and the possible forms of a federal insurance mechanism to address future pandemic BI insurance needs.

The CIPR session featured five proposals for structuring a federal pandemic BI program, including two industry proposals, one trade organization proposal, one legislative proposal, and one proposal by a group of BI policyholders. Presenters generally shared the starting premise that pandemic BI risk is not insurable due to its severe, widespread, and non-diversifiable nature, and that, as a result, the federal government must play a role in providing pandemic BI coverage in the future. Common themes across the five proposals included the need to establish a private-public partnership between the federal government and the insurance industry, to ensure affordability and incentivize the purchase of any pandemic BI coverage made available by such partnership, and to efficiently provide relief to policyholders, such as through parametric payment mechanisms upon the occurrence of a triggering event or events.

Ethan Sonnichsen, the NAIC’s Managing Director of Government Relations, stated that the NAIC does not have a position on any specific pandemic BI proposals at this time, although it could take one upon further review. According to Sonnichsen, the NAIC believes that a federal mechanism is necessary to address the BI coverage gap for pandemic risk, which must preserve the authorities of state insurance regulators and should make the product widely available and affordable to incentivize broad participation.

b. Innovation and Technology (EX) Task Force Report on Continuing “Regulatory Accommodations” Offered During the COVID-19 Pandemic

During the December 4, 2020 meeting of the Innovation and Technology (EX) Task Force, North Dakota Insurance Commissioner and Task Force Chair Jon Godfread reiterated his earlier remarks from the summer of 2020 that rapid regulatory modernization has been a “silver lining” of the pandemic, and his view that regulators, policymakers and industry alike have seen and do not want to lose the benefits of recent modernization post-pandemic. In September 2020,

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the Task Force submitted a request for information for interested parties to provide feedback as to any specific regulatory relief or accommodations related to innovation and technology that resulted from the pandemic that they would like to see continued or made permanent. Responses focused on the areas of (i) electronic commerce, such greater permissibility of electronic signatures and transactions; (ii) regulatory capabilities, such as more broadly permitting remote or digital completion of regulatory requirements or filings, as applicable; (iii) claims facilitation, such as expanding what can be done virtually; and (iv) surplus lines, such as relaxing diligent search requirements for “on demand” products not available in the admitted market. The Task Force will use these responses to drive its work and priorities for 2021.

c. Pandemic-Related Data Collection Efforts

Prior to the Fall National Meeting, the Liquidity Assessment (EX) Subgroup formed a study group to establish a data collection plan focused on liquidity for certain large life insurance groups during the pandemic. The first phase of the data collection was a request for qualitative data based on first quarterly financials and the second phase was a request for qualitative and quantitative data based on second quarterly financials. Overall, insurers reported the ability to withstand liquidity stresses during the pandemic, which were well within their risk appetite ranges. The Subgroup used the results of the COVID-19 study to inform its work on liquidity stress testing, discussed in Section II.A, below.

B. NAIC Finalizes the Group Capital Calculation and Adopts Amendments to the Model Holding Company Act and Regulation

At the Fall National Meeting, the Executive and Plenary adopted amendments to the NAIC’s Model Insurance Holding Company System Regulatory Act (Model #440) (the “Holding Company Act”) and Model Insurance Holding Company System Model Regulation (Model #450) (the “Holding Company Regulation”). The Financial Condition (E) Committee also adopted the template for the group capital calculation tool (“GCC”) and related instructions. As discussed in greater detail below, the amended Holding Company Act (i) requires the ultimate controlling person of every insurer subject to holding company registration to file an annual GCC with its lead state regulator; (ii) contains general exemptions from the GCC filing requirement; (iii) sets forth sub-group reporting requirements; and (iv) includes a confidentiality provision. The amended Holding Company Regulation contains additional filing exemptions and the criteria to determine whether a non-U.S. jurisdiction “recognizes and accepts” the GCC.

The NAIC designed the GCC to deliver regulators a view of the interconnectedness, business activities and underlying capital for an insurance group. The GCC uses a “bottom up” Aggregation Method that requires an accounting of available capital/financial resources and the required regulatory capital of corporate group members. All insurance entities and entities owned directly or indirectly by the insurance entities in a group, along with all financial entities (as defined in the GCC instructions), are included in the scope of the GCC, while other non-insurance/non-financial entities within a group may potentially be excluded. Commissioner Altmaier, Chair of the Group Capital Calculation (E) Working Group (the “GCC Working Group”), said that the GCC will complement the Form F Enterprise Risk Report, Own Risk and Solvency

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Assessment (ORSA) reporting and the Corporate Governance Annual Disclosure as another post-2008 group supervision tool for regulators. Commissioner Altmair remarked that such tools “have been developed in a way that is cost effective and appropriate for the U.S. system, with the GCC being less costly and burdensome than other ‘consolidated approaches,’ and in a way that respects other jurisdictions’ existing capital regimes.”

a. Summary of Amendments to the Model Holding Company Act and Regulation

1. General Exemptions

The amended Holding Company Act contains exemptions from the annual GCC filing for four types of insurance groups:

1. A holding company system with only one insurer that only writes business in its domestic state and assumes no business from any other insurer.
2. A holding company system that is required to perform a group capital calculation by the Federal Reserve where the group’s lead state insurance regulator has access to such group capital information.
3. A holding company system whose non-U.S. group-wide supervisor is located in a Reciprocal Jurisdiction that recognizes the U.S. state regulatory approach to group supervision and group capital.

A drafting note in the amended Holding Company Act states that the revised Credit for Reinsurance Models provide that jurisdictions subject to the Covered Agreements are treated as Reciprocal Jurisdictions, and any “Qualified Jurisdiction can also qualify as [a] Reciprocal Jurisdiction if they provide written confirmation that they recognize and accept the U.S. state regulatory approach to group supervision and group capital.” The NAIC intends to publish a list of non-U.S. jurisdictions that recognize and accept the GCC.

4. A holding company system: (a) that provides information to the lead state regulator who has determined that such information will allow the lead state to comply with the NAIC group supervision approach (as set forth in the NAIC Financial Analysis Handbook); and (b) whose non-U.S. group-wide supervisor that is not a Reciprocal Jurisdiction recognizes and accepts the GCC as the worldwide group capital assessment for U.S. insurance groups that operate in such jurisdiction.

In addition to the four exemptions described above, the amended Holding Company Act provides that the lead state regulator may promulgate a regulation setting forth criteria under which it would exempt the ultimate controlling person from filing the annual GCC or accept a limited group capital filing.

2. Exemptions for a Holding Company System that Has Previously Filed the GCC

The amended Holding Company Regulation sets forth additional exemptions where the ultimate controlling person of a holding company system has previously filed the GCC, including providing the lead state regulator with discretion to exempt the ultimate controlling person if the holding company system has annual direct written and unaffiliated assumed premium of less than \$1 billion; it has no insurers domiciled in a non-U.S. jurisdiction; and it has no banking, depository or

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other financial entity that is subject to a regulatory capital framework. The lead state regulator may also in certain circumstances accept a limited group capital filing in lieu of the GCC.

3. Sub-Group Reporting

The GCC's applicability to "sub-group operations" (i.e., whether a GCC filing should be required for the U.S. operations of a non-U.S. insurance or reinsurance group) was discussed extensively during the GCC Working Group's interim fall meetings by regulators and interested parties, who expressed concerns that requiring the filing of a GCC by a U.S.-domiciled insurer within a non-U.S. insurance or reinsurance group could potentially constitute U.S. supervisory authorities exerting group supervision upon the worldwide group of such insurer. Some interested parties were opposed to subgroup requirements in all jurisdictions since they do not believe this type of requirement enhances group supervision. Others maintained that regulators should have discretion on this topic, noting that a sub-group reporting requirement could be viewed as acting on a retaliatory basis against a foreign jurisdiction that also imposes this type of requirement, rather than a prudential basis.

The amended Holding Company Act provides that, notwithstanding the filing exemptions for holding company systems described above in Sections a.1.3 and a.1.4, a lead state regulator must require the GCC for the U.S. operations of any non-U.S.-based insurance holding company system where, "after any necessary consultation with other supervisors or officials, it is deemed appropriate by the lead state commissioner for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace."

4. Confidentiality

The amended Holding Company Act provides that the relevant insurance commissioner must provide confidentiality protection for the GCC and the group capital ratio produced within the calculation. This confidentiality protection extends to any group capital information received from a holding company supervised by the Federal Reserve or any U.S. group-wide supervisor.

The GCC is not intended to be used as a way to rank insurers or insurance holding company systems. An insurer, broker or other person engaged in the insurance business is therefore prohibited from publishing (e.g., in an advertisement or any electronic means of communication) the GCC or group capital ratio of any insurer or any insurer group, subject to a limited exception to rebut a materially false statement regarding the GCC or an inappropriate comparison of any amount to an insurer's or insurance group's GCC that appears in a written publication.

b. GCC Template and Instructions

The amendments to the Holding Company Act state that "[t]he [annual GCC] report shall be completed in accordance with the NAIC Group Capital Calculation Instructions." Accordingly, the GCC Working Group has been developing a GCC

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template and instructions and held several conference calls this fall to address stakeholders' comments. Each of the template and the instructions is a new stand-alone document, with the template to be completed by the GCC preparer and the instructions to be maintained and amended from time to time by the NAIC. The instructions provide detailed information on the scope of application and the related issues of defining financial entities to be included in the group and whether to exclude non-financial entities for purposes of the GCC, including guidance for updating these determinations. The document also defines key terms and provides guidance on the allowance for debt as additional capital and scalars to account for potential differences in jurisdictions' capital requirements, among other topics. The Executive and Plenary is expected to approve the GCC template and instructions at the 2021 Spring National Meeting.

C. Innovation and Technology

a. NAIC Adopts Revisions to Model Unfair Trade Practices Act

On December 9, 2020, the NAIC Executive Committee adopted amendments to anti-rebating language in the NAIC Model Unfair Trade Practices Act (Model #880). Commissioner Godfread, the Innovation and Technology (EX) Task Force Chair, described the adoption as “a big move” for both regulators and industry, given that anti-rebating laws date back many decades, and have been supplemented over time with bulletins or revisions resulting in “a patchwork of laws” that has been difficult to follow.

Without compromising the rebating laws' original intent of protecting insurer solvency, amendments to the model are intended to permit the offer or provision of value-added products or services at no or reduced cost when such products are not specified in the policy. Such services or products must (i) relate to the insurance product and (ii) be primarily designed to satisfy one or more criteria, such as providing loss mitigation or control, reducing claim costs or enhancing health, among others. In addition, the cost for offering such products or services must be reasonable compared to the premiums or insurance coverage; the customer must receive contact information for any questions about the product or service; the availability of the product or service must be based on documented, objective evidence which can be produced to a regulator upon request; and the products or services must be offered in a manner that is not unfairly discriminatory. The amendments also permit an insurer or producer to offer or give non-cash gifts, items or services in connection with the marketing, sale, purchase or retention of insurance contracts, as long as the cost does not exceed an amount determined to be reasonable by the commissioner.

b. P&C Committee Adopts White Paper on Predictive Models

The Property and Casualty Insurance (C) Committee (the “P&C Committee”) adopted during its December 8 meeting the Regulatory Review of Predictive Models White Paper (the “White Paper”), which discusses best practices for an insurance regulator when reviewing predictive models and analytics justifying an insurer's rate filing. The term “predictive model,” when applied to insurance, refers to a model chosen to estimate the probability or expected value of an outcome (such as the frequency of a loss, the severity of loss, or the loss cost), given a set amount of input data. The White Paper was

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drafted by the P&C Committee's Casualty Actuarial and Statistical (C) Task Force ("CASTF"), including actuaries from 10 state insurance departments, to provide guidance to regulators in response to the increasing sophistication of predictive models used by insurers. In response to concerns from some interested parties that the guidance in the White Paper is overly prescriptive, CASTF added language following the 2020 Summer National Meeting to clarify that the White Paper is intended as guidance for state insurance regulators who choose to use it and that nothing in the document changes the existing legal and regulatory standards for approval of rating plans. The White Paper also notes that state insurance regulators will maintain confidentiality, in accordance with state law, regarding predictive models. P&C Committee members representing Louisiana and Maryland objected to the adoption of the White Paper after other members of the P&C Committee rejected a proposed Louisiana amendment that in their view would give too much latitude to the insurer in providing a "rational explanation" to justify the use of predictive models. The Executive and Plenary is expected to consider the White Paper for formal adoption at the 2021 Spring National Meeting.

c. NAIC to Prepare Accelerated Underwriting Guidance for Regulators

The Accelerated Underwriting (A) Working Group met via conference call on November 17, 2020 in lieu of meeting at the Fall National Meeting. In 2021, the Working Group will develop an educational and guidance document, after deciding against drafting a model law. The Working Group intends for this guidance to summarize information learned about accelerated underwriting through presentations over the past year; highlight issues that regulators should be aware of related to accelerated underwriting; acknowledge existing, relevant laws and identify any gaps; and provide guidance to regulators. The Working Group is also tracking efforts of other NAIC groups related to accelerated underwriting.

d. Consolidation of the Big Data (EX) Working Group and the Artificial Intelligence (EX) Working Group

The NAIC is developing a work plan for a new working group that combines the Big Data (EX) Working Group and the Artificial Intelligence (EX) Working Group moving forward. The combination is intended to continue the efforts of the Big Data (EX) Working Group, eliminate any overlap, and streamline next steps since the adoption of the Artificial Intelligence (AI) Guiding Principles ("AI Principles") at the 2020 Summer National Meeting. Explaining this decision, Commissioner Godfread noted that the two groups have been closely related, as the AI Principles apply the use of big data.

e. Update on Cybersecurity Workstreams

The Innovation and Technology (EX) Task Force assists in coordinating the NAIC's cybersecurity-related work streams, on which it received a report during the Fall National Meeting. Most notably, Commissioner Godfread highlighted during the meeting that state adoption of the NAIC Insurance Data Security Model Law (Model #668) will remain a priority in 2021. The U.S. Treasury Department had previously encouraged prompt adoption of the model law, noting the possibility of federal preemption otherwise. As of December 2020, the model had been adopted by 11 states.

In addition, in 2021 the P&C Committee will be newly charged with reporting on the cyber insurance market.

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D. International Developments

1. IAIS Continues Assessment of the Global Framework for Supervision of IAIGs

Following the adoption by the IAIS of a comprehensive set of reforms related to cross-border supervision of IAIGs, including ComFrame, the ICS and the Holistic Framework, in November 2019, the IAIS has been undertaking significant efforts in monitoring and assessing the components of this framework. As part of these efforts, the IAIS has been conducting the implementation assessment of the Holistic Framework, which is proceeding in phases, and is expected to inform the FSB's decision in November 2022 as to whether the annual identification of G-SIIs by the FSB should be reestablished or discontinued. In addition, 2021 will be the second year of the IAIS's five-year monitoring period for the ICS.

2. Update on Comparability of the U.S. Group Capital Standard

In the U.S., the key question continues to be whether the aggregation method that will be used as part of the GCC, which leverages the legal entity approach inherent in the state-based insurance regulatory scheme, will be considered to produce comparable (i.e., substantially the same) outcomes to the ICS. On November 9, 2020, the IAIS released for public consultation the draft definition and high-level principles that will inform the comparability criteria. This document is intended to reflect the agreement reached by IAIS members in Abu Dhabi in November 2019 on how comparability for the U.S. group capital standard will be determined. Following the completion of the public consultation period on this document in late January 2021, the IAIS plans to utilize the feedback on this document to develop specific comparability criteria.

Speaking at the meeting of the International Insurance Relations (G) Committee at the Fall National Meeting, various interested parties expressed significant concerns with the high-level principles for comparability criteria that are set forth in this document. Among other things, these concerns relate to the significant emphasis that the comparability analysis is proposed to place on quantitative standards, as opposed to qualitative criteria. The NAIC will be considering these comments in developing its feedback on the document.

E. Special (EX) Committee on Race and Insurance Begins Work

Following its formation in July 2020, the Special (EX) Committee on Race and Insurance identified five workstreams on which it will focus and make recommendations to the NAIC Executive Committee. Workstream #1 will focus on diversity within the insurance industry and access to insurance products. Workstream #2 will focus on diversity within the state insurance regulatory community and the NAIC. Workstreams #3–5 will focus on identifying practices or barriers that potentially disadvantage people of color and/or historically underrepresented groups in the property and casualty, life and annuity, and health insurance areas, respectively. Each of these workstreams has two NAIC member co-chairs who will lead the workstreams in research and information gathering in order to make recommendations by year-end 2021.

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Director Farmer also noted at the Opening Session that the NAIC has recently hired its first Diversity, Equity and Inclusion officer and formed an employee-based Diversity, Equity and Inclusion Committee.

F. Climate Risk and Resiliency

In his Opening Session remarks, Director Farmer highlighted the formation this year of the executive-level Climate Risk and Resiliency (EX) Task Force (the “Climate Task Force”) in light of the “nearly unprecedented number of natural disasters” that occurred in 2020, and stated that climate risk is a strategic priority for the NAIC. The Climate Task Force will consider appropriate climate risk disclosures and evaluate financial regulatory approaches to climate risk and resiliency; look for innovative insurer solutions to climate risk; identify sustainability, resilience, and mitigation issues and solutions related to the insurance industry; and will also focus on the role of state regulators with respect to pre-disaster mitigation measures.

G. Reinsurance Update

While the Reinsurance (E) Task Force did not meet at the Fall National Meeting, the Task Force has been working with NAIC staff to track state adoption of the 2019 amendments to the NAIC Credit for Reinsurance Model Law and the Credit for Reinsurance Model Regulation that incorporate applicable requirements of the Covered Agreements. The amendments will become an NAIC accreditation standard as of September 1, 2022. The Task Force reported that as of December 2, 2020, 16 jurisdictions had adopted the amended Model Law and three jurisdictions (PA, VA and CA) had adopted the amended Model Regulation, with action under consideration in additional jurisdictions.

II. **Topics of Interest to the Life Insurance Industry**

A. NAIC Adopts the Liquidity Stress Test Framework for Large Life Insurers as Part of Holding Company Act Amendments

In addition to the GCC, the Holding Company Act amendments adopted by the Executive and Plenary at the Fall National Meeting implement the liquidity stress test (“LST”) framework for large U.S. life insurers and insurance groups (based on the amounts of certain types of business written or material exposure to certain investment transactions). The development of the LST as a regulatory tool has been an important component of the NAIC’s Macroprudential Initiative, which got underway in 2017. The Macroprudential Initiative has been one of the NAIC’s top regulatory priorities in recent years since it is intended to enhance risk identification efforts by building on the state-based regulation system.

The amended Holding Company Act requires the ultimate controlling person of every insurer subject to holding company registration that satisfies the scope criteria for a particular year to file the LST results with its lead state regulator. The filing must comply with the NAIC’s instructions and template for the relevant year. The scope criteria must be reviewed at least annually by the Financial Stability (EX) Task Force. A life insurer that meets at least one threshold of the scope criteria will be considered within scope for a particular year’s LST, unless such insurer’s lead state regulator, in

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consultation with the Financial Stability (EX) Task Force, determines otherwise. Conversely, a life insurer that does not trigger a threshold will be excluded from a particular year's LST, unless its lead state regulator, in consultation with the Financial Stability (EX) Task Force, determines otherwise. At the interim meeting of the Financial Condition (E) Committee on November 19, 2020, Marlene Caride, New Jersey Commissioner of Banking and Insurance and Chair of the Life Insurance and Annuities (A) Committee, noted that fewer than 25 life insurers are expected to be within scope in any given year. The amended Holding Company Act also provides that the LST results and any supporting disclosures submitted to a state insurance regulator must receive confidentiality protection.

B. Long-Term Care Insurance (EX) Task Force Update

Director Farmer stated at the Opening Session that long-term care insurance ("LTCI") will continue to be an NAIC priority through 2021. In 2020, the NAIC focused on developing a state-based mechanism to ensure consistency in reviewing rate increase requests and guidance for evaluating a reduced benefit option ("RBO") in lieu of a higher premium. To that end, at the Fall National Meeting, the Long-Term Care Insurance (EX) Task Force received a report from the Long-Term Care Insurance Reduced Benefit Options (EX) Subgroup on two sets of "principles documents" related to RBOs. The first document is intended to provide guidance for evaluating RBO offerings by insurers, and the second focuses on consumer notices to ensure that LTCI policyholders have maximized their opportunity to make RBO decisions that are in their best interest.

The RBO principles documents were referred to the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup to incorporate into the development of an LTCI multistate review framework. A first draft of such framework is expected to be available at the 2021 Spring National Meeting, following the completion of a pilot project to review LTCI rate filings from several insurers.

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

A. P&C Committee Adopts Real Property Lender-Placed Insurance Model Act

The NAIC has been considering since 2012 issues related to lender-placed insurance ("LPI") and the effect of the practice on consumers. In 2017, the NAIC decided to create two lender-placed insurance workstreams—one focused on automobiles and personal property and one focused on real property. The Lender-Placed Insurance Model Act (C) Working Group has been drafting the Real Property Lender-Placed Insurance Model Act (the "LPI Model Act") since that time. At the Fall National Meeting, the P&C Committee voted to adopt the LPI Model Act. Commissioner David Altmaier (FL), Chair of the LPI Model Act Working Group, noted that the LPI Model Act had been the subject of "vigorous debate" including with respect to whether tracking expenses as part of LPI rates should be prohibited. While the Working Group ultimately decided not to prohibit tracking expenses, the LPI Model Act notes that regulatory rate review should include whether any tracking expenses included in LPI rates are appropriate to pass on to consumers. The Executive and Plenary is expected to consider the LPI Model for formal adoption at the 2021 Spring National Meeting.

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B. Surplus Lines (C) Task Force Update

a. Request for Model Law Development for the Nonadmitted Insurance Model Act

The P&C Committee approved a Request for Model Law Development from the Surplus Lines (C) Task Force with respect to the Nonadmitted Insurance Model Act (Model #70), which was last revised in 2002 and has been adopted in 31 states. Revisions to the model will be intended to conform certain provisions to the portions of the Nonadmitted and Reinsurance Reform Act that govern the placement of nonadmitted insurance, which came into effect in July 2011, as well as other possible modernizing updates.

b. Recommended Updates to the NAIC Trust Agreement for Alien Excess or Surplus Lines Insurers

At an interim meeting on November 18, the Surplus Lines (C) Task Force made a referral to the Surplus Lines (C) Working Group to propose updates to the NAIC Trust Agreement for Alien Excess or Surplus Lines Insurers. The current International Insurers Department Plan of Operations provides Core Requirements and Guidelines for Inclusion on the NAIC Quarterly Listing of Alien Insurers, and includes a requirement for a trust fund and agreement containing provisions consistent with the model Trust Agreement for Alien Excess or Surplus (an "IID Trust Agreement"). Under the current guidance, no termination or expiration of the IID Trust Agreement may occur without five years' notice by the insurer to the trustee of its intention to terminate the trust fund, and the NAIC has recommended considering revisions to the current IID Trust Agreement to provide greater flexibility for the termination of a Trust Agreement where, for practical purposes, there are no present or future liabilities to the trust.

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