NAIC HIGHLIGHTS — SUMMER 2009 NATIONAL MEETING

The NAIC

The National Association of Insurance Commissioners (the "NAIC") works to coordinate the efforts of the insurance commissioners of the U.S. states and territories and the District of Columbia (including by promulgating model laws and regulations and encouraging adoption thereof by legislators and regulators). The NAIC held its Summer 2009 National Meeting from June 12, 2009 through June 16, 2009 in Minneapolis, Minnesota. At this meeting, many important issues were discussed by the various NAIC committees, task forces and working groups. Set forth below are certain highlights of the meeting.

Reinsurance Issues

The Reinsurance Task Force discussed several matters during its June 13 meeting, including the Reinsurance Regulatory Modernization Framework Proposal, minimum trusteed surplus requirements for certain multiple beneficiary reinsurance trusts, and reinsurance-related issues currently before Congress.

Reinsurance Regulatory Modernization Framework Proposal

As discussed in previous NAIC Highlights, the NAIC adopted the Reinsurance Regulatory Modernization Framework Proposal (the "Framework") to reform state reinsurance regulation for both domestic and foreign reinsurers electing to participate.[1] The Framework is part of the larger NAIC Solvency Modernization Initiative.[2]

---

[1] NAIC Highlights — Spring 2009 National Meeting (March 15, 2009) 1-3 (describing the Framework in further detail), *available at* http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2932/NAIC_Highlights_Spring_2009_Meeting.pdf; *see also* NAIC Highlights — Winter 2008 National Meeting (Dec. 19, 2008) 1-2, *available at* http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2826/NAIC_Highlights_Winter_2008_National_Meeting.pdf; NAIC Highlights — Fall 2008 National Meeting (Oct. 3, 2008) 3-7, *available at* http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2718/NAIC_Highlights_Fall_2008_National_Meeting.pdf; NAIC Highlights — Summer 2008 National Meeting (June 12, 2008) 1-3, *available at* http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2616/NAIC_Summer_2008.pdf; NAIC Highlights — Spring 2008 National Meeting (April 8, 2008) 1-2, *available at* http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/2582/NAIC_Spring_2008.pdf.

[2] The Solvency Modernization Initiative ("SMI") is coordinated by the Solvency Modernization Initiative (EX) Task Force, which oversees the work of five NAIC groups focusing on capital requirements, international accounting, group supervision, valuation issues in insurance, and reinsurance. A summary of SMI activities can be found at http://www.naic.org/committees_ex_isftf.htm.

As a first step toward implementation of the Framework, on March 24, 2009 the Reinsurance Task Force exposed a draft federal bill entitled the "Reinsurance Regulatory Modernization Act of 2009" (the "RRMA") for comments through April 23, 2009.[3] The RRMA incorporates many of the elements of the Framework, including:

(i) the establishment of a single-state system of licensure for U.S. and foreign reinsurers (the "Home State" for domestic reinsurers and Port of Entry State ("POE State") for non-U.S. reinsurers);

(ii) the creation of a Reinsurance Supervisory Review Board (the "RSR Board"), a nonprofit corporation owned by or affiliated with the NAIC, which, based on standards recommended by the NAIC, would have authority to (x) evaluate and certify U.S. and non-U.S. jurisdictions seeking recognition as Home and POE States; (y) evaluate non-U.S. jurisdictions with respect to the reciprocity afforded by such jurisdictions to U.S. reinsurers and determine the appropriate supervisory recognition approach to such jurisdictions by POE States; and (z) develop recognition and regulatory cooperation agreements for adoption by POE States and non-U.S. jurisdictions; and

(iii) the establishment of credit for reinsurance and collateral requirements including the standards applied by a Home State or POE State in rating reinsurers, which translates into the amount of reinsurance collateral to be posted by such reinsurers, and acceptable types of reinsurance collateral.[4]

The RRMA contemplates the incorporation of additional details set forth in the Framework in future state regulations and RSR Board rules.

The Reinsurance Task Force received industry comments on the RRMA that have been characterized as constitutional and non-constitutional issues. Interested parties have questioned the constitutionality of the proposed Congressional authorization of the RSR Board on three grounds: the Appointments Clause (U.S. Const. art. II, § 2, cl. 2), which authorizes the President to appoint all officers of the United States with the advice and consent of the Senate (several interested parties have argued that Congressional authorization of the RSR Board, a private entity acting as a public official without federal oversight, violates the Appointments Clause); the Tenth Amendment to the U.S. Constitution and Supreme Court decisions holding that Congress is not authorized to command state action; and the Fifth and Fourteenth Amendments to the Constitution, which guarantee due process for actions of federal and state governments (interested parties have expressed concern that the RRMA does not provide for judicial review of the decisions of the RSR Board). In response to the comments on the RRMA, the Reinsurance Task Force has retained the services of Sidley Austin, LLP to review the constitutional issues and propose any necessary revisions. A memorandum outlining the results of the review and accompanying proposals will be circulated upon completion.

---

[3] The draft RRMA is *available at* http://www.naic.org/documents/committees_e_reinsurance_fed_legislation_draft.pdf.

[4] *See* NAIC Highlights — Spring 2009 National Meeting, at 1-2.

Non-constitutional issues arising from the RRMA were also raised and discussed at the June 13 meeting. As part of the RRMA structure, and consistent with existing state credit for reinsurance laws, a ceding insurer's domestic state (the "Host State") shall grant financial statement credit to such ceding insurer for reinsurance ceded to a reinsurer approved by a Home State or POE State. The issue of a non-domestic state's extraterritorial application of such financial statement reinsurance credit (to both domestic and foreign ceding insurers licensed in the state) was raised by several interested parties who requested that the RRMA be revised to either prohibit extraterritorial application of credit for reinsurance laws or compel all states, not just the Host States, to grant financial statement credit for reinsurance.

Other comments received by the Reinsurance Task Force included concerns regarding the composition of the RSR Board, ratings standards applicable to reinsurers, and differences between the collateral requirements applicable to U.S. and non-U.S. reinsurers. For example, several parties commented on the provision of the RRMA that permits a Home State or POE State to consider a reinsurer's participation in a "solvent scheme of arrangement" affecting a U.S. ceding insurer in determining the reinsurer's rating. Several interested parties submitted that a distinction should be drawn between a reinsurer that "participates" in such a scheme and one that "proposes or is the subject of" such a scheme, suggesting that a ratings impact should only apply with respect to the latter. Others objected to any modification of the proposed language, in particular where amended language would permit a U.S. regulator to assess the fairness of a scheme of arrangement to U.S. ceding insurers.

As a next step in the implementation process, the Reinsurance Task Force adopted a motion recommending that the model law amendment process within the NAIC be initiated to conform the Credit for Reinsurance Model Law and/or the Credit for Reinsurance Model Regulation with the RRMA. The Reinsurance Task Force proposes to submit a final version of the RRMA to Congress by the end of the year.

Credit for Reinsurance Relating to Reinsurers in Run-Off

During the Winter 2008 National Meeting, Tawa Management, LLC proposed an amendment to the Credit for Reinsurance Model Law in connection with the U.S. multi-beneficiary trust requirements applicable to unauthorized reinsurers (the "Tawa Proposal"). Pursuant to Section 2D(3) of the Model Law, U.S. ceding insurers may take financial statement credit for reinsurance ceded to an unauthorized reinsurer provided the reinsurer establishes a multi-beneficiary trust in an amount not less than the reinsurer's obligations to U.S. ceding insurers plus a trusteed surplus of not less than $20 million. As originally drafted, the Tawa Proposal provided that the trusteed surplus requirement be reduced from $20 million to no less than five percent (5%) of the reinsurer's obligations to U.S. ceding insurers because reinsurers in run-off are no longer writing new business and the trusteed surplus requirement can cause liquidity problems. The Reinsurance Task Force agreed with the general principle of reducing the trusteed surplus requirement but suggested that the minimum surplus be no less than 50% of U.S. reinsurance obligations.[5]

---

[5] The proposed language to amend the Credit for Reinsurance Model Law is *available at* http://www.naic.org/documents/committees_e_reinsurance_mutli_beneficiary_trust_proposal.pdf. *See also,* NAIC Highlights — Spring 2009 National Meeting, at 11.

During the Summer Meeting, domestic ceding insurers and trade associations opposed any amendment to the Credit for Reinsurance Model Law that would reduce collateral requirements applicable to reinsurers in run-off, stating that collections from run-off reinsurers are problematic and U.S. ceding insurers should not be jeopardized by collateral reductions introduced by the Tawa Proposal. The New York State Insurance Department favored a Tawa counterproposal for a minimum surplus of no less than 30% of U.S. reinsurance obligations. The Reinsurance Task Force included the Tawa Proposal, in addition to the RRMA, as part of its motion to direct the NAIC staff to initiate the consideration process to amend the Credit for Reinsurance Model Law and Model Regulation. While the minimum trusteed surplus amount remains subject to debate, the Reinsurance Task Force expects to reach a consensus as the Tawa Proposal makes its way through the NAIC's amendment process.

Congressional Initiatives Affecting Reinsurance

During its June 13, 2009 meeting, the Reinsurance Task Force received a report on reinsurance-related issues in Congress. The Nonadmitted and Reinsurance Reform Act of 2009 (H.R. 2571) (the "NRRA") was introduced by Representative Dennis Moore (D-Kansas) into the House of Representatives on May 21, 2009.[6] Title II of the NRRA would prohibit the extraterritorial application of credit for reinsurance and other kinds of reinsurance requirements by any state other than the ceding insurer's domestic state. The NRRA generally preempts the application of a non-domiciliary state's laws to reinsurance agreements, specifically prohibiting laws that restrict or eliminate an insurer's right to resolve disputes through contractual arbitration, require a certain state's law to govern a reinsurance contract, or try to enforce different contract terms. The NRRA also limits a non-domiciliary state from requiring more financial information from a reinsurer than is required by the state of domicile. Similar legislation is expected from the Senate. The NAIC's position is that the reinsurance portion of the NRRA is insufficient to address the scope of issues facing state insurance regulators. The Reinsurance Task Force also received a report on the status of the Neal Proposal regarding the tax treatment of reinsurance payments to offshore affiliates. In terms of the introduction to Congress of the RRMA, discussed above, there was some discussion regarding the possibility of incorporating the RRMA into the NRRA or introducing the RRMA independent of other reinsurance-related bills. However, a definitive approach has not yet been developed in this regard.

Insurance Group Solvency Issues

The Group Solvency Issues (EX) Working Group of the Solvency Modernization Initiative (EX) Task Force (the "SMI Task Force") met on June 12, 2009. In light of the recent economic downturn, the Working Group was formed to study the impact of affiliated insurance groups on the solvency of U.S. insurers. In this respect, the Working Group is studying the effectiveness of the Insurance Holding Company System Regulatory Act (the "IHCA") in addressing issues posed by insurance groups, including international solvency issues. In addition, the Working Group is

---

[6] The text of the NRRA is *available at* http://thomas.loc.gov/home/gpoxmlc111/h2571_ih.xml.

studying the need to develop group-wide supervision (including group-wide capital requirements) and coordination among cross-border (including cross-state) and cross-sector supervisors such as Supervisory Colleges.

During its June 12 meeting, the Working Group reviewed state insurance department responses to its questionnaire regarding the effectiveness of the IHCA in addressing solvency issues within an insurance group and suggestions for proposed enhancements to the IHCA. Several suggestions were received from state insurance regulators. For example, regulators have suggested an expansion of their authority to consider the impact of holding companies on U.S. insurers to include a broader range of conditions such as rating, reputational and liquidity risks. In addition, suggestions included authorizing domestic regulators to examine an insurance holding company and access information from parent and affiliated companies, and amending the IHCA to permit or require Supervisory Colleges among regulators to facilitate information sharing between regulators of large insurers with subsidiaries domiciled in several jurisdictions.

The Working Group also reviewed suggestions for greater consistency among the states with respect to granting Form A exemptions with respect to change of control filing requirements. In addition, members of the Working Group recommended that Form B registration statement filings be submitted to the NAIC to facilitate easier access for U.S. and international regulators. Further, the Working Group received comments regarding the lack of uniformity among states regarding Disclaimer of Affiliation filings. The Working Group noted that the issue of Disclaimer of Affiliation filings has been raised by a number of states, particularly in connection with investment advisors and voting proxies, and will consider revising the Model Act to address these issues.

The Working Group will summarize these recommendations in a report and then hold an interim meeting to discuss which recommendations are conceptually supported by the majority of the Working Group members and interested regulators. The Working Group will then draft a proposal to be distributed to the Financial Condition (E) Committee and the SMI Task Force to support the regulators' desire and need to revise the existing Model Act.

Obama Administration's Plan for Financial Services Regulatory Reform

The NAIC/State Government Liaison Committee follows and updates state regulations on congressional developments affecting insurance. During its June 13, 2009 meeting, the Committee received reports on hearings and proposals regarding systemic risk within the financial services industry and anticipated President Obama's announcement regarding financial services regulatory reform. On June 17, 2009, the President and the Treasury Department released "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation" (the "Reform Plan"), which proposes various recommendations to strengthen supervision and regulation of the financial industry, including the insurance sector.[7] The Reform Plan proposes to create a number of federal agencies and entities dedicated to monitoring, overseeing and supervising various

[7] Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation, Department of the Treasury, *available at* http://www.ustreas.gov/news/index1.html.

types of financial institutions and financial markets and protecting consumers and investors. Such agencies and entities include, among others, a Financial Services Oversight Council, chaired by the Treasury and including the heads of the principal federal financial regulators as members (the "FSO Council"), and the Office of National Insurance (the "ONI"), a federal agency within the Treasury Department, to oversee and monitor the insurance industry.

One of the responsibilities of the FSO Council as a monitor of the financial industry would be to identify financial institutions that are deemed to require supervision by the Federal Reserve Board as "Tier 1 Financial Holding Companies" ("Tier 1 FHCs"). The Reform Plan designates Tier 1 FHCs as "firms whose failure could pose a threat to financial stability due to their combination of size, leverage, and interconnectedness." Such entities, as well as affiliates within their respective holding company systems, will be subject to a heightened level of supervision and regulation by the Federal Reserve Board. With respect to the insurance industry, the ONI would be responsible for recommending to the Federal Reserve any insurance companies that the ONI believes should be supervised as Tier 1 FHCs. The ONI would also be responsible for "gather[ing] information and be[ing] responsible for identifying the emergence of any problems or gaps in regulation that could contribute to a future crisis." The Reform Plan also intends that the ONI act on behalf of the insurance industry in the international context. The ONI would have the authority to work with other nations and represent American interests in the International Association of Insurance Supervisors.

While specific criteria for determining whether a company is a Tier 1 FHC are expected to be included in future legislation, the Reform Plan proposes that the Federal Reserve Board consider such factors as the impact the firm's failure would have on the financial system and the economy, the firm's combination of size, leverage and degree of reliance on short-term funding, and the firm's criticality as a source of credit and liquidity. The Reform Plan notes that while industry-specific regulators would continue to operate in their respective sectors, responsibility for supervision and standard setting for Tier 1 FHCs would ultimately rest with the Federal Reserve Board. The Federal Reserve Board would have the authority to request information and conduct examinations of entities meeting certain minimum size requirements and, upon consultation with state regulators, to impose and enforce stricter regulatory requirements.

The Reform Plan's proposal for the establishment of the ONI does not directly mandate federal regulation of the insurance industry or the creation of an optional federal charter (an "OFC"), an alternative federal regulatory system in which insurance industry participants doing business on a national basis could choose to participate.[8] Instead, under the Reform Plan, the ONI would develop

[8] On April 2, 2009, H.R. 1880, titled the "National Insurance Consumer Protection Act," was introduced in the House of Representatives. This bill contains certain systemic risk proposals and also would authorize the creation of (a) an OFC, a parallel, national system of regulation and supervision for insurance companies, insurance agencies and producers (which, in most cases, could elect either national or state regulation, charters and licenses and could convert from state to national or vice versa), (b) a mandatory federal charter for insurers found to be systemically important and (c) an Office of National Insurance to supervise national insurers, national insurance agencies and national insurance producers.

expertise and consider and support proposals to modernize the insurance regulatory framework. While the Reform Plan proposes a framework for the comprehensive regulation of the financial industry as a whole, it also sets forth the following six principles specifically for insurance regulation: further reduction of systemic risk; strong capital standards and risk management; enhancement of consumer protection; greater consistency in the regulatory treatment of insurance, either by a federal charter or effective state action; addressing gaps in the insurance holding company system that allow affiliated businesses to impair insurance companies; and improving the international competitiveness of the American insurance industry.

In response to the Reform Plan, the NAIC issued a press release commending President Obama and the Treasury "for proposing a plan to help improve stability and supervision of the financial sector, while preserving the role of states as regulators of insurance."[9] Therese M. Vaughan, Ph.D., NAIC Chief Executive Officer, stated in the press release that "[t]he proposal appropriately focuses on the problems that need fixing, by addressing systemic risk and other regulatory gaps. We are pleased that a council of regulators with functional expertise is included in the proposal, but urge inclusion of state insurance regulators to offer expertise and information on the insurance markets."[10] In a subsequent press release, the NAIC reiterated the importance of the state insurance regulators' involvement in the identification, discussion and oversight of systemic risks by federal agencies.[11]

The Reform Plan is conceptually similar to the Insurance Information Act of 2009 (H.R. 2609) (the "Insurance Information Act"), introduced into the House on May 21, 2009 by Rep. Paul Kanjorski (PA).[12] Similarly to the Reform Plan, the Insurance Information Act proposes to establish a federal agency within the Treasury Department called the Office of Insurance Information (the "OII"), to act as the federal representative of the insurance industry. The Insurance Information Act proposes that the OII would perform functions such as gathering and disseminating information regarding all lines of insurance except health insurance, establishing federal policy on international insurance matters, advising and reporting to Congress on insurance issues, and monitoring state insurance measures. Thus, both the Reform Plan and the Insurance Information Act propose to create a

---

9 News Release, NAIC, "NAIC Praises Preservation of State Regulation Under Obama Administration's Plan" (June 17, 2009), *available at* http://naic.org/Releases/2009_docs/state_regulation_obama_plan.htm.

10 *Id.*

11 Investment News, "NAIC Praises Obama's Regulatory Plan But Has Suggestions Of Its Own" (June 19, 2009), *available at* http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20090619/REG/906199971.

12 *Available at* http://www.govtrack.us/congress/bill.xpd?bill=h111-2609. The Insurance Information Act is the reintroduction of a previous bill of the same name, H.R. 5840, which was originally introduced on April 17, 2008, also by Rep. Kanjorski. H.R. 5840 passed the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises on July 9, 2008, but no further action was taken. Like the current bill, H.R. 5840 proposed to create an Office of Insurance Information to collect industry-related information and advise Congress on the insurance sector. However, the Insurance Information Act contemplates an expanded role for the OII as a liaison between the federal and state governments, as well as more comprehensive procedures for preemption of state insurance laws in favor of federal policies.

federal insurance agency with limited oversight, information gathering and advisory functions while preserving the current state-based insurance regulatory scheme, instead of proposing to create an OFC.

Catastrophe Issues

During its meeting on June 14, 2009, the Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee discussed a number of issues in connection with the federal Catastrophe Obligation Guarantee Act (S. 886) (the "Catastrophe Act").[13] The Catastrophe Act, introduced in the Senate on April 23, 2009, proposes to assist states and their citizens to financially recover from natural catastrophes by providing federal guarantees for debt issued by eligible state catastrophe insurance programs. The Catastrophe Act is intended to reinforce state catastrophe insurance programs in recognition that "a small but significant number of catastrophic events are likely to exceed the combined financial capacity of such state programs and the local insurance markets."[14] Coverage would be provided for perils such as earthquakes, hurricanes, typhoons, tornadoes, volcanic eruptions, catastrophic winter storms and other natural catastrophes insured or reinsured under the state program (excluding floods). The maximum principal amount of debt obligations guaranteed under the Catastrophe Act would be set at $5 billion for state programs that cover earthquake risks and $20 billion for programs that cover all other perils. The issues discussed during the Working Group meeting included identification of economically efficient ways to fund losses after the occurrence of a catastrophe, methods to promote private and state funding of catastrophe losses, and appropriate ways to spread catastrophe risk.

The Working Group also discussed the use of "all risk" policies as a means to address insurance funding of catastrophe losses and discussed risk distribution, rating and structure of such policies. During the meeting, a presentation was given by two insurance consumer protection organizations, United Policyholders and Fair Insurance Rates in Monroe ("FIRM"), expressing support for the use of "all risk" policies and the Catastrophe Act. The presenters asserted that "all risk" policies would eliminate challenges to providing coverage for hurricanes, which involve simultaneous wind and water perils. Because each such peril currently may be covered only by separate insurance schemes, policyholders are burdened by delays in the payment of claims by each insurer until hurricane damage has been assessed proportionately to each peril. United Policyholders and FIRM also asserted that the Catastrophe Act, if passed, would provide access to property insurance in areas where catastrophe insurance is becoming unaffordable or unavailable.

Adoption of Revisions to the Model Audit Rule

In 1980, the NAIC adopted the Model Regulation Requiring Annual Audited Financial Reportings. The most recent amendments to the Model Regulation were adopted by the NAIC on June 11, 2006, which changed the Model Regulation's name to the Annual Financial Reporting Model Regulation

---

13 The text of the Catastrophe Act is *available at* http://thomas.loc.gov/home/gpoxmlc111/s886_is.xml.

14 *Id.*

(as amended, the "Revised Model Audit Rule").[15] The Revised Model Audit Rule sets forth requirements relating to (a) auditor independence, (b) corporate governance (including independent audit committee requirements), and (c) internal control over financial reporting. Specifically, the Revised Model Audit Rule requires that an insurance company have an audit committee, comprised of members of its Board of Directors, that is directly responsible for the appointment, compensation and oversight of the work of the company's auditors.[16] Foreign or alien insurers licensed in a particular state or insurers that are SOX Compliant Entities[17] are exempted from this requirement (the "SOX Compliant Entity Exemption").[18] To date, 23 states have adopted the Revised Model Audit Rule. All remaining states plan to complete the adoption process by the end of 2009, with a uniform implementation date of January 1, 2010.

To assist insurers in complying with the Revised Model Audit Rule, the NAIC/AICPA (E) Working Group and the Financial Condition (E) Committee adopted an Implementation Guide as an appendix to the March 2007 Accounting Practices and Procedures Manual. During the interim meeting via conference call on April 28, 2009, the Working Group discussed the SOX Compliant Entity Exemption. While the SOX Compliant Entity Exemption was intended to avoid conflicts in audit committee independence rules between SOX and the Revised Model Audit Rule, several questions with respect to the interpretation of the Exemption have been raised. Such questions include whether SOX Compliant Entities are required to notify the insurance regulator of the election of a parent-level audit committee, and the scope of the responsibility of the SOX compliant parent company's audit committee to provide oversight to its insurance company subsidiaries.

Proposed revisions to the Implementation Guide were drafted to clarify that the intention of the SOX Compliant Entity Exemption was to avoid conflicts between SOX and the Revised Model Audit Rule. At the April interim meeting, the Working Group exposed the proposed revisions for a 30-day comment period. During this comment period, various insurance industry interested parties submitted written comments. Commentators expressed concern, among other things, that the proposed revisions to the Implementation Guide created additional requirements, in conflict with its

---

15 The text of the Revised Model Audit Rule is *available at* http://www.naic.org/documents/committees_e_naic_aicpa_adopted_model_audit_rule_revisions.pdf. At its meeting on June 13, 2009, the Financial Regulation Standards and Accreditation (F) Committee voted to adopt the Revised Model Audit Rule as an accreditation standard, effective as of January 1, 2010. The next step is individual state actions to enact the Revised Model Audit Rule.

16 Revised Model Audit Rule §§ 14A-B.

17 "'SOX Compliant Entity' means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 ("SOX"): (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K)." *Id.* at § 3M.

18 *Id.* at § 14.

purpose of only supplementing the Revised Model Audit Rule, and also created inconsistencies between the Implementation Guide and the Revised Model Audit Rule. At its meeting on June 14, 2009, the Working Group discussed comments on the proposed changes to the Implementation Guide with the interested parties, further revised the proposed revisions in satisfaction of the interested parties, and adopted such revisions.

Also Noted

Several other developments during the NAIC's Summer 2009 National Meeting are noted below.

- Restructuring Mechanisms for Troubled Companies Subgroup of the Financial Condition (E) Committee. The Subgroup is preparing a white paper on schemes of arrangement and Part VII portfolio transfers (a transfer leaving no recourse to the original contractual obligor/insurer) and similar restructuring mechanisms that are employed internationally for financially troubled insurers. The purpose of the study is to assess the impact of such "run-off" transactions on U.S. insurers and to develop best practices for state insurance regulators. During its June 12 meeting, the Subgroup reviewed the white paper outline and sought contributions from regulators and interested parties on various subjects. The white paper will comprise a review of alternative mechanisms for troubled insurers within and outside the U.S., such as the run-off of existing blocks of business, New York Regulation 141 commutations and Rhode Island voluntary restructurings as well as U.K. Solvent Schemes of Arrangement and Part VII Portfolio Transfers. In addition, the white paper will include case studies of various restructurings. The white paper has not been exposed to interested parties and the Subgroup will discuss the timing of such exposure prior to the next NAIC National Meeting.

- Adoption of an Amendment to the Purposes and Procedures Manual of the NAIC Securities Valuation Office (the "SVO"). At its meeting on June 14, 2009, the Valuation of Securities (E) Task Force of the Financial Condition (E) Committee adopted an amendment to the Purposes and Procedures Manual of the SVO (the "P & P Manual") to expand the applicability of an exemption from the filing requirement with the SVO. This amendment was in response to a proposal by American International Group, which identified a conflict between the filing exemption for common stock and the valuation procedures applicable to all securities contained in the P & P Manual. The current rule provides an exemption from filing with the SVO only for common stock listed on the New York Stock Exchange or the American Stock Exchange or traded on the NASDAQ National Market System. The amendment removes the requirement for a designated exchange in the filing exempt rule and allows insurers to report a value of non-restricted common stock derived from any exchange.

- Climate Change and Global Warming. During its meeting on June 12, 2009, the Climate Change and Global Warming (EX) Task Force discussed the proposed Climate Change and Global Warming Summit to take place at the NAIC Fall 2009 National Meeting in Washington, D.C. to discuss issues such as the Pay As You Drive Insurance Program (the "PAYD Program"), green building and facilitating association between climatologists and

risk modelers. The PAYD Program is an optional insurance program that permits policyholders to pay insurance premiums based on the annual mileage driven. The American Insurance Association cautioned against regulatory implementation of a mandatory PAYD Program and expressed the importance of offering flexible programs and not endorsing a particular methodology for measuring mileage. Variations of the PAYD Program are available in several states, including California and Texas, and in other countries, such as Australia and South Africa.

Upcoming NAIC Activities

The NAIC's Fall 2009 National Meeting is scheduled to be held in Washington, D.C. from September 21, 2009 through September 24, 2009. In the meantime, the NAIC's committees, task forces, and working groups continue to work on the above and other issues faced by state insurance commissioners, including through interim meetings and conference calls. The NAIC's calendar of upcoming meetings and events is available at http://www.naic.org/meetings_calendar.htm.

* * * * * * * * * * * * * * *

If you have any questions regarding this memorandum, please contact Leah Campbell (212-728-8217, lcampbell@willkie.com) or the Willkie attorney with whom you regularly work.

This memorandum was authored by Leah Campbell, Robin Choi and Toni Calbert.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

June 25, 2009