

CLIENT ALERT

Congressional Hearing Considers Private Equity-Controlled Insurers

September 27, 2022

AUTHORS

Kara Baysinger | **Leah Campbell** | **Jane Callanan** | **Matthew J. Gaul**
Donald B. Henderson, Jr. | **David G. Nadig** | **Allison J. Tam**

On September 8, 2022, the U.S. Senate Committee on Banking, Housing and Urban Affairs (“[Senate Banking Committee](#)”) held a hearing to consider “Current Issues in Insurance.” One of the items discussed at the hearing was Senator Sherrod Brown’s (D-OH) March 2022 letter to the National Association of Insurance Commissioners (the “[NAIC](#)”) and U.S. Department of the Treasury’s Federal Insurance Office (“[FIO](#)”) regarding private equity-controlled insurers.¹

In his letter, Senator Brown requested that FIO, in consultation with the NAIC, prepare a report for Congress that evaluates the investment strategies pursued by private equity-controlled insurers, the impact on protections for pension plan beneficiaries following pension risk transfer arrangements, and whether state regulatory regimes are capable of assessing and managing risks related to private equity-controlled insurers. In the early summer, the NAIC and the U.S. Department of the Treasury (on behalf of FIO) each provided substantive responses to Senator Brown.²

¹ Letter from Senator Sherrod Brown to the NAIC and FIO, dated March 16, 2022, is available [here](#).

² The letter from the NAIC Executive Committee to Senator Sherrod Brown, dated May 31, 2022 (the “[NAIC Letter](#)”), is available [here](#); and the letter from Jonathan C. Davidson, Department of the Treasury, to Senator Sherrod Brown, dated June 29, 2022 (the “[FIO Letter](#)”), is available [here](#).

Congressional Hearing Considers Private Equity-Controlled Insurers

In addition to the private equity-related topics identified in Senator Brown's letter, during the September 8 hearing the Senate Banking Committee examined topics including the insurance industry's response to cyber insurance challenges, international capital standards, coverage for pandemic-related losses and climate change. The focus of this Client Alert is the Senate Banking Committee's interest in and testimony pertaining to private equity-controlled insurers.³

Maryland Insurance Commissioner Kathleen Birrane represented the NAIC at the hearing. FIO Director Steven Seitz also testified.

Maryland Insurance Commissioner Birrane's Opening Remarks

Commissioner Birrane testified that state insurance regulators are actively monitoring private equity firm investments in insurance companies, and emphasized that any insurer regardless of ownership structure is subject to a comprehensive regulatory regime.⁴ This regime focuses on risks at both the individual insurer level and the group level with significant disclosure, analysis, capital and conservative accounting requirements that are used to protect solvency and promote product availability.

Commissioner Birrane acknowledged that in light of the historically low interest rate environment, insurers have searched for investment yields to avoid raising insurance product prices. In her written testimony, Commissioner Birrane explained that this has "placed pressure on insurers to take on more risk in a percentage of their investment portfolios in order to increase yield."

Commissioner Birrane testified that the NAIC is currently working to address 13 regulatory considerations related to state regulators' abilities to adequately assess risks posed to private equity-controlled insurers and traditional insurers with similar features (the "13 Considerations"), as we previously reported on [here](#).⁵ Commissioner Birrane also stated that state regulators have extensive data reporting and analytical capabilities that they are continuing to refine, and that she is confident in the state regulators' ability to oversee insurers regardless of the ownership structure.

FIO Director Seitz's Opening Remarks

Director Seitz testified that FIO is focused on the growing role of "alternative asset managers," including private equity firms, in the insurance sector and encouraged increased focus and progress by state regulators to ensure that regulatory mechanisms are designed to address developments in this area.⁶ Director Seitz noted that FIO has four areas of focus for this topic: (i) liquidity risk, (ii) credit risk and capital adequacy, (iii) offshore reinsurance implications including

³ A complete recording of the Senate Banking Committee's September 8, 2022 hearing is available [here](#).

⁴ Commissioner Birrane's written testimony as filed with the Senate Banking Committee in advance of the September 8 hearing is available [here](#).

⁵ The list of "Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers" as adopted by the NAIC on August 13, 2022, is available [here](#).

⁶ Director Seitz's written testimony as filed with the Senate Banking Committee in advance of the September 8 hearing is available [here](#).

Congressional Hearing Considers Private Equity-Controlled Insurers

interconnectivity between the U.S. and Bermuda insurance markets, and (iv) potential conflicts of interest, each as described in detail in the FIO Letter.

Key Private Equity-Related Inquiries and Comments by Senate Banking Committee Members

1. *Pension Risk Transfers*. Questions related to the transfer of pension risks away from an employer that sponsors a pension plan to private equity-controlled insurers were raised in Senator Brown's March 16 letter and during the hearing by Senators Patrick J. Toomey (R-PA), Bill Hagerty (R-TN) and Elizabeth Warren (D-MA), with the senators questioning the security of workers' retirement savings following such a transfer. In particular, Senator Warren commented that risk associated with private equity-controlled insurers endangers the insurers' solvency, and demanded that state and federal regulators take action to address this increased risk.

Commissioner Birrane testified that life insurance companies have extensive experience managing long-term liabilities and are well suited for managing pension risks. In addition, life insurance companies are subject to rigorous oversight that is stricter than that applicable to pension funds, and state guaranty funds would be available in the unlikely event of an insolvency of a life insurer.⁷

2. *Regulation of Private Equity-Controlled Insurers*. In response to a question from Senator Hagerty about whether private equity-controlled insurers are treated differently than traditional insurance companies, Commissioner Birrane testified that, since 2013, states have imposed greater requirements on investments in insurance companies by private equity firms and noted that these requirements are now part of the NAIC Financial Analysis Handbook.⁸ In addition, with the 13 Considerations, state insurance regulators are currently focused on investment disclosures, ownership and collateral, reliance on rating agencies and pension risk transfer guidance.
3. *Short-Term Investments by Private Equity Firms*. Senator Jerry Moran (R-KS) questioned whether private equity firms have a short time horizon for investments in insurers and suggested that this may result in riskier activities. Director Seitz testified that private equity firms are not generally making short-term investments but indicated that FIO is continuing to monitor for this type of behavior.

⁷ The comment about the security of workers' retirement savings is addressed more fully in the NAIC Letter, which references a 2016 report by the National Organization of Life and Health Insurance Guaranty Associations titled "Consumer Protection Comparison – The Federal Pension System and the State Insurance System," available [here](#). This comment is also addressed in the FIO Letter.

⁸ NAIC Financial Analysis Handbook, Section V (Domestic and Non-Lead State Analysis) (2021 Annual / 2022 Quarterly) (see Stipulations for Limited Period of Time and Continuing Stipulations at pp. 724-725), available [here](#).

Congressional Hearing Considers Private Equity-Controlled Insurers

4. *Positive Impact of Private Equity Investments in the Insurance Industry.* Senators Moran and Mike Rounds (R-SD) both commented on the positive impact of private equity investments in the insurance industry. Senator Moran specifically noted an influx of capital and a positive impact on jobs following the acquisition of a Kansas-domiciled insurance company by a private equity firm.

Requested Prioritization of Work and Reporting to the Senate Banking Committee

The Senate Banking Committee asked the NAIC and FIO to continue to prioritize their work on the various risks discussed and report on their progress to the Senate Banking Committee. In addition, as noted above, Director Seitz encouraged increased focus and progress by state regulators related to their work concerning alternative asset managers. Commissioner Birrane committed to keeping the Senate Banking Committee advised as to state regulators' ability to oversee insurers regardless of ownership structure.

We expect that the NAIC will continue to focus on the area of regulating private equity controlled-insurers due to the state-based nature of insurance regulation. However, the attention from FIO, the Senate Banking Committee and Senator Brown may lead the NAIC to operate on an accelerated timeline in addressing the 13 Considerations.

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

Kara Baysinger

415 858 7425

kbaysinger@willkie.com

Leah Campbell

212 728 8217

lcampbell@willkie.com

Jane Callanan

212 728 3519

k_jcallanan@willkie.com

Matthew J. Gaul

212 728 8261

mgaul@willkie.com

Donald B. Henderson, Jr. David G. Nadig

212 728 8262

dhenderson@willkie.com

312 728 9097

dnadig@willkie.com

Allison J. Tam

212 728 8282

atam@willkie.com

Copyright © 2022 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

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