

Private Credit and New NAIC Task Force

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Predictions regarding the growth of private credit continue as we start 2025. Interest in private credit strategies remained strong through 2024. Private credit CLO issuances increased in 2024. Insurance company investment in private credit is tied to this growth. For example, insurers may directly originate a private credit investment structured as a bilateral loan (such as a NAV loan to private equity managers or a warehouse loan to finance companies) or may purchase bonds issued by a “rated note feeder fund” or collateralized fund obligation (CFO) organized by private capital managers. Bond issuances by rated note feeder funds and CFOs have been a driver of fundraising and liquidity growth for private capital managers with an underlying private credit or debt strategy (such as senior loans to sponsor backed companies or specialty equipment financing).¹ As private credit continues to finance more of the real economy and as insurers continue to be a source of capital for private credit, members of the National Association of Insurance Commissioners (the “NAIC”) have noted that “insurers now [serve] as a growing source of real economy financing.”²

¹ In NAIC parlance, these are “funds investing in bonds,” where the “bond” investment may be a loan or equipment lease that is being analogized to a fixed-income bond.

² Memorandum re: Risk-Based Capital (RBC) Model Governance (EX) Task Force dated February 9, 2025 (the “RBC Model Governance Task Force Memo”). <https://communications.willkie.com/138/2867/uploads/2025-rbc-ex-task-force-memo-french-houdek-020925.pdf>.

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Bonds issued by rated note feeder funds or CFOs may have a different collateral profile than, for example: private placement bonds (whether from a corporate issuer or a BDC), bonds issued by CLOs (whether middle market CLOs or broadly syndicated CLOs), and bonds issued in the capital markets. The attractiveness of a bond investment to the insurer when compared to other bonds is influenced by the regulatory capital treatment of such bond, which is generally determined by model laws and guidance promulgated by the NAIC.

The NAIC continues to respond to the collateral profiles of these relatively new bond issuances. In that vein, a new task force, the Risk-Based Capital (RBC) Model Governance (EX) Task Force (the “RBC Model Governance Task Force”) is being formed in 2025 to “develop guiding principles for future [risk-based capital] adjustments.”³ These principles will answer, among other things, “[w]hat level and type of data and analysis are needed to support the setting of capital factors” and “[h]ow should new and emerging risks and asset types be treated if a capital framework has not yet developed for them.”⁴

In a memo to interested regulators and interested parties, the RBC Model Governance Task Force also noted that the insurance market “has become more global.”⁵ Similarly, private credit fundraising and investing is global. The NAIC’s discussion regarding international stakeholders highlights the value of understanding how private credit-related bonds with similar cash flows or collateral profiles are viewed across different regulatory schemes.

Changes to the regulatory capital treatment of these private credit-related bonds impact private capital managers and insurers, and we will provide updates on the RBC Model Governance Task Force as they become available.

The introduction of the RBC Model Governance Task Force comes on the heels of the introduction of the “principles-based” bond definition on January 1, 2025, and other oversight measures by the NAIC’s Securities Valuation Office and Valuation of Securities (E) Task Force.⁶

³ RBC Model Governance Task Force Memo.

⁴ RBC Model Governance Task Force Memo.

⁵ RBC Model Governance Task Force Memo.

⁶ Discussion of the Bond Project as well as the Securities Valuation Office can be found here: https://www.willkie.com/-/media/files/publications/2024/06/update_on_naic_actions_on_structured_security_investments.pdf.

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