

CLIENT ALERT

# NAIC Report: 2024 Summer National Meeting

August 27, 2024

## AUTHORS

**Kara Baysinger | Leah Campbell | Stephanie Duchene | Matthew J. Gaul  
Michael Groll | David Heales | Donald B. Henderson Jr. | David G. Nadig  
Allison J. Tam**

---

The 2024 Summer National Meeting (the “[Summer National Meeting](#)”) of the National Association of Insurance Commissioners (the “[NAIC](#)”) was held from August 12 to August 15, 2024, in Chicago, Illinois with attendees participating virtually or in person.

Highlights from the Summer National Meeting and recent interim meetings include:

- The Financial Analysis Solvency Tools (E) Working Group has proposed revisions to the NAIC Financial Analysis Handbook (the “[Financial Analysis Handbook](#)”) to increase attention to Form A and disclaimer of control/affiliation filings, including to focus on factors that indicate control of an insurer beyond ownership of voting securities. The Working Group also adopted Financial Analysis Handbook guidance for regulators’ review of the terms and fairness of affiliated IMAs. These actions are part of the NAIC’s initiative related to considerations associated with (but not exclusive to) private equity ownership of insurers.
- The NAIC adopted Valuation of Securities (E) Task Force’s amendment to the definition of “NAIC Designation” in the P&P Manual that focuses on the “investment risk” of a security instead of the narrower “credit risk” in the prior definition. However, it deferred consideration of VOSTF’s amendment to allow the SVO to challenge NAIC Designations assigned based on CRP ratings in the filing exemption process, which will be taken up at a Financial Condition (E) Committee meeting on August 29, 2024.

---

## NAIC Report: 2024 Summer National Meeting

- The Financial Condition (E) Committee exposed further revisions to the proposed *Framework for Regulation of Insurer Investments – A Holistic Review* and accompanying work plan, as well as a request for proposal for an outside consultant to develop a due diligence framework for the ongoing use of CRP in regulating insurer solvency.
- The Statutory Accounting Principles (E) Working Group adopted the Bond Project issue paper, and exposed a Question-and-Answer Implementation Guide (Q&A) related to the Bond Project as well as revisions to *SSAP No. 26 – Bonds* to clarify guidance under the new bond definition for debt securities issued by funds. The previously revised SSAPs that implement the new principles-based bond definition will be effective January 1, 2025.
- The Life Actuarial (A) Task Force exposed for comment a “straw man draft” actuarial guideline requiring periodic asset adequacy analysis for ceded life reinsurance involving long duration business that relies substantially on asset returns. The draft actuarial guideline is intended to establish additional safeguards within the domestic cedent to ensure that the assets supporting reserves continue to be adequate based on moderately adverse conditions.
- The Privacy Protections (H) Working Group exposed for public comment amendments to the NAIC *Privacy of Consumer Financial and Health Information Regulation Model Law (#672)* that expand the definition of nonpublic personal information; add consumer rights to request access, correction and deletion of nonpublic personal information; add requirements for contracts with third-party service providers; and require an affirmative opt-in consent for the sale of nonpublic personal information.

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.

**TABLE OF CONTENTS**

I. Financial Condition Regulation ..... 8

    A. Work Continues on the Framework for Insurer Investment Regulation ..... 8

        1. Investment Framework ..... 8

        2. Credit Rating Provider Due Diligence ..... 9

    B. Proposed Handbook Guidance for Review of Form A and Disclaimer of Affiliation Applications ..... 9

    C. Key Initiatives of the Statutory Accounting Principles (E) Working Group ..... 10

        1. Updates Related to the NAIC Bond Project ..... 10

        2. Interest Maintenance Reserve Updates ..... 11

        3. Repack and Derivative Investments Proposal ..... 11

    D. Valuation of Securities (E) Task Force Updates ..... 12

        1. Finalizing the Definition of an NAIC Designation ..... 12

        2. Update on Rating Agency Matters ..... 13

        3. CLO Modeling Update ..... 14

    E. RBC Matters ..... 14

        1. Residual Tranches ..... 14

        2. Proposal to Revise RBC Preamble Deferred Until 2025 ..... 15

        3. Capital Adequacy (E) Task Force Seeks to Establish New Working Group to Review RBC Risk Factors ..... 15

        4. Adoption of RBC Blanks Proposal on Climate Scenario Analysis Reporting ..... 15

    F. Proposal to Enhance Regulator Guidance for Overseeing Insurers in Run-Off ..... 16

<b>II.</b>	Macroprudential Risk and Insurance Industry.....	16
A.	Status of Private Equity Considerations Work Plan.....	16
B.	Other Macroprudential Updates.....	21
1.	Liquidity Stress Test.....	21
2.	Clarification on Application of GCC to Risk Retention Groups.....	21
<b>III.</b>	Innovation, Cybersecurity and Technology and Privacy Developments.....	22
A.	Update on the Model Bulletin on Artificial Intelligence.....	22
B.	NAIC Efforts to Study Frameworks for Regulating Third-Party Data Models.....	22
C.	Updated Draft of the Privacy of Consumer Financial and Health Information Model Law.....	22
D.	AI/ML Survey Updates.....	23
<b>IV.</b>	Reinsurance Matters.....	23
A.	Exposure of a “Straw Man Draft” Actuarial Guideline on Asset Adequacy Analysis for Certain Life and Annuity Reinsurance Transactions.....	23
B.	Update on Certified and Reciprocal Jurisdiction Reinsurers and Passporting.....	25
<b>V.</b>	Other Topics of General Interest.....	25
A.	Topics of Interest to the Life Insurance Industry.....	25
1.	Federal Update on Life Insurance Matters.....	25
2.	Accelerated Underwriting.....	26
B.	Topics of Interest to the Property & Casualty Industry.....	26
1.	International Insurers Department Plan of Operation Amended.....	26
2.	Exposed Service of Process Form for Surplus Lines Insurers.....	26

- 3. National Association of Public Insurance Adjusters Presentation on Anti-Public Adjuster Endorsements ..... 27
- 4. Climate-Related Initiatives ..... 27
- 5. 2023 Revisions to the Property and Casualty Insurance Guaranty Association Model Act Are Not Required for NAIC Accreditation..... 27
- C. International Update..... 27
- VI. Briefly Noted..... 28**
  - A. New Reporting Schedules for Reinsurance Collateral..... 28
  - B. SAPWG Exposes Guidance on Book Value Separate Accounts ..... 28

**GLOSSARY**

“AG 53” means Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves.

“AI/ML” means artificial intelligence and machine learning.

“Bond Project” means the NAIC’s principles-based bond project, which aims to clarify what should be considered and reported as a bond on Schedule D-1 (Long-Term Bonds) of an insurance company’s statutory financial statements and to improve accounting and reporting.

“Certified Reinsurer” means a reinsurer that is domiciled in a “Qualified Jurisdiction” (meaning a non-U.S. jurisdiction listed on the NAIC list of “Qualified Jurisdictions” established pursuant to the NAIC Process for Evaluating Qualified and Reciprocal Jurisdictions) that is eligible to qualify for reduced reinsurance collateral pursuant to the 2019 amendments to the Credit for Reinsurance Models.

“Considerations” means the Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers.

“Covered Agreements” 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 and 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.

“Credit for Reinsurance Models” means the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

“CRP” means credit rating provider.

“ERISA” means the Employee Retirement Income Security Act of 1974.

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

“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.

“IMA” means investment management agreement.

“IMR” means interest maintenance reserve.

“LST” refers to the Liquidity Stress Test, an annual filing by a life insurance company that satisfies the test’s scope criteria pursuant to the relevant state’s insurance holding company laws. The LST filing provides an insurance regulator with quantitative and qualitative insights for macroprudential surveillance.

“P&P Manual” means the Purposes and Procedures Manual of the NAIC Investment Analysis Office.

“RBC” means risk-based capital.

“Reciprocal Jurisdiction Reinsurer” means a reinsurer that is domiciled in a “Reciprocal Jurisdiction” (meaning a non-U.S. jurisdiction listed on the NAIC list of “Reciprocal Jurisdictions” established pursuant to the NAIC Process for Evaluating Qualified and Reciprocal Jurisdictions) that is eligible to qualify for zero reinsurance collateral pursuant to the 2019 amendments to the Credit for Reinsurance Models.

“SEC” means the U.S. Securities and Exchange Commission.

“SSAP” means Statement of Statutory Accounting Principles.

“SVO” means the NAIC’s Securities Valuation Office.

### I. Financial Condition Regulation

#### A. Work Continues on the Framework for Insurer Investment Regulation

##### 1. *Investment Framework*

As we previously reported [here](#), the NAIC's proposed *Framework for Regulation of Insurer Investments—A Holistic Review* (the "Investment Framework"), first exposed at the 2023 Summer National Meeting, is intended to highlight areas where the insurance regulatory framework and the SVO can be enhanced to strengthen oversight of insurers' investments in complex assets. The Investment Framework proposes to improve investment oversight by:

- Reducing/eliminating "blind" reliance on CRPs by implementing a due diligence framework that oversees CRPs' effectiveness, with such system to be designed and implemented by an external consultant/resource;
- Bolstering the SVO's portfolio risk analysis capabilities by investing in a risk analytics tool and adding personnel with investment, actuarial and risk management backgrounds; and
- Potentially establishing an investment working group under the Financial Condition (E) Committee (the "(E) Committee") to advise on several investment processes, such as reviewing bond reporting analysis under the principles-based bond definition and challenging individual designations provided by CRPs.

At the Summer National Meeting, the (E) Committee exposed for public comment: (i) a revised memorandum addressing comments received in response to a February 2024 exposure of the Investment Framework, (ii) revisions to its proposed work plan to guide implementation of the Investment Framework and (iii) a revised draft of the Investment Framework itself (all of which are exposed in a single document, available [here](#)).

The updated draft of the Investment Framework includes the following changes:

- New language emphasizing that NAIC Designations are a tool solely for the benefit of state insurance regulators in assessing insurers' solvency.
- Removal of a discussion of challenges presented by the NAIC's financial workstreams (e.g., their highly technical nature and limited NAIC resources).
- A new statement of the Investment Framework's "core principles."
- Revisions to discussion of RBC treatment for investments to specify that the principle of "Equal Capital for Equal Risk" includes consideration of tail risk.



- New guidance that the Risk-Based Capital Investment Risk and Evaluation (E) Working Group (the “RBCIRE WG”) should coordinate with the Statutory Accounting Principles (E) Working Group (“SAPWG”) to address areas where inconsistencies in treatment across asset classes may incentivize a particular legal form (e.g., securitizing private credit funds with underlying fixed-income assets to receive a more favorable capital charge).

**These items are currently exposed for a comment period ending on October 14, 2024**, and we expect further discussion of these items at the 2024 Fall National Meeting. The exposure materials also include a “matrix of work” to coordinate efforts related to the Investment Framework.

### 2. *Credit Rating Provider Due Diligence*

The Investment Framework calls for the NAIC to use an external consultant to design and implement a due diligence framework for the ongoing use of CRPs. The Executive (EX) Committee previously approved the (E) Committee’s development of a request for proposal (“RFP”) for such consultant in March 2024. At the Summer National Meeting, the (E) Committee exposed for comment an initial draft of the RFP. The RFP (available [here](#)) provides background information on the use of CRP credit ratings in NAIC processes (such as in assigning NAIC Designations), the filing exemption process and goals of the due diligence framework project. The requested work product is a “quantitative and qualitative due diligence framework design and implementation plan that will permit the SVO to primarily focus on the on-going administration of its holistic due diligence process around CRP usage.” **Comments on the RFP are due by October 14, 2024.**

#### B. Proposed Handbook Guidance for Review of Form A and Disclaimer of Affiliation Applications

The Financial Analysis Solvency Tools (E) Working Group (the “FAST WG”) held an interim meeting on July 16, 2024, to discuss a proposal to revise the Financial Analysis Handbook in response to certain of the private equity-related Considerations. As background, the Group Solvency Issues (E) Working Group (the “GSIWG”) was tasked with addressing certain Considerations related to concerns that regulators may not be obtaining a clear picture of holding company control structures, thereby presenting risk to insurers. The GSIWG prepared proposed Financial Analysis Handbook guidance for regulators reviewing Form A applications and disclaimers of affiliation, which the FAST WG has exposed for a comment period ending on August 30, 2024.

For Form A applications, the proposed updates to the Financial Analysis Handbook contain guidance that reviewing analysts should consider looking beyond ownership of voting shares when identifying an insurer’s ultimate controlling person, stating that “[w]hether a simple corporate structure, or a unique or complex structure such as trusts, limited partnerships (LP) and limited liability corporations (LLC),” analysts should “review the ownership documents and agreements to understand the terms of the structure, each parties’ rights and responsibilities conveyed by the agreement,

who has responsibility for decisions and who controls the insurer.” The proposal also adds guidance relating to non-U.S. acquiring parties and a new section on post-closing monitoring measures for analysts to consider.

A new section on procedures for disclaimers of affiliation directs analysts to consider situations where a disclaiming party may in fact exert influence or control over the insurer, including through any nonvoting arrangement or contract conveying an element of control (e.g., investment management, reinsurance, administrative service and employment agreements with non-customary terms that implicate control), or passive investment companies “where the actions and activities do not support the investment company’s assertion that it does not exert control.” The guidance states that the burden of proof is on the applicant to demonstrate that the applicant does not have control or affiliation. It also provides detailed “best practices” for reviewing and approving a disclaimer, such as considering conditions or stipulations to ensure that the facts and circumstances on which the disclaimer is based do not change without further regulatory review.

We expect the FAST WG to discuss comments received on the Financial Analysis Handbook proposal at its next meeting on September 26, 2024.

### C. Key Initiatives of the Statutory Accounting Principles (E) Working Group

#### 1. *Updates Related to the NAIC Bond Project*

SAPWG continues to advance initiatives related to the Bond Project as it approaches the January 1, 2025 effective date of the revised SSAPs that implement the new principles-based bond definition. For additional detail on the new bond definition and its application, please refer to our recent reporting available [here](#).

##### a. Issue Paper Adopted and Q&A Implementation Guide Exposed for Public Comment

At the Summer National Meeting, SAPWG adopted an issue paper, most recently exposed in May 2024, to serve as a historical reference regarding the issues discussed and key decisions made over the course of the Bond Project. The issue paper is available [here](#). While not authoritative like the SSAPs, the issue paper provides guidance for evaluating the substance of investments under the new bond definition. **In an effort to provide further guidance for applying the new bond definition, SAPWG also exposed a Question-and-Answer Implementation Guide (Q&A) for public comment until September 27, 2024, available [here](#).**

##### b. Exposed Revisions to Clarify Guidance for Debt Securities Issued by Funds

In addition, SAPWG exposed revisions to *SSAP No. 26—Bonds*, along with corresponding edits to the newly adopted issue paper discussed above, to clarify guidance in the new bond definition for debt securities issued by funds (Ref #2024-01). The bond definition, which becomes effective on January 1, 2025, identifies bonds issued by SEC-registered business development corporations, closed-end funds, or similar operating entities as examples of issuer credit obligations

(“ICOs”). The revisions seek to move toward a principles-based definition that does not turn on SEC registration status. Specifically, to allow for consistent treatment of similar funds regardless of SEC registration status, the proposed revisions clarify that debt securities issued by funds representing “operating entities” (as opposed to a securitization vehicle representing an asset-backed security (“ABS”) issuer) qualify as ICOs, thereby making them eligible for bond treatment.

The proposed revisions provide guidance for analyzing an entity’s substance and primary purpose in order to determine whether a fund represents an operating entity, noting that a fund representing an operating entity has a primary purpose of raising equity capital and generating returns to its equity investors. While SEC-registered funds will automatically be considered “operating entities” for this purpose, other funds will be subject to this principles-based approach.

**The exposure is available [here](#) for a shortened public comment period ending September 6, 2024.**

c. Bond Project Training Course

Finally, Julie Gann (NAIC) promoted the NAIC’s principles-based bond project training, available as a self-study course on how to apply the bond definition guidance and determine whether a debt security qualifies as an ICO or ABS. The course is free through year-end 2024, although there will be a fee for non-regulators beginning in 2025. More information on the course is available [here](#).

2. *Interest Maintenance Reserve Updates*

NAIC staff provided an update on the work of the IMR Ad Hoc Group, which was formed by SAPWG in 2023 to consider potential modifications to statutory accounting treatment of IMR, including net negative (disallowed) IMR. The group’s work to date has resulted in new SAPWG agenda items regarding derivatives and separate account transfers, with further proposals expected to follow as it considers topics including IMR from reinsurance transactions, IMR allocation from SSAP No. 26—*Bond* investments, reinvestment requirements, guidance on excess withdrawals and admittance of net negative IMR. NAIC staff also summarized discussions by the Life Actuarial (A) Task Force (“LATE”) on preliminary assessments of how admitted negative IMR has been treated in cash flow testing. This review identified various company errors in reporting (e.g., incorrectly inputting a net negative IMR balance as positive). NAIC staff have developed IMR templates to help regulators review whether this information was input correctly, and suggested that these could be shared with companies to aid in reconciliation of IMR.

3. *Repack and Derivative Investments Proposal*

SAPWG exposed for public comment proposed revisions to SSAP No. 86—*Derivatives* (“[SSAP No. 86](#)”), along with minor revisions to SSAP No. 26—*Bonds* (“[SSAP No. 26](#)”), as part of a new agenda item (Ref # 2024-16) developed to address debt security investments with derivative components that do not qualify as structured notes, commonly referred to as “repacking” or “repack” structures.

As background, a “repacking” or “repack” structure results when a special purpose vehicle acquires a debt security and reprofiles the cash flows by entering a derivative transaction with a derivative counterparty. The redesigned debt instrument (known as a “credit repack,” reflecting the combined debt security and derivative in one instrument that resembles a debt security) is then sold to an investor.

In response to questions regarding their treatment under the principles-based bond definition, which will take effect January 1, 2025, NAIC staff analyzed repack structures under existing statutory accounting guidance. For example, under existing guidance, a repack could reflect an ICO if it simply converted cash flows (fixed to floating or foreign currency), but did not impact the timing or extent of cash flows, assuming that the investment did not reflect a structured note. However, if the structure alters the timing or amount of cash flows, it would need to be analyzed as an ABS, and because there is no substantive credit enhancement (and, rather, cash flows are simply passed through), it would fail to qualify as a bond.

Current SSAP No. 86 guidance precludes separating embedded derivatives from the host contract. For debt securities that have derivative components or wrappers that are not structured notes, the proposed amendments to SSAP No. 86 and SSAP No. 26 would require separate reporting of the debt security and embedded derivative instrument, and would apply to all debt securities with derivative components or wrappers. **This draft has been exposed for a comment period ending September 27, 2024, to allow for consideration at the 2024 NAIC Fall National Meeting.**

### D. Valuation of Securities (E) Task Force Updates

#### 1. *Finalizing the Definition of an NAIC Designation*

Executive and Plenary adopted an amendment to the definition of “NAIC Designation” in the P&P Manual. NAIC Designations are used as an indication of risk in several NAIC processes, including credit quality assessment of investments by the SVO, assignment of RBC factors, statutory accounting valuation, and determining eligibility of reinsurance collateral, as well as state investment regulations that incorporate NAIC guidance. The purpose of the amendment is to clearly articulate what an NAIC Designation is in a single definition that applies to all of these processes. The concept was previously defined in different parts of the P&P Manual.

The Valuation of Securities (E) Task Force (“VOSTF”) had been developing the amendment since 2022, with several rounds of feedback from interested parties focused on ensuring that the definition did not overstate or increase the SVO’s authority with respect to NAIC Designations. In response to the most recent feedback provided after the 2024 Spring National Meeting, VOSTF updated the proposed amendment, highlighting that the term “investment risk” has replaced “credit risk” in the definition. As described in the SVO’s cover memo to the amendment, “focusing on credit risk alone would limit the SVO’s ability to appropriately assess certain risks, including, but not limited to, the performance component of a [principal protected security] or certain funds for regulatory purposes.”

The final, adopted version of the definition is as follows:

NAIC Designations represent opinions of gradations of the likelihood of an insurer's timely receipt of an investment's full principal and expected interest ("investment risk"). Where appropriate for a given investment, NAIC Designations and Designation Categories shall reflect "tail risk" and/or loss given default, the position of the specific liability in the issuer's capital structure, and all other risks, except for volatility/interest rate, prepayment, extension or liquidity risk. NAIC Designations shall be identified by the NAIC 1 through NAIC 6 symbols (as modified by NAIC Designation Categories) which indicate the highest quality (least risk) to the lowest quality (greatest risk), respectively.

VOSTF has emphasized that the definition is intended to be representative of VOSTF's existing policies and procedures, and that the amendment to the P&P Manual does not create any new policies or procedures.

### *2. Update on Rating Agency Matters*

VOSTF also adopted an amendment to the P&P Manual creating procedures for the SVO to exercise discretion over NAIC Designations assigned through the filing exemption process, as described below. However, the (E) Committee deferred consideration of the amendment at the Summer National Meeting, and is scheduled to take up this issue at a meeting on August 29, 2024.

VOSTF seeks to amend the P&P Manual to limit reliance on CRP ratings and enhance the SVO's role in the filing exemption process. Throughout the process, VOSTF has made changes to address interested party concerns about transparency in SVO processes and the creation of market uncertainty with respect to CRP ratings.

The proposal that VOSTF adopted at the Summer National Meeting (currently available [here](#)) would exclude a CRP rating from the automated filing exemption process upon a finding that the CRP rating "does not provide a reasonable assessment of investment risk for regulatory purposes." The amendment sets forth a detailed process to support such an exclusion, which includes (i) a materiality threshold required to flag a CRP rating (i.e., the NAIC Investment Analysis Office ("IAO") may propose the removal of a CRP rating from the filing exemption process only if the rating results in a NAIC Designation that is three or more notches different than the IAO's assessment); and (ii) a deliberative process before any rating is removed, including rights for the insurance company holder of the relevant security to be notified and provide information to support its analysis of the investment, and to invite the CRP to participate in discussions. A subgroup of VOSTF would ultimately have to agree with the determination of the IAO for the CRP rating to be removed from the automated filing exemption process.

In response to comments from interested parties, the amendment was updated prior to the Summer National Meeting to clarify that the process "will be consistently applied to all CRPs without favor to any individual CRP or class of

CRPs, and is not expected to be used often.” In addition, language was added to emphasize the confidential, anonymous nature of the process, stating that specific securities and CRPs will not be disclosed in published materials. Interested parties had requested that the amendment include a timetable for the rating challenge process. Carrie Mears (IA) responded that it is not possible to predict how long necessary information-gathering may take, but that the process will proceed “expeditiously” once all information is received.

In Chicago, interested parties generally expressed support for the revised amendment, noting that it strikes a balance between oversight capability for the SVO and transparency and fairness to insurers and other stakeholders. Ms. Mears stated that CRP ratings are “still very important” to the NAIC and “will continue to be used,” and that the new process should not be construed as “overruling” CRP ratings, but rather as deciding whether to use them for regulatory purposes.

VOSTF has noted that the amendment is intended to complement the (E) Committee’s Investment Framework, discussed above. If (E) Committee adopts the amendment at its August 29, 2024 meeting, the changes to the P&P Manual would next be considered by Executive and Plenary at the 2024 Fall National Meeting. Thereafter, the SVO would seek to implement the new process sometime after 2025 in order to allow time for necessary operational updates at the SVO.

### 3. *CLO Modeling Update*

Because the work of the CLO Ad Hoc Group to develop a modeling methodology for collateralized loan obligations (“CLOs”) has been slower than anticipated, VOSTF adopted a proposal at an interim meeting on June 18, 2024, to postpone the effective date for CLO modeling from year-end 2024 to year-end 2025. The CLO Ad Hoc Group now plans to present an update to VOSTF in September.

#### E. RBC Matters

##### 1. *Residual Tranches*

The interim RBC factor for structured security residual tranches of 30% for year-end 2023 RBC filings will rise to 45% for year-end 2024 RBC filings, as initially agreed upon at the 2023 Summer National Meeting, following discussions by the RBCIRE WG prior to the Summer National Meeting. At interim meetings on May 22, 2024 and June 21, 2024, the RBCIRE WG discussed a request from interested parties to delay implementation of the intended 45% interim charge by an additional year, as well as a proposal to limit the 45% interim charge to exclude residuals from certain asset classes. However, after certain regulators and NAIC staff raised concerns, the RBCIRE WG ultimately rejected this proposal, meaning that the 45% interim factor will take effect for year-end 2024 reporting as planned.

### 2. *Proposal to Revise RBC Preamble Deferred Until 2025*

In April 2024, the Capital Adequacy (E) Task Force (“CATF”) exposed proposed revisions to the Risk-Based Capital Preamble (the “[RBC Preamble](#)”), which are intended to clarify and emphasize the purposes and intent of using RBC (available in Proposal 2024-16-CA). Among other things, the revisions would further limit public disclosures of RBC levels, stressing that RBC levels are not an appropriate means of comparing or ranking insurers and should be limited to identifying potentially weakly capitalized companies to facilitate regulatory oversight and corrective action.

Interested parties requested that CATF defer action on the proposal, noting that eliminating RBC transparency could introduce uncertainty among investors and lead to the development and reliance of less-effective risk solvency tools, and requested that industry and regulators have more time to consider the proposal. At its June 28, 2024 interim meeting, CATF agreed to defer the proposal to allow for further discussion at later meetings. At the Summer National Meeting, CATF placed this item on its 2025 working agenda with an expected completion date of 2025 or later.

### 3. *Capital Adequacy (E) Task Force Seeks to Establish New Working Group to Review RBC Risk Factors*

CATF exposed for public comment a draft memorandum to the (E) Committee requesting appointment of a new working group, the Risk-Based Capital Risk Research (E) Working Group, to review non-investment-related factors that affect the RBC formula. The memorandum explains that the requested working group would be charged with performing a comprehensive review of the RBC framework for all business types, noting that many of the risk factors have not been updated since the creation of the RBC formulas in the 1990s. Tom Botsko (OH) suggested that the new working group could review the possibility of removing total adjusted capital and authorized control level amounts in the annual statement’s five-year historical data page based on the proposed modifications to the RBC Preamble mentioned above. **The draft memorandum (available [here](#)) is exposed for public comment until September 13, 2024.**

### 4. *Adoption of RBC Blanks Proposal on Climate Scenario Analysis Reporting*

At an interim meeting on August 2, 2024, the Financial Condition (E) Committee adopted an RBC blanks proposal, available [here](#), related to climate scenario analysis reporting. The adopted proposal was developed by joint trade associations following industry feedback critical of the initial exposure that would have required property and casualty insurers to utilize existing CAT modeler products (known as “Climate Conditioned Catalogs”) to conduct climate scenario analysis to determine the impact of climate change on hurricane and wildfire risk, on which we reported [here](#).

The new, adopted proposal allows insurers to choose between taking the approach described above or taking a frequency-adjusted approach to conduct the climate scenario analysis. The disclosures are intended for informational purposes only and not to determine any new charge, and will be effective for year-end 2024, 2025 and 2026 reporting.



### F. Proposal to Enhance Regulator Guidance for Overseeing Insurers in Run-Off

At an interim meeting on July 17, 2024, the Risk-Focused Surveillance (E) Working Group (the “RFSWG”) exposed new guidance for the Financial Analysis Handbook and the Financial Condition Examiners Handbook on solvency monitoring procedures for insurers in run-off (i.e., insurers that cease writing new policies on a portion of business or all business written). As background, the Financial Analysis (E) Working Group referred this topic to the RFSWG in May, noting an opportunity to enhance existing handbook guidance by considering best practices for monitoring companies in run-off. The proposed draft includes the following changes to the Financial Analysis Handbook and the Financial Condition Examiners Handbook:

- Run-Off Plan: An insurer should prepare a “run-off plan” addressing how it will manage its resources, the size of its operations and employee retention plans. The plan should identify key performance indicators, such as cash flow projections.
- Corporate Governance and Operations: It may be difficult for a run-off insurer to maintain effective oversight due to its limited resources and employee retention issues. Regulators should monitor employee turnover and request additional reporting on changes to senior officers.
- Managing Certain Types of Risks:
  - Capital and Liquidity Risk. Regulators should review and monitor certain information, such as the run-off insurer’s investment income in relation to operating expenses (using pro forma projections and reconciling differences) and information used by the company to determine its future cash flow needs.
  - Reinsurance Risk. Regulators should closely monitor a run-off insurer’s reinsurance transactions because the credit risk associated with reinsurance can be material to the company’s solvency.

**The RFSWG voted to expose the proposed guidance, available [here](#) for a 45-day comment period ending on August 30, 2024.**

## II. Macroprudential Risk and Insurance Industry

### A. Status of Private Equity Considerations Work Plan

The Macroprudential (E) Working Group (“MWG”) is charged with coordinating the NAIC’s work related to the private equity-related Considerations. At the Summer National Meeting, MWG Chair Robert Kasinow (NY) updated the Financial Stability (E) Task Force on the current status of the 13 Considerations. As described below, Mr. Kasinow stated that the



MWG considers certain items to be completed and that “significant progress” has been made on others, while Considerations that are “more complex in nature” remain in progress.

- **Consideration One** (*Structuring Contracts in a Holding Company System*): Regulators may not be obtaining a clear picture of risk due to holding companies structuring contractual agreements in a manner to avoid regulatory disclosures and requirements. Related party agreements may also be structured to avoid disclosure (for example, by not including the insurer as a party to the agreement).
- **Consideration Two** (*Control*): Control is presumed to exist where ownership is greater than or equal to 10% of an insurer’s voting securities, but control and conflict of interest considerations may exist with less than 10% ownership. For example, a party may exercise a controlling influence over an insurer through board and management representation or contractual arrangements, including non-customary minority shareholder rights or covenants, IMA provisions, such as onerous or costly IMA termination provisions, or excessive control or discretion given over the insurer’s investment strategy and its implementation.
  - **Status of Considerations One and Two**: As previously reported, in November 2023, the GSIWG adopted regulator-only “Sound Practices” guidance for reviewing complex ownership structures of insurers. Since then, on July 16, 2024, the FAST WG exposed for comment proposed additions to the Financial Analysis Handbook relating to the review of Form A and disclaimer of control/affiliation filings, as described in Section I.B above.
- **Consideration Three** (*IMAs*): The material terms of an IMA and whether they are arm’s-length or include conflicts of interest—such as in the amount and types of investment management fees paid by the insurer, the termination provisions (how difficult or costly it would be for the insurer to terminate the IMA) and the investment manager’s degree of discretion or control over investment guidelines, allocation and decisions.
  - **Status of Consideration Three**: This Consideration was referred to the RFSWG, which developed guidance for regulators to evaluate the fairness and reasonableness of affiliated IMAs, as we reported in Spring 2024. Specifically, the proposed guidance instructed financial analysts reviewing an affiliated IMA to consider if certain items are addressed in the agreement, including:
    - *Selection of Investments*. Whether the agreement contains “clear investment guidelines” for the investment advisor that comply with the insurer’s investment strategy and applicable laws;
    - *Authority for Transactions*. The investment advisor’s level of authority in regard to executing transactions on behalf of the insurer;

- *Conflicts of Interest.* “To the extent that any conflicts of interest may be known to the insurer,” the specific way in which such conflicts of interest are addressed;
- *Calculation of Fees.* Whether fees are well defined in the agreement and include any incentive fees in addition to a base management fee;
- *Fiduciary Responsibility.* Whether the investment advisor’s fiduciary duties are acknowledged;
- *Reporting Obligations.* Whether the investment advisor is required to report to the insurer on portfolio performance;
- *Review of Performance.* Whether the insurer will receive information that will allow it to adequately review the advisor’s performance and its compliance with the insurer’s investment guidelines;
- *Use of Sub-Advisors.* The investment advisor’s ability to contract with sub-advisors, whether the insurer’s consent is required and which party is responsible for the sub-advisor’s fees; and
- *Termination Rights.* Whether there are termination provisions with and without cause.

On July 16, 2024, the FAST WG adopted the proposed guidance, in the form of an update to the Financial Analysis Handbook. Based on the documented procedures for updates to the handbook, we expect the new guidance to be effective January 1, 2025.

Also related to this Consideration, in August 2023, RFSWG finalized NAIC handbook guidance related to reviewing affiliate service agreements generally, as previously reported [here](#), setting forth approaches to provide evidence in a Form D filing that pricing of a proposed affiliate service agreement is “fair and reasonable,” language to be included in a Form D approval that the insurer’s representations in a Form D filing are subject to verification on examination, verification procedures upon examination, and certain criteria for an examiner to use in considering whether an affiliate service agreement, or certain aspects of the agreement, should be reviewed.

- **Consideration Four (Asset-Liability Matching):** Owners of insurers, regardless of type and structure, may be focused on short-term results that may not be in alignment with the long-term nature of liabilities in life insurance products.
  - **Status of Consideration Four:** This Consideration is addressed by the newly adopted IMA guidance discussed above, as well as by AG 53, which became effective for year-end 2022. AG 53 requires life insurers that are in scope to submit information related to complex assets that support their business to

help regulators evaluate a company's reserve adequacy and claims-paying ability in moderately adverse conditions. The Valuation Analysis (E) Working Group has received the second annual AG 53 filings, for year-end 2023, and noted common areas of focus compared to last year's filings (i.e., net yield assumptions and reinsurance collectability) as well as new areas for review, including projected allocations of asset types and tranche-level data for structured assets. Fred Anderson (MN) stated that AG 53 has had a "very positive outcome" in increasing understanding of risks and coordination between actuarial and investment functions, both within companies and in regulatory settings.

- In addition, on July 16, 2024, the FAST WG agreed to form a drafting group, including volunteers from Connecticut, Michigan and Texas, to address (i) surplus notes and appropriate interest rates given their special regulatory treatment, including whether floating rates are appropriate; and (ii) capital maintenance agreements (i.e., suggesting guidance for the appropriate entities to provide them, and considering ways to make them stronger).
- Consideration Five (Operational Oversight): Operational, governance and market conduct practices may be affected by the different priorities and level of insurance experience possessed by entrants into the insurance market without prior insurance experience, including, but not limited to, private equity owners.
  - **Status of Consideration Five**: As of the Summer National Meeting, no new action has occurred because the MWG was focused on Consideration Thirteen (discussed below).
- Consideration Six (Private Equity Definition): There is no uniform or widely accepted definition of private equity; there are challenges in maintaining a complete list of insurers' material relationships with private equity firms.
  - **Status of Consideration Six**: This Consideration is closed, and no action will be taken since regulators agree the focus should be on activities and not specific types of owners.
- Consideration Seven (Related Party Investments): The lack of identification of related party-originated investments (including structured securities) may create conflicts of interests and excessive and/or hidden fees in the portfolio structure. Assets created and managed by affiliates may include fees at different levels of the value chain—for example, a CLO, which is managed or structured by a related party.
  - **Status of Consideration Seven**: This Consideration is also closed because it is addressed by the financial statement related party transaction reporting requirements adopted in 2022 and 2023, as reported [here](#) and [here](#).
- Consideration Eight (Affiliate Investments within Structured Securities): Although the NAIC's Annual and Quarterly Statement blanks include affiliate investment disclosures, it is not easy to identify underlying affiliate investments

and/or collateral within structured security investments. Also, transactions may be excluded from affiliate reporting due to nuanced technicalities. Regulatory disclosures may be required to identify underlying related party and subsidiary, controlled and affiliated investments and/or collateral within structured security investments (e.g., loans in a CLO issued by a corporation owned by a related party).

- **Status of Consideration Eight:** The approach to this Consideration overlaps with Consideration Seven (related party reporting requirements, which is considered complete) and Consideration Ten (privately structured securities).
- **Consideration Nine (*Disclaimers of Affiliation*):** Broader considerations exist around asset manager affiliates (not just private equity owners) and disclaimers of affiliation avoiding current affiliate investment disclosures.
  - **Status of Consideration Nine:** This Consideration is closed, and is addressed by previously adopted changes to statutory reporting requirements, including as a result of the Bond Project.
- **Consideration Ten (*Increased Risk from Certain Investments*):** The material increases in privately structured securities (both by affiliated and nonaffiliated asset managers), which introduce other sources of risk or increase traditional credit risk, such as complexity risk and illiquidity risk and involve a lack of transparency.
  - **Status of Consideration Ten:** This Consideration is addressed by (i) AG 53, described under Consideration Four above; (ii) the Bond Project reporting changes that will become effective January 1, 2025; (iii) ongoing efforts to determine appropriate RBC charges for CLOs held by insurers; and (iv) VOSTF's work to amend the P&P Manual as discussed in Section I.D.2, "Rating Agency Matters," as well as more broadly by the Investment Framework described in Section I.A.
- **Consideration Eleven (*Reliance on Ratings*):** The level of reliance on rating agency ratings and their appropriateness for regulatory purposes (e.g., accuracy, consistency, comparability, applicability, interchangeability and transparency).
  - **Status of Consideration Eleven:** VOSTF is actively engaged on this topic. For more information, see Section I.D.2, "Rating Agency Matters."
- **Consideration Twelve (*Pension Risk Transfer Risks*):** The trend of life insurers engaging in pension risk transfer business and supporting such business with the more complex investments outlined above.
  - **Status of Consideration Twelve:** This Consideration is addressed by certain prior NAIC actions, including (i) AG 53; (ii) a new charge added to the 2021 Life Risk-Based Capital Formula related to longevity risk transfer business, which regulators will monitor; and (iii) modifications to the reporting of pension risk

transfer transactions adopted by SAPWG in May 2021. SAPWG may discuss whether more detailed reporting of pension risk transfer transactions is necessary based on its review of year-end 2023 reporting. In addition, the Longevity Risk (E/A) Subgroup of LATF will consider the development of pension risk transfer/longevity risk mortality factors in the future.

Other completed actions addressing this Consideration include revisions by the U.S. Department of Labor to its Interpretive Bulletin 95-1, related to fiduciary standards under ERISA with respect to annuity providers, and work by the National Organization of Life and Health Insurance Guaranty Associations indicating that state guaranty funds provide adequate protections for pension risk transfer business.

- Consideration Thirteen (Offshore Reinsurers): Insurers' use of offshore reinsurers (including captives) and complex affiliated sidecar vehicles increase investment risk and introduce complexities into the group structure.
  - **Status of Consideration Thirteen**: The NAIC's adoption of the "Reinsurance Comparison Worksheet" addressed this Consideration, as reported [here](#) and [here](#). In addition, LATF is considering a proposal that recommends changes to the asset adequacy analysis methodology for reinsurance transactions, as discussed further below.

The MWG continues to monitor the offshore reinsurance market and met on July 8, 2024 to receive a report of cross-border reinsurance activity. In that meeting, regulators requested that NAIC staff provide additional metrics to be discussed at a follow-up meeting, including a breakdown of the types of products ceded and jurisdictions of reinsurers.

### B. Other Macroprudential Updates

#### 1. *Liquidity Stress Test*

NAIC staff is reviewing the results of the LST filings submitted in June 2024, and plans to provide a summary report to the MWG next month. The primary objective of the LST filing is to allow regulators to evaluate the market impact of potential asset sales by large life insurers under different stress scenarios. As an update to our prior reporting (available [here](#)) that a study group was considering whether an LST stress scenario should address the potential sale of separate account assets, the MWG has concluded that the LST current framework is adequate from a macroprudential perspective. As a result, separate account assets will remain excluded from this regulatory tool.

#### 2. *Clarification on Application of GCC to Risk Retention Groups*

We previously reported [here](#) that the NAIC's 2020 amendments to the *Insurance Holding Company System Model Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms* (#450), which implement

the annual filing requirements for the GCC and LST, will become an accreditation standard effective January 1, 2026. At the Summer National Meeting, the Accreditation and Financial Standards (F) Committee adopted a clarification that the GCC element of these amendments applies to risk retention groups while the LST does not, as risk retention groups are not authorized to write life insurance business.

### III. Innovation, Cybersecurity and Technology and Privacy Developments

#### A. Update on the Model Bulletin on Artificial Intelligence

Commissioner Doug Ommen (IA) provided an update to the Innovation, Technology and Cybersecurity (H) Committee (the “H Committee”) on behalf of a small group of regulators that has been meeting to discuss next steps related to the implementation of the NAIC’s Model Bulletin on the Use of Artificial Intelligence Systems by Insurers (the “Model AI Bulletin”). Since its adoption at the 2023 Fall National Meeting, the Model AI Bulletin has been adopted by approximately 17 states with only minor deviations. Commissioner Ommen noted that the group of regulators plans to hold public discussions in the future and will continue to collaborate with other committees on AI-related developments.

#### B. NAIC Efforts to Study Frameworks for Regulating Third-Party Data Models

The Third-Party Data and Models (H) Task Force is in the initial stage of researching and evaluating existing regulatory frameworks to regulate third-party data models. At the Summer National Meeting, this task force heard presentations on existing state regulatory frameworks, and plans to later hear presentations on similar frameworks used outside of the insurance industry. Task force Chair Michael Conway (CO) suggested that a blend of a nationwide and market-wide approach, which takes into account state-specific risks, might be useful, and stressed the need for third-party modeling companies and insurers to be able to efficiently comply with any regulation in light of an insurance department’s potentially limited capacity to evaluate such models.

#### C. Updated Draft of the Privacy of Consumer Financial and Health Information Model Law

After pausing work on the new *Insurance Consumer Privacy Protections Model Law* (#674) last summer, the Privacy Protections (H) Working Group abandoned efforts on a new model and is instead refocused on updating the existing NAIC *Privacy of Consumer Financial and Health Information Regulation Model Law* (#672) (“Model 672”). **On August 20, 2024, the Privacy Protections (H) Working Group exposed draft revisions to Model 672, currently available [here](#), for a comment period ending September 18, 2024.** The Working Group is seeking comments on third-party arrangements only (discussed at Article II, Section 5), and will seek comments on other sections in the future.

The exposed language adds certain requirements for contractual arrangements with third-party service providers based on the provider’s size and complexity, including a prohibition on processing nonpublic personal information for any purpose not specified in the contract, an obligation to delete or return all nonpublic personal information upon the licensee’s

request or once no longer necessary, and a requirement to reasonably assist the licensee in fulfilling consumer requests in compliance with Model 672.

Without creating or implying a private right of action, the revisions add certain consumer rights for access, correction and deletion of nonpublic personal information. The revisions would also require a licensee to obtain a consumer's affirmative opt-in consent for the sale of nonpublic personal information (which term has been expanded in scope). In addition, the draft provides consumers an opt-out right to limit a licensee's disclosure or processing, for purposes other than those identified in Model 672, of "sensitive personal information," a term newly defined in the exposure.

D. AI/ML Survey Updates

The (H) Committee received an update on the Health AI/ML Survey from the Big Data and Artificial Intelligence (H) Working Group. The survey is currently in the pilot phase and is expected to be released in early October 2024 with completion in Spring 2025. The Artificial Intelligence (H) Working Group is speaking with certain insurers that previously responded to the Auto AI/ML survey and will consider the cadence for future updates to the Auto, Life and Home AI/ML surveys following those discussions.

**IV. Reinsurance Matters**

In lieu of the Summer National Meeting, the Reinsurance (E) Task Force (the "RTF") met on July 22, 2024. LATF met on July 25, 2024, and reconvened in person at the Summer National Meeting. Key developments from both groups are discussed below.

A. Exposure of a "Straw Man Draft" Actuarial Guideline on Asset Adequacy Analysis for Certain Life and Annuity Reinsurance Transactions

In February 2024, the RTF received a proposal from LATF recommending changes to the asset adequacy analysis ("AAA") methodology for assets that support life and annuity reinsurance transactions. As background, and as previously reported in more detail [here](#), according to LATF, long duration insurance business that relies heavily on asset returns ("asset-intensive business") may pose a risk that domestic life insurers may enter into reinsurance transactions that materially lower the total asset requirement in support of their asset-intensive business, and thereby facilitate releases of capital. Although AAA requires reserves to be held at a level that meets moderately adverse conditions, when a reinsurance transaction lowers the ceding insurer's reserves, the new reserves established by the reinsurer could be materially less than what would be needed to meet policyholder obligations under moderately adverse conditions in addition to providing an appropriate level of capital.

LATF's February proposal recommended enhancements to the reserve adequacy requirements for all reinsurance transactions, and included requirements that AAA be performed (i) using a cash flow testing methodology that evaluates



ceded reinsurance as an integral component of asset-intensive business; and (ii) at the line of business and treaty level. The proposal was intended to ensure that the AAA safeguard continues to apply within the domestic cedent for all business for which it remains directly liable to pay policyholder claims, and that the assets supporting reserves continue to be held based on moderately adverse conditions, whether held by the direct insurer or a reinsurer.

At its July 22, 2024 meeting, the RTF heard an overview of the comment letters received from various industry representatives and private consumers regarding this proposal, with more detailed comments received at LATF's July 25, 2024 meeting. Most comment letters expressed concerns about the following areas of consideration relating to the proposal:

1. The need for reserve adequacy review beyond or as part of collectability review, with commenters expressing varying opinions about whether additional review is necessary;
2. A materiality threshold to determine whether no additional disclosure, attribution analysis, or cash-flow testing is necessary;
3. The frequency and vigor of asset adequacy analysis, which commenters generally noted should be proportional to risks;
4. Actuarial analysis considerations, whereby commenters also expressed that the required analysis should be proportional with the level of risk;
5. Aggregation considerations (i.e., aggregation of assets across different reinsurers, or aggregation of ceded business with other direct written business);
6. Attribution analysis (i.e., whether attribution analysis alone would ensure adequate assets to cover policyholder obligations);
7. Utilizing information already available (e.g., through existing enterprise risk management frameworks, ORSA filings, and cedent counterparty risk management frameworks and practices) before imposing new requirements;
8. The idea that any new requirements should be imposed on new rather than existing reinsurance treaties, as those completed before the finalization of new standards may not have provisions requiring reinsurers to supply the necessary information needed to perform the analysis; and
9. Timing of development and implementation of requirements, commenting generally that existing and new transactions should not be subject to the same requirements.



In addition, comment letters raised concerns about the proposal's potential impact on the reinsurance market and conflict with Covered Agreements, the need to protect consumers from a reinsurer's potential failure, and systemic risk posed by offshore reinsurance.

At the Summer National Meeting, LATF discussed and exposed for comment a "straw man draft" actuarial guideline proposing enhancements to reserve adequacy requirements for life insurance companies by requiring that asset adequacy testing use a cash flow testing methodology that evaluates ceded reinsurance as an integral component of asset-intensive business. The draft actuarial guideline is intended to establish additional safeguards within the domestic cedent to ensure that the assets supporting reserves continue to be adequate based on moderately adverse conditions. It is intended to be effective for AAA of the reserves reported in the December 31, 2025 annual statement and all subsequent annual statements. **Comments on this exposure are requested by October 11, 2024.**

### B. Update on Certified and Reciprocal Jurisdiction Reinsurers and Passporting

The Reinsurance Financial Analysis (E) Working Group ("ReFAWG") continues to assist states with reviewing reinsurance collateral reduction applications to determine whether an applicant meets the requirement to be recognized as a Certified Reinsurer and/or a Reciprocal Jurisdiction Reinsurer. As of July 22, 2024, ReFAWG had approved 85 Reciprocal Jurisdiction Reinsurers and 45 Certified Reinsurers, and 49 states had "passporting" at least one Reciprocal Jurisdiction Reinsurer (i.e., given the state discretion to defer to the collateral reduction status of a reinsurer in another state). The NAIC's complete list of Certified and Reciprocal Jurisdiction Reinsurers is available [here](#). Although not required by law, the RTF continues to recommend submission of reinsurance collateral reduction applications to ReFAWG in order to ensure uniformity in the review process, which can better equip ReFAWG to answer questions from governments, foreign jurisdictions or other interested parties.

## V. Other Topics of General Interest

### A. Topics of Interest to the Life Insurance Industry

#### 1. *Federal Update on Life Insurance Matters*

NAIC staff provided an update to the Life Insurance and Annuities (A) Committee (the "(A) Committee") on the U.S. Department of Labor's ("DOL") adoption of amendments to the Retirement Security Rule (the "Fiduciary Rule"), on which we previously reported [here](#) and [here](#). The final version of the Fiduciary Rule was published in the Federal Register on April 25, 2024.

The adoption of the updated Fiduciary Rule, which was intended to take effect on September 23, 2024, has resulted in litigation. This July, two federal district courts in Texas issued orders staying the effective date. The new Fiduciary Rule

will not go into effect until the lawsuits have been resolved. The DOL is expected to appeal the two Texas orders, but the current version of the Fiduciary Rule continues to apply.

### 2. *Accelerated Underwriting*

As reported in our 2024 Spring National Meeting report, the Accelerated Underwriting (A) Working Group (the “AUWG”) paused earlier work on the *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* document, as well as on a *Market Regulation Handbook* referral to the Market Conduct Examination Guidelines (D) Working Group pending the resolution of related projects by the (H) Committee and the Big Data and Artificial Intelligence (H) Working Group. Since then, the AUWG discussed a workplan and revisions to these documents to take into account the Model AI Bulletin discussed above. The revised documents which provide a framework for state insurance regulators to reference when they review life insurers’ accelerated underwriting programs to ensure that these programs are fair, transparent and secure were adopted by AUWG on August 6, 2024, and subsequently adopted by the (A) Committee at the Summer National Meeting.

### B. Topics of Interest to the Property & Casualty Industry

#### 1. *International Insurers Department Plan of Operation Amended*

The Surplus Lines (C) Task Force adopted amendments to the International Insurers Department (IID) Plan of Operation, which sets forth the eligibility requirements for alien insurers seeking to be included on the NAIC *Quarterly Listing of Alien Insurers* and therefore eligible to write surplus lines policies. Among other things, the amendments: (i) emphasize that an Alien ID, which is required to apply for admittance to the *Quarterly Listing*, is for reporting purposes only and does not provide authority to write business in the United States; (ii) add market conduct requirements to the overall risk assessment and ethics/integrity requirements sections; (iii) removed “Examination of Insurer” from the ongoing analysis section; and (iv) made other clarifying or organizational revisions. The amendments will become effective January 1, 2025.

#### 2. *Exposed Service of Process Form for Surplus Lines Insurers*

The Surplus Lines (C) Task Force exposed for comment a draft *Uniform Surplus Lines Consent to Service of Process* form. The new form is intended to address issues raised by the use of the UCAA Uniform Consent to Service of Process (“Form 12”) by surplus lines insurers in light of the U.S. Supreme Court’s recent decision in *Mallory v. Southern Railway Co.*, 600 U.S. 122 (2023), holding that any company which consents to service of process through a state’s secretary of state or insurance commissioner is subject to suit in that state for any cause of action, regardless of the action’s relation to matters arising under the company’s contracts in the state. By narrowly defining the scope of consent, the proposed draft of the service of process form is intended to address the concern that the Form 12’s broad language, which was drafted for use by admitted carriers, could subject surplus lines issuers executing it to a state’s general jurisdiction under *Mallory*. **The deadline for submitting comments is September 13, 2024.**

### 3. *National Association of Public Insurance Adjusters Presentation on Anti-Public Adjuster Endorsements*

The Surplus Lines (C) Task Force also heard a presentation from the National Association of Public Insurance Adjusters (“[NAPIA](#)”) on issues with the use of anti-public adjuster endorsements in surplus lines policies, which are increasingly common in policies issued in Florida, Louisiana, Massachusetts, New York, Ohio and Texas. NAPIA explained that such endorsements prevent insureds from using the services of public adjusters, which can put insureds at a disadvantage and delay the settlement of claims. Texas has adopted legislation prohibiting these endorsements and NAPIA reports that Massachusetts is considering such legislation. NAPIA encouraged regulators to support such legislation in their states.

### 4. *Climate-Related Initiatives*

At its July 16, 2024 interim meeting, the FAST WG exposed for comment proposed revisions to the Financial Analysis Handbook to provide additional possible procedures for analysts to use in reviewing of the adequacy of a property/casualty insurer’s reinsurance protection—specifically, whether concerns exist regarding the insurer’s exposure to catastrophic events due to climate change. Proposed procedures relate to reviewing the *Interrogatory on Catastrophe Risk Reinsurance Program RCAT (PR027)* section of the insurer’s RBC filing and, if necessary, requesting additional information to gain a comprehensive understanding of an insurer’s catastrophe reinsurance program and any recent changes in coverage due to market conditions. **The exposure is available [here](#) for public comment until August 30, 2024.**

### 5. *2023 Revisions to the Property and Casualty Insurance Guaranty Association Model Act Are Not Required for NAIC Accreditation*

At the Summer National Meeting, the Accreditation and Financial Standards (F) Committee adopted the Receivership and Insolvency (E) Task Force’s recommendation that the 2023 revisions to the *Property and Casualty Insurance Guaranty Association Model Act* (#540) would not be required in order for states to maintain their NAIC accreditation status. As we previously reported [here](#), the 2023 revisions are intended to preserve guaranty fund coverage for policyholders subject to restructuring transactions, such as insurance business transfers or corporate divisions, and also clarify guaranty fund coverage of cybersecurity insurance.

### C. International Update

A brief update on certain key priorities at the International Association of Insurance Supervisors (“[IAIS](#)”) is provided below.

- International Capital Standard (“ICS”). The IAIS is approaching the end of the ICS’s development phase and it is on track to adopt the ICS in December 2024. Following its adoption, the ICS will be implemented as a group-wide

prescribed capital requirement for international active insurance groups (IAIGs). For more detail on this project, please refer to our prior reporting available [here](#).

- **Comparability Assessment.** In related work, the IAIS continues to analyze data to assess whether the aggregation method (“AM”) approach to a group capital standard, which forms part of the NAIC’s group capital calculation, produces comparable outcomes to the ICS. The IAIS’s standard for a comparable outcome is whether the AM produces results which are substantially the same as the ICS. The IAIS will make its determination on comparability in the third quarter of 2024, to be followed by a written report by year end.
- **Climate Risk.** In July 2024, the IAIS issued its fourth and final public consultation package on climate risk, focused specifically on public disclosure, macroprudential considerations and supervisory issues, with comments due by October 28, 2024. Stakeholder input from all four public consultations will be used to update the IAIS’s 2021 *Application Paper on the Supervision of Climate-related Risks in the Insurance Sector*.

### VI. **Briefly Noted**

#### A. **New Reporting Schedules for Reinsurance Collateral**

SAPWG exposed for comment a draft of new reporting schedules for annual statement blanks that would require reporting entities to identify assets that are subject to a funds withheld or modified coinsurance (modco) arrangement in connection with reinsurance (Ref # 2024-07). Although this proposal stems from the IMR Ad Hoc Group’s work with respect to life insurers, it would impact schedules for all annual statement blanks. Interested parties raised concerns that a previous version of this proposal could require disclosing proprietary information and that an asset-by-asset identification of withheld assets that are not held in trust would not be feasible. **The revised schedules are exposed for comment until September 27, 2024, with further discussion expected at the Fall National Meeting.**

#### B. **SAPWG Exposes Guidance on Book Value Separate Accounts**

At the Summer National Meeting, SAPWG exposed revisions to SSAP No. 56—*Separate Accounts* (Ref # 2024-10) for comment until November 8, 2024. The revisions were made pursuant to SAPWG’s direction at the 2024 Spring National Meeting that NAIC staff work with industry to expand guidance in the SSAP on how transfers between the general and separate accounts should occur when insurers report assets at “book value” within the separate account. Revisions reflect discussion by the IMR Ad Hoc group as to treatment of IMR for transfers between accounts, with the broad concept that such transfers would have offsetting IMR impacts between the general account and the book value separate account with a zero net impact to surplus.

---

## NAIC Report: 2024 Summer National Meeting

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

**Stephanie Duchene**

310 855 3066

sduchene@willkie.com

**Matthew J. Gaul**

212 728 8261

mgaul@willkie.com

**Michael Groll**

212 728 8616

mgroll@willkie.com

**David Heales**

212 728 8294

dheales@willkie.com

**Donald B. Henderson Jr.**

212 728 8262

dhenderson@willkie.com

**David G. Nadig**

312 728 9097

dnadig@willkie.com

**Allison J. Tam**

212 728 8282

atam@willkie.com

Copyright © 2024 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, Dallas, Frankfurt, Houston, London, Los Angeles, Milan, Munich, 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](http://www.willkie.com).