

CLIENT ALERT

Private Credit Rated Investments – NAIC Proposes that Insurers Document “Process” and “Analysis” as Part of Compliance with the Bond Definition

October 23, 2025

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The NAIC continues to focus on privately-rated securities and the principles-based bond definition (“PBBD”) this year. The NAIC created the new Risk-Based Capital Model Governance (EX) Task Force in February (as reported [here](#)), reorganized the NAIC’s Valuation of Securities (E) Task Force (“VOSTF”) and formed new subgroups specifically focused on analysis of investment risks and credit rating provider matters in June, and adopted a rule requiring that insurance company investors submit a sufficiently substantive credit rating rationale report (a “Rationale Report”) for rated private credit securities to remain filing-exempt, also in June as reported [here](#).

This focus coincides with the increase in insurance company investments into privately-rated securities,¹ many of which are investment-grade private credit assets, such as rated note feeder funds, collateralized fund obligations (“CFOs”), net asset value (“NAV”) financings and other bespoke private asset-backed securities (“ABS”). Under the PBBD, bonds can be issuer credit obligations or ABS, and much of the innovation in these private credit offerings has been with respect to ABS. The PBBD necessitates a substantive review of the legal documentation creating these bespoke securities. Ultimately, an insurer’s statutory accountant determines whether the security can be reported as a filing-exempt bond on Schedule D.

Most recently, the NAIC has proposed new language in the *Financial Condition Examiners Handbook* (the “Handbook”) related to determining insurance companies’ compliance with the PBBD with respect to their investments. An insurance company’s primary regulator is its state of domicile regulator. Generally speaking, insurance companies are subject to financial examinations by such regulator every three years. The examiners conduct their review by following the Handbook, and the technical responsibility for the review and maintenance of the Handbook sits with the Financial Examiners Handbook (E) Technical Group (the “Examiners Handbook Group”).

The Examiners Handbook Group has exposed for comment several proposed revisions to the Handbook, including that an examiner should:

- “Review a sample of structured securities to test for proper valuation and reporting. For example, review a sample of financial and nonfinancial ABS securities reported on Schedule D, Part 1, Section 2 of the annual statement to verify the security qualifies as a bond under the Principles-Based Bond Definition and applicable SSAP standards.”
- Confirm that the insurer “[h]as a process in place to determine if the security qualifies for bond reporting treatment under the Principles-Based Bond Definition.”
- Confirm that the insurer “[m]aintains underlying analysis that supports reporting financial and nonfinancial ABS as bonds (on Schedule D, Part 1, Section 2) as opposed to other assets (Schedule BA).”
- “Obtain and review the company’s underlying analysis to verify that financial and nonfinancial ABS are properly reported.”

The NAIC has repeatedly stressed that the PBBD, to state what is in the name, is a principles-based definition, which requires interpretation of the principles and application of those principles to bespoke assets, investment structures and legal documentation. Insurers may wish to consider documenting their “process,” for example documenting what quantitative and qualitative factors (including legal documentation terms) are reviewed as part of the insurer’s analysis of the creditor relationship, as well as their “analysis” or the outcome of applying that process to a particular investment. Given the above proposal which would make both the process and analysis subject to

¹ Valuation of Securities (E) Task Force March 16, 2024 Minutes, https://content.naic.org/sites/default/files/national_meeting/vostf-minutespacket-031624.pdf; Life Insurers’ Private Credit Investments and Annuity Market Share Capture” June 30, 2025 <https://doi.org/10.21033/wp-2025-09>

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review, insurers should take care to implement proper recording processes. For example, insurers may wish to include their analysis as part of a written investment memo completed at the time of investment.

The proposed revisions to the Handbook, which are similar to existing guidance with respect to workpapers to support whether material values in the RBC report were properly classified, further underscores to insurance company investors that obtaining a credit rating, even one with a Rationale Report, is not sufficient on its own to determine whether a particular investment is a bond.

The proposed revisions in the Handbook are exposed for comment until November 13, 2025 and can be found [here](#). We anticipate that the revised Handbook will be presented for adoption at the Examiners Handbook Group's next meeting on November 20, 2025. We will continue to monitor the proposed revisions in the Handbook and other developments related to the PBBD.

If you have any questions regarding this client alert or developing a PBBD review process in consultation with your statutory accountants, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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