CLIENT ALERT

NAIC Report: 2021 Summer National Meeting

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The 2021 Summer National Meeting of the National Association of Insurance Commissioners (the "Summer National Meeting") was held from August 14-17, 2021 in a hybrid format, with attendees participating virtually or in person in Columbus, Ohio.

Florida Insurance Commissioner and NAIC President David Altmaier opened the Summer National Meeting by identifying the NAIC's top priority areas as COVID-19; natural catastrophe and climate risk; diversity, equity and inclusion in the insurance sector; the impact of artificial intelligence and big data on insurance; consumer data privacy and the long-term care market, noting that the same issues are increasingly the focus of international insurance regulation.

Highlights from the Summer National Meeting include:

- The NAIC plans to create a new letter committee—the (H) Committee—to coordinate the NAIC's work related to innovation, AI and cybersecurity by the end of 2021.

- The analysis phase of the Group Capital Calculation trial implementation is underway. The NAIC's Group Capital Calculation (E) Working Group intends to discuss the results of data submitted as part of the trial at the 2021 Fall National Meeting, which could result in further refinements to the Group Capital Calculation template and instructions.

- In September 2021, the Long-Term Care Insurance Multistate Rate Review (EX) Subgroup expects to release a revised draft of an operational and actuarial framework, under which the NAIC would review rate filings and make recommendations to the states.
- The *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787) will become an NAIC accreditation standard on September 1, 2022, with enforcement to commence on January 1, 2023.
- Executive and Plenary adopted amendments to the Holding Company Models that address the continuation of essential services by affiliates of insurers undergoing receivership, as well as the receiver's access to data and records held by affiliates but belonging to the insurer.
- Issues around consumer data ownership and access will likely become an increasing focus of the NAIC, as discussed during the meeting of the Innovation and Technology (EX) Task Force.

The report below further summarizes key activities at the Summer National Meeting, and certain interim conference calls and other developments leading up to the Summer National Meeting, that may be of interest to our clients in the insurance industry.

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GLOSSARY

Definitions used in this report include:

"2020 Amendments" means the amendments to the Holding Company Models that were adopted by Executive and Plenary in December 2020, and which implement the filing requirements related to the GCC and LST.

"AI" means artificial intelligence.

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

"Covered Agreements" mean the U.S./E.U. Covered Agreement and the U.S./U.K. Covered Agreement, both as defined below.

"Credit for Reinsurance Models" means the *NAIC Credit for Reinsurance Model Act* (#785) and 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.

"Financial Analysis Handbook" means the Financial Analysis Handbook published and maintained by the NAIC.

"FSB" means the Financial Stability Board, a nonprofit international body, composed of representatives from international 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.

"GCC" means the group capital calculation that was developed by the Group Capital Calculation (E) Working Group and adopted by the NAIC in December 2020. It is a tool that uses an RBC aggregation methodology for all entities within the insurance holding company system, including non-U.S. entities.

"Holding Company Models" means the *NAIC Insurance Holding Company System Model Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms* (#450).

"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.

"LST" means Liquidity Stress Test, which provides quantitative and qualitative insights for macroprudential surveillance designed to capture the impact on the broader financial markets of aggregate asset sales under a liquidity stress event.

"NAIC" means the National Association of Insurance Commissioners.

"NAIC Climate Risk Disclosure Survey" means the survey adopted by the NAIC in 2010, designed to be an insurer reporting mechanism, which asks insurers to provide a description of how they incorporate climate risks into their mitigation, risk-management and investment plans.

"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 Credit for Reinsurance Models.

"UETA" means the Uniform Electronic Transactions Act.

"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.

1. Topics of General Interest

A. Proposed New Committee to Be Dedicated to Innovation and Technology

During the Opening Session of the Summer National Meeting, Commissioner Altmaier announced that the NAIC intends to create a new letter committee—the (H) Committee—by the end of 2021. The new committee will be charged with monitoring developments and coordinating the NAIC's work related to innovation, AI and cybersecurity, and developing regulatory models and guidance as appropriate. An ad hoc group of the Innovation and Technology (EX) Task Force will develop a mission statement and charges for the new committee, with the goal of finalizing the committee formation at the 2021 Fall National Meeting. North Dakota Insurance Commissioner and Innovation and Technology (EX) Task Force Chair Jon Godfread indicated that more information about the new committee will be available in the coming weeks.

B. Other Developments Relating to Innovation and Technology

i. NAIC to Review Consumer Data Ownership Issues

During the meeting of the Innovation and Technology (EX) Task Force, Rhode Island Superintendent of Insurance and Task Force Vice Chair Beth Dwyer solicited input on what, if any, steps the Task Force should take with respect to issues around consumer data ownership and access. Regulators and interested parties raised considerations such as the potential benefits to consumers of allowing third parties to access consumer data to provide related services, and how to mitigate any resulting cybersecurity risks. Task Force members agreed that this issue should be referred to the Privacy Protections (D) Working Group for continued consideration, given the closely related topics that the Privacy Protections (D) Working Group is already considering, as discussed below.

ii. Colorado Passes Legislation Restricting Insurers' Use of External Consumer Data

Colorado Senate Bill 21-169 was signed into law last month, and prohibits use of "external" consumer data sources, algorithms or predictive models that unfairly discriminate against individuals based on protected classes and gives the Insurance Commissioner broad new rule-making and enforcement authority in this area. While the Innovation and Technology (EX) Task Force did not hear a presentation on the bill as was expected, we anticipate that the NAIC will monitor Colorado's progress in promulgating new regulations implementing the bill and whether other states develop any similar legislation in the future.

iii. Survey on Use of Big Data by Private Passenger Auto Insurers

The Big Data and Artificial Intelligence (EX) Working Group is drafting a survey to assist regulators in analyzing big data use by private passenger automobile insurers. Five companies have already received the survey on a pilot basis and the Working Group is considering their feedback. The survey will next be distributed to 188 companies in nine pilot states, seeking responses by the end of September 2021. A public report will compile the aggregated responses, maintaining the confidentiality of each participating company's data. Iowa Insurance Commissioner and Working Group Chair Doug Ommen stated that the Working Group intends eventually to expand the survey to other lines of insurance, such as life and homeowners insurance. The analysis will inform the work of the NAIC to develop guidance and update regulatory frameworks relating to big data and AI.

iv. Update on Work Plan of New E-Commerce (EX) Working Group

Since its formation at the 2021 Spring National Meeting, the new E-Commerce (EX) Working Group met in June to discuss how to carry out its charges related to e-commerce laws and regulations, including the UETA. The Working Group will first seek to understand the current legal landscape and state adoption of the UETA using a state-by-state survey. The Working Group will use the survey to identify any gaps in uniformity among states with the possibility of developing a model bulletin or white paper. The Working Group expects to meet again in September 2021 to further develop the proposed state survey.

v. Update on NAIC Cybersecurity Workstreams

Commissioner Godfread highlighted recent activity related to the 12 separate cybersecurity workstreams that the NAIC is currently tracking, including that the Insurance Data Security Model Law has been adopted by 18 states, with action under consideration in two additional states. Commissioner Godfread also noted that cybersecurity incident best practices guidelines are being developed by the NAIC through tabletop exercises and work with the U.S. Financial and Banking Information Infrastructure Committee and others, and that the NAIC will consider whether updates to the Market Regulation and Financial Examiners Handbooks might be helpful in this regard.

vi. International Focus on Innovation and Technology

The NAIC is working closely with international colleagues, including the IAIS and the European Union, on cybersecurity issues. The IAIS's Operational Resilience Task Force is gathering information to inform a paper on how insurance supervisors are approaching cyber-related risks, which is scheduled for public consultation in the second quarter of 2022. In addition, the IAIS's Fintech Forum is studying topics, such as machine learning and data analytics. Work related to innovation and technology also continues through the EU-U.S. Insurance Dialogue Project, which includes a working group focused on big data and AI that will publish a paper in October 2021 summarizing the working group's exchanges on supervisor experiences and regulatory environments.

C. Climate Risk and Resilience

i. Climate and Resiliency (EX) Task Force Workstreams

The Climate and Resiliency (EX) Task Force received reports from its five workstreams, focused on (1) Pre-Disaster Mitigation; (2) Climate Risk Disclosure; (3) Solvency; (4) Innovation; and (5) Technology.

- Pre-Disaster Mitigation. The goal of this workstream is to mitigate losses from common perils. The workstream consults with industry and community stakeholders to understand how to incentivize resilience through mitigation, and assists with related consumer education and outreach. As the federal government shifts its focus away from reactionary disaster spending to research-supported protective investments, the workstream is exploring ways to secure federal funding for mitigation and resiliency efforts.

- Climate Risk Disclosure. The workstream is modifying the NAIC Climate Risk Disclosure Survey, adopted by the NAIC in 2010 to provide regulators with information about risks posed to insurers by climate change. New survey questions are being developed that better align with the FSB's Task Force on Climate-Related Financial Disclosures. The workstream has encouraged states to participate in the NAIC Climate Risk Disclosure Survey, noting that 15 states have volunteered so far.

- Solvency. The workstream is focused on potential enhancements to existing financial surveillance and reporting tools, such as the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual, and seeks to apply what it has learned during recent sessions on financial climate risk surveillance.

- Innovation. The workstream is exploring parametric insurance products, which cover the probability of a predefined event as opposed to actual loss incurred. These products are designed to close coverage gaps for specific weather-related events, and include: (1) special coverages offered in Hawaii for hurricane expenses; (2) risk-pooling arrangements in the Caribbean and Africa to assist communities preparing for and responding to extreme weather events; and (3) catastrophe bonds to protect the New York City subway from coastal surge risk.

- Technology. The workstream is drafting revisions to the NAIC's Catastrophe Computer Modeling Handbook, which will include a compendium of state laws.

ii. International Updates on Climate Risk

At the international level, the IAIS published the *Application Paper on the Supervision of Climate-related Risks in the Insurance Sector* (the "Application Paper") in partnership with the Sustainable Insurance Forum ("SIF") in May. As described by the IAIS, the Application Paper provides insurance supervisors with concrete tools to strengthen efforts to assess and address risks posed by climate change to the insurance sector. It also provides recommendations and examples of good practice, consistent with the IAIS's Insurance Core Principles. With this publication, the IAIS and SIF aim to promote a globally consistent approach to the supervision of climate-related risks.

D. Initiatives of the Special (EX) Committee on Race and Insurance

The NAIC's Special (EX) Committee on Race and Insurance is charged with coordinating issues across the NAIC relating to race, diversity and inclusion. The Special Committee's five workstreams continue to gather and analyze data in order to be able to make recommendations on increasing diversity and inclusion within the insurance sector. The workstreams provided the following updates during the Summer National Meeting:

- The Special Committee has two workstreams focused on researching and analyzing diversity and inclusion in the insurance sector. One focuses on the insurance industry and one focuses on state insurance departments. A best practices survey was emailed to state insurance commissioners in August to address state- and department-level diversity and inclusion best practices for consideration by the entire NAIC membership.

- There are three workstreams focused on examining the insurance industry to determine what practices create barriers that disadvantage people of color and/or historically underrepresented groups. Each workstream is focused on a different type of insurance (property and casualty, life and annuities, and health). The workstream focused on health insurance recently exposed for comment a data collection best practices document that will be discussed at interim meetings this year.

- These three workstreams plan to make a joint referral to the Market Regulation and Consumer Affairs (D) Committee requesting a report on the availability of producer licensing exams in foreign languages, steps examination vendors have taken to mitigate cultural bias, and the number and location of producers by company compared to demographics in the area.

E. Stabilizing the Long-Term Care Insurance Market

The Long-Term Care Insurance (EX) Task Force is charged with addressing the challenge posed by the current long-term care insurance ("LTCI") market to consumers and the state-based system of insurance regulation, due to historically underpriced LTCI policies. To that end, the Task Force is charged with developing a consistent national approach to reviewing LTCI rates that results in actuarially appropriate increases being granted by the states in a timely manner. The LTCI Multistate Rate Review (EX) Subgroup has exposed for comment an operational and actuarial framework under which the NAIC would review rate filings and make recommendations to the states. Under the exposed framework, the actuarial review would result in an advisory report for the benefit and use of all state insurance departments, which would include an overall recommended rate increase. State insurance departments may rely on the advisory report to make decisions on an insurer's rate increase filing or to supplement the state's own review. The exposure draft specifies that recommendations are not specific to any state-specific laws or regulations, and that each state would remain responsible for making decisions regarding rate increases in accordance with applicable state law. Task Force Chair Scott White (VA) noted that states will not be forced to accept such recommendations, but participation by states will be critical to the success of the framework. A revised draft of the framework is expected to be released in mid-September.

The Task Force is also charged with recommending options to provide consumers with choices regarding modifications to LTCI contract benefits where policies are no longer affordable due to rate increases. The LTCI Reduced Benefit Options (EX) Subgroup is creating a checklist for consumer notices regarding reduced benefit options for regulators, which is intended to establish a consistent approach to drafting and reviewing such notices.

F. New Macroprudential (E) Working Group Formed

At the Summer National Meeting, Executive and Plenary adopted a proposal from the Financial Stability (EX) Task Force to repurpose the Liquidity Assessment (E) Subgroup to address other areas of the NAIC Macroprudential Initiative ("MPI"), since the LST has been finalized. The subgroup will be renamed the Macroprudential (E) Working Group, and it will be responsible for several initiatives, including: (1) overseeing the implementation and maintenance of the LST framework for 2020 data as well as future iterations; (2) assisting with the remaining MPI projects related to counterparty disclosures and capital stress testing as needed; (3) continuing to develop and administer data collection tools as needed, leveraging existing data where feasible, to provide the Financial Stability (E) Task Force with meaningful macroprudential information regarding how the insurance sector is navigating the prevailing market conditions; and (4) overseeing the development, implementation, and maintenance process for a new Macroprudential Risk Assessment system (i.e., policies, procedures, and tools) to enhance regulators' ability to monitor industry trends from a macroprudential perspective. Superintendent Eric Cioppa (ME), Vice Chair of the Task Force, noted that the proposed charges are intended to be crafted broadly since the NAIC is just beginning its work to build out the macroprudential surveillance system.

The newly formed Working Group will also oversee work surrounding the Macroprudential Risk Assessment (charge #4 above), which is a "risk dashboard" for supervisors outlining proposed risk categories, key risk indicators, and an assessment scale. NAIC staff reported that the dashboard will be presented to the new Working Group and the Task Force and exposed for public comment in the near future.

G. Reviewing and Updating Consumer Privacy Protections

The Privacy Protections (D) Working Group continues to develop a policy statement on consumer rights around the collection, use and disclosure of information gathered in connection with insurance transactions and whether existing privacy models include appropriate consumer protections. The Working Group exposed for comment a draft of the statement, which identifies consumer rights that should attach to required privacy notices to be provided to consumers, including the rights to opt out of data sharing, opt in to data sharing, correct information, delete information, restrict the use of data, and the right of data portability. In the coming months, the Working Group plans to focus on potential amendments to the *Privacy of Consumer Financial and Health Information Model Regulation* (#672).

2. Financial Condition (E) Committee Matters

A. NAIC Adopts Holding Company Model Amendments Imposing New Requirements Related to Affiliated Transactions for Insurers Deemed to Be in a Hazardous Financial Condition

At the Summer National Meeting, Executive and Plenary adopted amendments to the Holding Company Models that the Receivership Law (E) Working Group developed to address the continuation of essential services by affiliates of insurers undergoing receivership, as well as the receiver's access to data and records held by affiliates but belonging to the insurer. The amendments, among other things, add certain standards for affiliate transactions, including that such transactions must (1) allow the commissioner to require a deposit or bond for the protection of the insurer in connection with affiliated transactions for an insurer that is deemed to be in hazardous financial condition or subject to a supervision, conservation or delinquency proceeding; (2) require that all records and data of the insurer held by the affiliate are and remain the property of the insurer; and (3) specify that premiums or other funds belonging to the insurer but collected or held by an affiliate are the exclusive property and subject to the control of the insurer.

The amendments permit the commissioner to require that certain affiliate agreements specify that the affiliate consents to the jurisdiction of the supervision, seizure, conservatorship or receivership proceedings. The amendments also bolster the minimum required provisions that must be included in agreements for cost-sharing services and management services, including to specify that the affiliate will provide essential services for a specified period of time after termination of the affiliate agreement if the insurer is placed into supervision, seizure, conservatorship or receivership. The NAIC is proposing that the states enact these amendments to their holding company laws at the same time they enact the 2020 Amendments, and will work with states that have already adopted the 2020 Amendments to integrate these latest revisions.

B. Valuation of Securities (E) Task Force Adopts Amendments to Purposes and Procedures Manual of the NAIC Investment Analysis Office

On July 15, the Valuation of Securities (E) Task Force adopted amendments to the Purposes and Procedures Manual of the NAIC Investment Analysis Office ("P&P Manual"). The amendments (1) add additional instructions for the review of funds to clarify guidance for fund leverage and the use of derivatives, (2) permit securities similar to credit tenant loan and ground lease financing transactions[1] to use NAIC credit rating provider ratings through filing exemption, and (3) conform guidance to the Statutory Accounting Principles (E) Working Group's adopted change to Statement of Statutory

[1] The amendments newly specify that credit tenant loans only refer to mortgage loans "in the scope of SSAP No. 37," which by default excludes securities.

Accounting Principles (SSAP) No. 105R—Working Capital Finance Investments. The Task Force also received a proposed amendment to the P&P Manual to permit the Securities Valuation Office to rely on the parent entity's rating for an unrated and unguaranteed subsidiary in a working capital finance investment program, and directed the Securities Valuation Office to refer the amendment to the Statutory Accounting Principles (E) Working Group for comment.

C. Developments Related to the Group Capital Calculation

i. 2021 Trial Implementation Moves into Analysis Phase

The Group Capital Calculation (E) Working Group (the "GCC Working Group") met on July 26 in lieu of the Summer National Meeting. The GCC Working Group discussed the trial implementation of the GCC template that the NAIC adopted last December. The insurance groups participating in the GCC trial submitted their year-end 2020 data to their lead state regulators in July, using the GCC template, as modified to add a stress scenario for purposes of the trial only. The analysis of the data should generate information that can be used for future improvements to the GCC template and instructions. The GCC Working Group intends to complete its review of the data in October 2021, with a goal of discussing the results at the 2021 Fall National Meeting.

ii. Update on Accreditation Standard

The Financial Regulation Standards and Accreditation (F) Committee recommended exposure of a revised draft of the 2020 revisions to the Holding Company Models for a one-year public comment period beginning January 1, 2022, with the expectation that the normal timeline for adoption of a Part A accreditation standard will be followed, and the effective date for all states will be January 1, 2026. The revisions implement the GCC and LST as additions to the accreditation standard. The exposure draft was amended to allow commissioners to grant a filing exemption to qualifying insurance groups that meet the standards set forth in Sections 21A and 21B of the *Holding Company System Model Act* (#440) without the requirement to submit at least one GCC filing. This recommendation is expected to go to the Executive and Plenary for approval at the 2021 Fall National Meeting.

iii. Evaluating Non-U.S. Jurisdictions that "Recognize and Accept" the GCC

On July 20, the GCC Working Group held a joint meeting with the Mutual Recognition of Jurisdictions (E) Working Group (formerly the Qualified Jurisdiction (E) Working Group) to discuss the draft Process for Evaluating Jurisdictions that Recognize and Accept the GCC. The 2020 Amendments to the Holding Company Models provide that the annual GCC filing requirement "applies to U.S.-based groups, while a group headquartered outside the U.S. is exempt from the GCC (subject to limited exceptions) if its group-wide supervisor 'recognizes and accepts' the GCC for U.S. groups doing business in that jurisdiction." The NAIC intends to publish a list of such jurisdictions that will be reviewed annually, although the list is not binding on the states (i.e., the authority to designate a "recognize and accept" jurisdiction resides with each state).

iv. Group Capital Calculation Guidance for the NAIC's Financial Analysis Handbook

In May 2021, the GCC Working Group exposed two guidance documents that will be added to the Financial Analysis Handbook section on group-wide supervision to address how insurance regulators should use the GCC. One document describes how an insurance group's GCC filing will enhance group-wide financial analysis and fits into a lead state regulator's overall assessment of the group. The GCC will be an additional data input in the regulator's Group Profile Summary (GPS), which is a tool used by insurance regulators to gather data from various sources (e.g., the Form F, the ORSA summary report and the corporate governance filing) for their holding company analysis. The second guidance document describes specific procedures an analyst can use to evaluate an insurance group's material risks when reviewing the GCC filing.

v. Draft Referral to the Capital Adequacy (E) Task Force

During its July 26 meeting, the GCC Working Group voted to expose a memorandum to the Capital Adequacy (E) Task Force to inform that Task Force of certain differences between the GCC and risk-based capital ("RBC") formulas, and to request that the Task Force consider addressing the topic of consistent treatment of certain types of required capital in an insurance group structure. (The memorandum is Attachment C to the GCC Working Group meeting materials, available here.) The relationship stems from the fact that the GCC uses an RBC aggregation methodology for all entities within the insurance holding company system.

The draft memorandum explains that "as it relates to insurance subsidiaries, [the GCC] accumulates the available capital and company action level RBC from the RBC formula for U.S. insurers and utilizes the same methodology for non-U.S. insurers. In doing so, it also does not require insurance groups to 'de-stack' non-insurance and nonfinancial subsidiaries reporting directly or indirectly from the parent insurance company's available capital and company action level RBC." When the NAIC was developing the GCC, several insurance regulators and interested parties decided not to require de-stacking of these entities since "the GCC and RBC should treat similar assets similarly." Under the current GCC and RBC formulas, however, there would be different treatment of certain entities' required capital, including the treatment of foreign insurers, other regulated entities (e.g., banks) and other financial entities (e.g., asset managers). Tom Botsko (OH), Chair of the Property and Casualty Risk-Based Capital (E) Working Group, said that it is preferable to have the GCC and RBC "be as consistent as possible," noting that the draft memorandum is a good start for the GCC Working Group and the Task Force to share information.

Comments on the draft referral are due by October 25.

D. Reinsurance Updates

The Reinsurance (E) Task Force met on July 27 in lieu of the Summer National Meeting. The Task Force discussed the application by the Republic of Korea to become a Qualified Jurisdiction, and the exposed application raised comments from interested parties about requirements in Korea for localization of data, which has been viewed as an obstacle for U.S. reinsurers that are trying to conduct business there. The Task Force agreed to refer the application back to the Mutual Recognition of Jurisdictions (E) Working Group and to evaluate and remediate this issue before the Korean application moves forward. During its July 27 meeting, the Task Force also adopted certain clarifying and non-substantive revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions under the Credit for Reinsurance Models.

The Task Force also received a status report on states' implementation of the 2019 Revisions to the Credit for Reinsurance Models (the "2019 Revisions"). State credit for reinsurance laws based on the Credit for Reinsurance Models will be subject to federal preemption if they fail by September 2022 to afford reinsurers the zero reinsurance collateral treatment provided for in each of the Covered Agreements. The Task Force recommended that all states adopt the 2019 Revisions as soon as possible, noting that 42 states have adopted the *Credit for Reinsurance Model Law* (#785) (with four states currently considering adoption) and 15 states have adopted the *Credit for Reinsurance Model Regulation* (#786) (which is pending in another seven states).

E. Revisions to Model Audit Rule Implementation Guide

On July 27, the Accounting Practices and Procedures (E) Task Force adopted revisions to the *Model Audit Rule Implementation Guide*, which are intended to facilitate the collection of additional information on the external audit firm's lead engagement partner through the "Communication of Internal Control Related Matters Noted in an Audit" filing provided to each insurer's domestic regulator each year. The purpose of the additional information collection is to allow for regulatory review and verification of compliance with audit partner rotation and qualification requirements. Under the proposal, the information would be collected through the internal control letter because the letter receives confidential treatment from the NAIC and regulators, which protects the lead audit partner's personal information. These changes will be effective for audits as of December 31, 2021 and thereafter.

3. Topics of Interest to the Life Insurance Industry

A. Accelerated Underwriting Educational Report in Progress

The Accelerated Underwriting (A) Working Group recently exposed excerpts of its draft accelerated underwriting educational report for comment. Grace Arnold, Working Group Chair and Commissioner of the Minnesota Department of Commerce, reported that the educational report is focused on explaining what accelerated underwriting is and does and a suggested regulatory framework within existing legal requirements. The report is being released for public comment by section, and the third iteration of the report is expected to be released for public comment in September.

B. Work on Life Policy Overviews Stalled

The Life Insurance Illustration (A) Working Group reported that it is at a stalemate with respect to its work on policy overviews, i.e., high-level summaries for insurance applicants that describe key policy features and information obtained for underwriting purposes. The Working Group is divided over two delivery timelines, with the policy overview required at either: (1) the time of application, or if there is a free look period, at the time of policy delivery; or (2) at or before the time of application. The Working Group will report to the Life Insurance and Annuities (A) Committee at the 2021 Fall National Meeting to provide more detail on its progress and a summary of the commentary and feedback received on the delivery timing requirements.

C. Progress on Adoption of Term and Universal Life Insurance Reserve Financing Model

The *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787), a codification of the NAIC's Actuarial Guideline XLVIII (AG 48), will become an NAIC accreditation standard on September 1, 2022, with enforcement to commence on January 1, 2023. NAIC staff reported to the Reinsurance (E) Task Force at the Summer National Meeting that currently five states have adopted Model 787 (with six states pending). Also at the Summer National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted revisions to the NAIC Accreditation Manual to clarify that Model 787 is the new accreditation standard governing captive reinsurance transactions for term and universal life policies with secondary guarantees.

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

A. Pet Insurance Model Law Close to Finalization

During the Summer National Meeting, Pet Insurance (C) Working Group Chair Don Beatty indicated that the proposed Pet Insurance Model Law, which sets out to create a comprehensive legal framework in which pet insurance may be sold and requires insurers transacting pet insurance to make various disclosures to their customers, is expected to be ready for adoption by the 2021 Fall National Meeting. Prior to then, the Working Group will continue to discuss waiting periods, a 15-day free look period, look-back periods, and wellness plans as it relates to the Pet Insurance Model Law. The Working Group also continues to develop its definition of "pet insurance" to avoid consumer confusion about what coverage a policy provides. The Working Group will also consider drafting a white paper on the use of wellness plans in pet insurance, which would include a description of how wellness plans are marketed and the distinction between wellness plans and insurance.

5. International Matters

At the Summer National Meeting, Gary Anderson, Massachusetts Commissioner of Insurance and Chair of the International Insurance Relations (G) Committee, provided updates on certain of the IAIS's key projects.

A. International Capital Standard Monitoring Period Remains on Track

The five-year monitoring period for the ICS, which began in 2020, is on track and does not need to be extended because of disruptions caused by the COVID-19 pandemic. The pandemic represents a global stress event that will help the IAIS evaluate the performance of the ICS. The IAIS intends to utilize the remaining four years of the monitoring period to further refine the ICS.

B. Comparability of the ICS and the Aggregation Method

The IAIS has been collecting data from the United States and other interested jurisdictions to determine whether the aggregation method ("AM") will produce comparable (i.e., substantially the same) outcomes to the ICS. The AM is used as part of the GCC and leverages the legal entity approach inherent in the state-based insurance regulatory scheme.

An IAIS drafting group is preparing the initial draft of comparability criteria based on these data collection efforts, and Romain Paserot, IAIS Deputy Secretary, confirmed at the Summer National Meeting that the timetable for developing the criteria is on track for release for public consultation in the fourth quarter of 2021.

C. Evaluating the Holistic Framework

i. Implementation Assessment Moves to the Second Phase

In June, the IAIS published a report on the results of the Baseline Assessment ("BLA") of the implementation of the Holistic Framework's supervisory material (i.e., policy measures related to different topics, such as the supervisor's role and macroprudential supervision). The BLA was the first phase of the implementation assessment of the Holistic Framework, which was completed in Summer 2020 and represents a shift to an activities-based approach to systemic risk. BLA questionnaire results indicated "good progress with the implementation of the relevant standards of the Holistic Framework" from the 26 participating jurisdictions.

The second phase of the implementation assessment, referred to as the Targeted Jurisdictional Assessment ("TJA"), is currently underway. As the world's largest insurance market, the United States, through a sample of states, is participating in the TJA with nine other jurisdictions that will complete a series of questionnaires, to be followed by meetings in early 2022.

ii. Global Monitoring Exercise Continues

The global monitoring exercise ("GME"), another important component of the Holistic Framework, is also underway. The GME is designed to "detect the build-up of systemic risk in the global insurance sector." In June, the IAIS discussed the

2020 data from the pandemic assessment that was part of the GME. The data showed financial and operational resilience in the global insurance sector, aided by supervisory measures providing operational and monetary relief.

The IAIS plans to hold discussions on systemic risk in September. The GME will conclude in 2022, at which time the IAIS will submit the results of the implementation assessment to the FSB, which will decide whether to discontinue or re-establish the Global Systemically Important Insurers (or G-SII) designation system that was suspended in early 2020.

D. Incorporating International Standards in NAIC Financial Analysis Framework

The Group Solvency Issues (E) Working Group met on August 4 in lieu of the Summer National Meeting to discuss comments on the proposed revisions to the Financial Analysis Handbook related to incorporating certain elements of ComFrame that would be consistent with the U.S. system of insurance regulation. Interested parties raised several issues during the meeting, including: (i) the application of procedures designed for IAIGs to insurance groups that do not satisfy the IAIG definition in a state's holding company statute; (ii) clarifying that the IAIG-related procedures in the Financial Analysis Handbook are only intended for use by a lead state regulator that is acting as a group-wide supervisor; and (iii) ensuring that new guidance in the Financial Analysis Handbook regarding the application of ComFrame supervisory measures to IAIGs allows for sufficient regulator discretion. The Financial Analysis Handbook drafting group, which consists of regulators from Illinois, Michigan, Missouri and Nebraska, was asked to update the proposed revisions to reflect this input.

6. Briefly Noted

A. Cannabis Insurance Industry Faces Market Barriers

The Cannabis Insurance (C) Working Group hosted a fact-finding hearing in July focused primarily on market barriers for the cannabis insurance industry in spite of the increasing legalization of cannabis at the state level and relaxation of enforcement of prohibitions federally. Hearing participants reported that cannabis businesses currently face extremely high premiums compared to other industries, and called for collaboration with regulators, trade organizations and interested carriers to develop appropriate ratemaking procedures to expand the availability of insurance products.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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