EVERSHEDS SUTHERLAND

# NAIC Report – 2022 Fall National Meeting

**January 23, 2023**

The National Association of Insurance Commissioners (NAIC) held its 2022 Fall National Meeting from December 12-16 in Tampa, Florida.

The agenda for this National Meeting was limited, with a number of NAIC working groups and task forces meeting in the weeks prior to the meeting. Consequently, in this report, we offer highlights from both the Fall National Meeting and those preceding the National Meeting. Notable developments include the following:

– The Innovation, Cybersecurity, and Technology (H) Committee announced that the committee's "Collaboration Forum" on Algorithmic Bias is in the process of drafting a model interpretative bulletin regarding the use of artificial intelligence (AI) and machine learning (ML) in insurer underwriting processes. The forthcoming principles-based bulletin will likely include insurance regulators' expectations for the use of AI/ML in underwriting and establish exam standards for the same.

– The Privacy Protections (H) Working Group announced that it expects to expose a draft consumer privacy protections model act that consolidates and modernizes obsolete model laws and regulations on consumer data privacy in the context of the business of insurance. The working group expects to publish a corresponding white paper on state data collection, ownership, use rights and disclosure laws that apply to the business of insurance.

– The Risk-Based Capital Investment Risk and Evaluation (E) Working Group received a presentation from the American Academy of Actuaries regarding proposed RBC charges for certain collateralized loan obligation (CLO) tranches. The presentation took issue with the proposed charges concluding, among other items, that it is inappropriate to use existing bond factors that "force" capital charge equivalence between CLOs and corporate bonds and that it has no confidence that the proposed RBC charges are accurate.

– The International Relations (G) Committee welcomed a recent decision by the Financial Stability Board to discontinue global systemically important insurer (G-SII) designations in favor of the International Association of Insurance Supervisors' (IAIS) Holistic Framework for Systemic Risk in the Insurance Sector (Holistic Framework).

We do not cover every meeting in this report; rather, we comment on select noteworthy developments and matters of interest to our clients.

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## A. Technology, Cybersecurity and Privacy

### 1. Innovation, Cybersecurity, and Technology (H) Committee to Draft Artificial Intelligence/Machine Learning Model Bulletin

During the December 13 **Innovation, Cybersecurity, and Technology (H) Committee** meeting, Chair Commissioner Birrane (MD) announced that the committee's "Collaboration Forum" on Algorithmic Bias is in the process of drafting a model interpretative bulletin regarding the use of artificial intelligence (AI) and machine learning (ML) in insurer underwriting processes. Birrane noted that the bulletin would likely be principles-based rather than prescriptive; include high-level, objective standards regarding the use of AI/ML in underwriting; and include the following sections:

- Introduction (including background and legislative authority);
- Definitions;
- Regulatory expectations for the use of AI/ML in underwriting (including governance standards); and
- Regulatory oversight and examination standards.

Commissioner Birrane also noted that there is a "strong preference" to limit the scope of the bulletin to regulated entities and to require regulated entities to test and validate AI/ML underwriting programs prior to incorporating the technology into their underwriting processes.

For background, the NAIC established the concept of a "Collaboration Forum" to effectively serve as a "committee of committees" for groups considering similar issues. The first topic for consideration by the H Committee Collaboration Forum is unfair bias in algorithms and AI/ML-driven decisional systems. More information on how the H Committee expects to utilize the Collaboration Forum can be found here.

### 2. Privacy Protections (H) Working Group to Expose Enhanced Model Consumer Privacy Protections Act

The **Privacy Protections (H) Working Group** announced that it expects to expose a draft consumer privacy protections model act that is intended to consolidate and modernize the NAIC models addressing data privacy. Specifically, the draft Privacy Protections Model Act would apply to all lines of business and would address privacy protections regarding the collection, data ownership and use rights, and disclosure of information gathered in connection with insurance transactions. If adopted, the new model act would replace the *Insurance Information and Privacy Protection Model Act* (#670) and the *Privacy of Consumer Financial and Health Information Regulation* (#672), which were adopted by the NAIC several decades ago and have become outdated. The working group also expects to publish a corresponding white paper on state data collection, ownership, use rights and disclosure laws that apply to the business of insurance.

A draft of the proposed model law is expected to be exposed for public comment in January 2023 so that the working group is able to discuss comments on the model and the white paper during the 2023 NAIC Spring National Meeting in Louisville, Kentucky. The working group noted that a potential vote on the model law could come as soon as the 2023 NAIC Summer National Meeting in Seattle, Washington.

### 3. Big Data and Artificial Intelligence (H) Working Group Discusses Private Passenger AI/ML Report; Future Home, Life Reports

The **Big Data and Artificial Intelligence (H) Working Group** recently published a long-awaited public report on the use of artificial intelligence (AI) and machine learning (ML) technology by large private passenger auto (PPA) insurers. The comprehensive AI/ML PPA Report and its associated memo mark the first of a series of reports on AI/ML use by personal lines insurers.

In general, the AI/ML PPA Report and underlying AI/ML PPA Survey found that numerous insurers already employ AI/ML for certain company operations, with a large majority of respondents indicating that they use AI/ML for claims operations, nearly half use AI/ML for marketing and fraud detection, and a minority use AI/ML for underwriting, rating and loss prevention operations.

The December 8 memo also included the following six recommendations that "may be helpful as a starting point for discussions and decision-making about what next steps to take at the NAIC":

1. Evaluate the survey analysis and determine whether to further explore insurer AI/ML model usage and the level of decision-making, insurer data elements, insurers' governance frameworks and documentation, consumer data recourse, and third-party regulatory framework.
2. Create a risk hierarchy to prioritize the need for more model governance and insurer oversight. The general concept is that more oversight of a model will be needed as the consumer risk or impact increases from the modeling or models.
3. Evaluate consumer data recourse. Insurers report a wide variety of methods for consumers to evaluate and correct data used by insurers. Some methods are short and easy, such as using an app to correct data, and other methods are more time-consuming and require personal contact with the agent or company. In some cases, consumers may not know their data is being used, so consumer transparency is a priority.
4. Evaluate the regulatory framework around the use of third-party models and third-party data. Evaluate the ability of insurers and state insurance regulators to obtain needed information from third parties and for regulators to oversee this work either through the insurers or third parties in some way.
5. Evaluate concerns about third-party concentration by insurer use.
6. Determine whether additional white papers on best practices would be useful on subjects in the AI/ML space.

The PPA AI/ML analysis is the first of a series of AI/ML studies expected to be undertaken by state insurance regulators through the working group. A similar analysis is currently underway for insurer use of AI/ML in the homeowners' line of business, and regulators are in the process of finalizing a survey for AI/ML use in life business.

The Big Data and Artificial Intelligence (H) Working Group also voted to expose a set of draft Model and Data Regulatory Questions (BDAI Questions) to be used by state insurance regulators to better evaluate insurers' use of models and big data. The BDAI Questions Memo contains two "Questions" sections, a "Main General," and a "Detailed and Technical" section, each of which includes questions to insurers (and, in certain instances, third parties) regarding their models, data inputs into the models and the use of third-party data. The document also contains a "Definitions" section, which includes definitions for artificial intelligence, bias, machine learning, model, and governance framework and controls, among others. The BDAI Questions are exposed for a 62-day public comment period ending February 13, 2023.

## B. Environmental, Social and Corporate Governance (ESG)

### 1. Climate and Resiliency (EX) Task Force Referrals on Climate Risk to Be Considered in 2023

The **Solvency Workstream** of the **Climate and Resiliency (EX) Task Force** announced that it expects work to begin in 2023 on all three of the climate-related referrals it developed in 2022. Specifically, the Solvency Workstream issued, and the relevant working groups received, referrals to the **Financial Analysis Solvency Tools (E) Working Group** (available here), the **Financial Examiners Handbook (E) Technical Group** (available here), and the **Own Risk and Solvency Assessment (ORSA) Implementation (E) Subgroup** (available here) of the **Group Solvency Issues (E) Working Group**. The referrals provide high-level, climate-risk principles for relevant groups to consider and develop as appropriate for inclusion in relevant financial solvency regulation materials (i.e., the NAIC *Financial Analysis Handbook*, the NAIC *Financial Condition Examiners Handbook* and the NAIC *ORSA Guidance Manual*, respectively). The modifications proposed by the task force include procedures for utilizing the property and casualty risk-based capital (RBC) catastrophe reporting data, enhancements to the planning and fieldwork phases of financial examinations, and incorporating the consideration of climate change risks into field examinations of insurers' investment management programs, underwriting processes and reinsurance programs.

## C. Financial Issues of Particular Interest

### 1. Private Equity Considerations List to Remain a Priority in 2023

The **Macroprudential (E) Working Group** (MWG) met on December 13, 2022, to discuss the status of the Regulatory Considerations Applicable (but not exclusive) to Private Equity (PE) Owned Insurers (PE Considerations List). Justin Schrader (NE), chair of the MWG, summarized the status of the 13 working group considerations with respect to PE ownership of insurance, specifically:

- The **Statutory Accounting Principles (E) Working Group** and the **Life Actuarial (E) Task Force** have completed some of the items referred to their respective group by the MWG, though more work is left to be done over the next year or longer.
- The MWG is currently focused on Consideration 13 (Offshore Reinsurance Transactions) and has held several confidential meetings with insurance groups and jurisdictions to develop a template that permits state insurance departments to better understand the true economic impacts of offshore reinsurance transactions. It expects those meetings will continue into 2023. The working group also expects to address Consideration 5 (Operational and Market Conduct Governance) and Consideration 12.b and 12.c (Pension Risk Transfer Business) in 2023.

Mr. Schrader, who is also chair of the **Group Solvency Issues (E) Working Group** (GSIWG), discussed the referrals the GSIWG has received from the **Financial Stability (E) Task Force** and the MWG related to private equity ownership of insurers. The referrals include:

- Determining actual risk due to holding companies structuring contractual agreements in a manner to avoid regulatory disclosures and requirements; and
- The definition of "control" in the *Insurance Holding Company System Regulatory Act* (#440) and how that affects regulatory reporting and monitoring activities.

Mr. Schrader noted that in addressing these referrals, the GSIWG may need to consider additional disclosures or requests for information that can be used when regulatory concerns exist with respect to an acquisition of control or its corresponding Form A filing. Mr. Schrader also suggested that the GSIWG may want to consider providing advanced Form A training to regulators. The GSIWG agreed to form a drafting group of regulators to address these issues.

For additional information on the PE Considerations List, see our client alert.

### 2. Valuation of Securities (E) Task Force Authorizes NAIC Funding Request for CLO Modeling

The **Valuation of Securities (E) Task Force** (VOSTF), chaired by Carrie Mears (IA), received two presentations from Eric Kolchinsky of the NAIC Structured Securities Group (SSG) related to collateralized loan obligations (CLOs). The first was an update on the proposed edits to the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* (IAO) to add CLOs as a financially model security. The proposed edits were exposed in fall 2022, with an updated version exposed in late December for an additional 15-day comment period ending January 9, 2023. Among other items, the current draft of the proposed edits notes that the SSG will begin modeling CLOs effective as of January 1, 2024. Upon the request of Chair Mears, VOSTF adopted a motion to authorize the SSG staff, pending finalization of the amendment, to formally request the resources it may need to take on the CLO analytic function.

The SSG also presented a proposed CLO Modeling Methodology (excluding scenarios and probabilities) (Methodology), which covers the mechanics of the modeling process and cash flow. Among other items, the Methodology requests feedback by posing the following questions:

- Are there any other Assumptions (other than Default / Recovery Rate) that will allow market participants to completely replicate the work of NAIC for broadly syndicated loan CLOs?
- Are these Assumptions reasonable? Please consider that the Default and Recovery Rate Assumptions will come later and that there will be ample opportunity to comment on how these perform on actual CLOs replicated by market participants.
- Any other issues that you wish to bring to our attention.

The Methodology is exposed for a 62-day public comment period ending February 13, 2023.

## 3. American Academy of Actuaries Questions Interim CLO RBC Factors

The **Risk-Based Capital Investment Risk and Evaluation (E) Working Group** (RBCIRE) met on December 14 to discuss an NAIC Investment Analysis Office (IAO) proposal to establish new RBC factors of 30%, 75% and 100% for lower (or residual) CLO tranches (BBB-, BB- and Equity, respectively) on an interim basis. Prior to discussing the proposal itself, the RBCIRE received a presentation from the American Academy of Actuaries (Academy) regarding the Academy's initial IAO RBC proposal observations. The Academy undertook the analysis at the request of the RBCIRE chair, Philip Barlow (DC).

Among other items, the Academy report concluded:

1. Insurer CLO exposure is small and does not (currently) present a solvency risk to life insurers;
2. Corporate bonds, bank loans and CLOs have unique structures and risk profiles;
3. While it may be "expedient," it is inappropriate to use existing bond factors that "force" capital charge equivalence between CLOs and corporate bonds, specifically:
   - Conditional tail expectation (CTE) could be a more precise measure of CLO risk;
   - Bond charges are probably too high for higher CLO tranches;
   - Bond charges are probably too low for lower CLO debt tranches;
4. The proposed risk weights are not based on any sort of quantitative analysis;
5. The Academy has "zero confidence" that the RBC charges are accurate and that no quantitative analysis has been conducted to justify it (with respect to the 30% charge, the Academy concluded that it "was not derived based on anything resembling the loss experience of a CLO residual tranche"); and
6. Active management of CLOs changes the risk profile as compared to other modeled securities.

The Academy report also questioned why the NAIC has not applied the "sum of the parts equaling the whole" methodology to other securities such as residential mortgage-backed securities and commercial mortgage-backed securities, or asset backed securities.

Both the Academy report and the interim IAO RBC proposal were exposed for a 45-day comment period ending January 27. The Academy's analysis, which is likely to include recommendations for capital charges for each CLO tranche, remains ongoing.

## 4. Valuation of Securities (E) Task Force Adopts Related Party Amendments to IAO P&P Manual

The VOSTF adopted an amendment to the P&P Manual to update the instructions for Related Party and Subsidiary, Controlled and Affiliated (SCA) investments (P&P SCA Amendments) to provide further clarification on (i) what constitutes a non-control relationship and (ii) that SCA investments include related parties. For background, the P&P SCA Amendments were prompted by a June 10, 2022 referral received by the **Statutory Accounting Principles (E) Working Group** regarding the adoption of Agenda Item 2021-21: Related Party Report, which revised *Statement of Statutory Accounting Principles (SSAP) No. 25 –Affiliates and Other Related Parties* and *SSAP No. 43R – Loan Backed and Structured Securities* as those SSAPs concerned insurer disclosures for investments that involve a related party as sponsor, originator, manager, or other similar transaction party, regardless of whether the investment is captured on the affiliate reporting line. The SSAP revisions took effect as of the 2022 reporting year.

In particular, the P&P SCA Amendments:

1. Renamed the "Subsidiary, Controlled and Affiliated (SCA) Debt or Preferred Stock Investments" section of the P&P Manual to "Subsidiary, Controlled and Affiliated (SCA) and Related Party Debt or Preferred Stock Investments" to clarify that it includes non-control relationships;
2. Amend the SCA investment, SCA debt and SCA preferred stock definitions to include related parties;
3. Expand the definition of "SCA" and "related party debt" to include structures in which the non-issuer underlying credit exposure would qualify as a related party pursuant to paragraph 4.a. in SSAP No. 43R; and
4. Create a new category of SCA and related party investment called *SCA and Related Party Filing Exempt Investments* to include investments:
   a. By an affiliate or related party special purpose entity which itself is not an obligor or ultimate source of the investment repayment; or
   b. As part of a structure in which the originator, sponsor, manager, servicer, or other influential transaction party is an affiliate or related party of the reporting insurance company.

SCA and Related Party Filing Exempt Investments remain eligible for filing exemption unless otherwise ineligible (for reasons other than their affiliate or related party status).

The VOSTF also deferred action on proposed updates to Part One and Part Two of the P&P Manual, which are intended to: (i) further clarify that NAIC designations are specifically intended to reflect their use in the NAIC *Policy Statement and Financial Regulation Standards* (SFRS) that have been incorporated into state insurance law and (ii) conform the definition in Part One and Part Two.

The proposed updates to Part One and Part Two specify that NAIC designations:

1. Reflect the likelihood of timely payment of principal and interest, as appropriate, and the probability of principal and interest payment default;
2. Reflect the appropriateness and consistency of the RBC model factor that will be applied to the security given its level of risk; and
3. Must be considered in the context of their appropriateness and consistency of use in the NAIC Policy SFRS.

The VOSTF directed SVO staff to update the amendment to provide greater clarity and revert with a revised draft.

## 5. Valuation of Securities (E) Task Force Exposes "Structured Equity and Funds" Amendments to IAO P&P Manual

The VOSTF also exposed a proposed amendment to the IAO P&P Manual that would include a definition for "Structured Equity and Fund" investment and exclude such investments from Filing Exemption eligibility. In the November 28, 2022 cover letter to the proposed amendment, the SVO indicated that it has processed several private letter rating filings for investments in notes issued by, and of equity or limited partnership interests in, a special purpose vehicle, trust, limited liability company, limited partnership or other legal entity that operates as a feeder fund which itself invests, directly or indirectly, in one or more funds or other equity investments, and that such structures (1) circumvent regulatory guidance, (2) presents RBC arbitrage opportunities, and (3) lack transparency.

The proposed amendment defines a Structured Equity and Fund investment as:

> a note issued by, or equity or limited partnership interest in, a special purpose vehicle, trust, limited liability company, limited partnership, or other legal entity type, as issuer, the contractually promised payments of which are wholly dependent, directly or indirectly, upon payments or distributions from one or more underlying equity or fund investments. The inclusion of an intervening legal entity or entities between the Structured Equity and Fund investment issuer and the underlying equity or fund(s), does not change the risk that the insurer investment is ultimately dependent, in whole or in part, upon an investment in equity or one or more funds and its underlying investments. Any design that circumvents this definition, and related examples, through technical means but which in substance achieves the same ends or poses the same risk, shall be deemed a Structured Equity and Fund.

Among other things, the proposed amendment would permit the SVO to "apply any methodology it deems appropriate to assess the credit risk of a Structured Equity and Fund issuance and its ultimately underlying assets identified pursuant to a look-through assessment. Such methodologies include, but are not limited to, a weighted average rating factor (WARF) methodology or a CRP's rating rationale analysis of the issuance, notched as the SVO deems appropriate to eliminate any risk-based capital arbitrage that may exist through this structure." The NAIC Designation and Category assigned to each security could also be adjusted under the proposed amendment to reflect credit support with the structure (e.g., subordination, guarantees, insurance, equity).

The proposed amendment was exposed for a 60-day public comment period ending on February 13, 2023.

## 6. Statutory Accounting Principles (E) Working Group Adopts Revisions to SSAP No. 25 and SSAP No. 97

During its December 13 meeting, the **Statutory Accounting Principles (E) Working Group** (SAPWG) adopted revisions to SSAP No. 25 – *Affiliates and Other Related Parties* and SSAP No. 97 – *Investments in Subsidiary, Controlled and Affiliated Entities* to clarify that foreign open-end investment funds are not deemed to reflect insurer control unless the shareholder actually controls the insurer with the power to direct the insurer. Foreign open-end funds join exchange-traded fund (ETF) investments and mutual fund investments (as defined by the SEC) as investments that do not reflect ownership in an insurer regardless of the ownership percentage unless such ownership of actually results in "control" with the power to direct or cause the direction of management of an underlying company.

The SAPWG also exposed other revisions to SSAP No. 25 (agenda item 2022-15) to clarify that any invested asset held by a reporting entity that is issued by an affiliate of such entity (or that includes the obligations of such entity) is an affiliated investment. Comments for agenda item 2022-15 are due by February 10, 2023.

## 7. Statutory Accounting Principles (E) Working Group Considers Negative IMR Impact

The SAPWG also discussed the potential impact a rising interest rate environment could have on insurer interest maintenance reserve (IMR) and the concern that such an environment could prompt insurers to grapple with a negative IMR, which produces an inappropriate perception of decreased financial strength through lower surplus and RBC. In particular, a negative IMR means that net realized interest-related losses, which are amortized in the IMR calculation, are greater than net realized interested related gains, which are also amortized in the IMR calculation. A (disallowed) negative IMR is reported as a nonadmitted asset and amortized to income as a loss over time rather than being reported as a statutory liability and amortized to income over time (as is the case with a positive IMR).

The SAPWG members expressed concern about how to handle this issue, especially since companies are being encouraged to speak with their domiciliary regulators about obtaining a permitted accounting practice to provide relief in the event they are faced with a negative IMR.

Accordingly, the SAPWG asked industry stakeholders to provide potential guardrails and details on unique considerations. The SAPWG also directed NAIC staff to coordinate a joint regulator discussion with **Life Actuarial (A) Task Force** and develop a memorandum regarding considerations for state insurance regulators. In addition, the SAPWG voted to expose agenda item 2022-19 (negative IMR) for public comment, expiring February 10, 2023.

### 8. Statutory Accounting Principles (E) Working Group Exposes Bond Reporting Changes

SAPWG voted to expose proposed revisions to reflect the bond definition in *SSAP No. 26R – Bonds* and *SSAP No. 43R – Asset Backed Securities*. The exposure also includes corresponding revisions to other SSAPs, which includes guidance restricting asset backed securities from SSAP No. 2R and guidance for debt instruments that do not qualify as bonds in SSAP No. 21R (SSAP No. 26R, SSAP No. 43R, Other SSAPs).

SAPWG also voted to expose a number of materials relating to the proposed reporting changes for bonds in response to the Principles-Based Bond Project. In addition to a new draft schedule and granular reporting lines, the exposure includes proposed revisions to other schedules and instructions that reference bond reporting. A corresponding blanks proposal will be developed for exposure by the **Blanks (E) Working Group**. This exposure also included a revised Issue Paper. Each of the drafts was exposed for public comment, expiring February 10, 2023. For additional information on the NAIC Bond Project, see our Client Alert.

### 9. Macroprudential (E) Working Group Provides 2022 Liquidity Stress Test Framework Updates

The primary objective of the joint meeting was to consider adoption of the proposed 2022 Liquidity Stress Testing Framework (2022 LST Framework). Justin Schrader (NE), Chair of the **Macroprudential (E) Working Group**, explained that the 2022 LST Framework does not materially differ from the 2021 LST Framework, as regulators wanted to have a couple of consistent years to analyze. The only edits made were technical issues raised by the American Council of Life Insurers (ACLI). With respect to other ACLI-suggested considerations related to interest rate spike scenarios and the inclusion of non-insulated separate accounts, Mr. Schrader noted that the lead state regulators would ultimately be responsible for guiding the insurers on those topics. The “LST Study Group” (an informal group of regulators, industry participants and NAIC staff) will continue to meet in 2023 to allow for views to be shared on those topics, as well as the establishment of more consistent market valuation assumptions for assets for the 2023 LST Framework.

## D. Property and Casualty Insurance Items of Particular Interest

### 1. Property and Casualty Insurance (C) Committee Adopts Revisions to IID Plan of Operations

On December 15, 2022, the **Property and Casualty Insurance (C) Committee** adopted revisions to the NAIC International Insurers Department (IID) Plan of Operation. The Plan of Operation provides a description of the roles NAIC staff and selected state regulators perform in the oversight of non-US (or “alien”) insurers writing surplus lines business in the US and details the standards and processes that alien insurers must meet to gain and maintain inclusion on the NAIC Quarterly Listing of Alien Insurers (Quarterly Listing), such as the minimum required equity and the establishment of a US trust fund.

The latest revisions include an increase in the minimum US trust fund balance to $6.5 million. An earlier draft also included raising the maximum US trust fund balance to $300 million (from $250 million), though the $250 million cap was ultimately retained on the basis that only four insurers would be affected by the increased cap. Industry stakeholders also called for the elimination of the trust fund requirement altogether, though NAIC staff indicated that such a significant change was outside of the working group’s scope.

The new minimum shareholders’ equity requirement applies to new IID applicants immediately and will apply to existing IID-listed insurers as of June 30, 2023.

### 2. Surplus Lines (C) Task Force Continues Work on Nonadmitted Insurance Model Act

The Surplus Lines (C) Task Force met on December 12, 2022. The task force discussed industry comments on revisions to the *Nonadmitted Insurance Model Act* (#870) that are being contemplated to align the Model Act with the federal Nonadmitted and Reinsurance Reform Act (NRRA) that was passed into law in 2010 as part of the federal *Dodd-Frank Wall Street Reform* and *Consumer Protection Act of 2010*. Among other items, industry stakeholders questioned whether certain of the changes proposed in the revised Model Act go beyond what the NRRA requires. For example, stakeholders noted that the NRRA only applies to *nonadmitted* property and casualty insurance, while the proposed model would apply to surplus lines (which, in certain states, include certain accident and health risks) and that the revised draft provides for broad exemptions for “exempt commercial purchasers” (as defined), including notice requirements that are prescribed by the NRRA. Task Force Chair Commissioner Jim Donelon (LA) indicated that the task force would continue to work toward finalizing an amended model.

### 3. Mortgage Guaranty Insurance (E) Working Group Exposes Mortgage Guarantee Insurance Model Act

The **Mortgage Guaranty Insurance (E) Working Group** met on December 13, 2022. During the meeting, the working group discussed comments received on the Exposure Draft of the *Mortgage Guaranty Insurance Model Act* (#630), which was most recently exposed for a public comment period ending November 7, 2022. Among other changes, references to the capital model and the Mortgage Guaranty Insurance Standards Manual have been removed from the proposed Model Act.

### 4. Cannabis Insurance (C) Working Group Nearing Completion of Revised Cannabis Insurance White Paper

The **Cannabis Insurance (C) Working Group** met on November 29, 2022, at which time it reported that the working group was nearing completion on a second version of the *Understanding the Market for Cannabis Insurance*. The initial version was published in May 2019. The working group noted that it expects to consider the second version (known as Version 2.0) for approval during the 2023 Summer National Meeting.

## E. Life Insurance Items of Particular Interest

### 1. Life Insurance and Annuities (A) Committee Signals Guidance on Accelerated Underwriting Is Forthcoming

The **Life Insurance and Annuities (A) Committee** met on December 14, 2022. Among other items, the committee received a report from the **Accelerated Underwriting (A) Working Group**, which has developed draft guidance for the use of accelerated underwriting by life insurers. Although a timeline for the exposure draft was not provided, the guidance is expected to be based on the Accelerated Underwriting White Paper that was adopted during the 2022 Spring National Meeting. The working group anticipates that it will have an open meeting to expose and discuss the guidance and that the guidance will likely be referred to the **Market Conduct Examination Guidelines (D) Working Group** for further analysis.

### 2. Life Actuarial (A) Task Force Adopts Actuarial Guideline ILVA

On December 11, the **Life Actuarial (A) Task Force** (LATF) **adopted** Actuarial Guideline 54 (ILVA) – *Nonforfeiture Requirements for Index-Linked Variable Annuity Products* (ILVA AG), which addresses the interim values for ILVAs (also known as registered index-linked annuities). The ILVA AG was developed by the LATF ILVA Subgroup over the past year and a half. The guideline will apply to all contracts issued on or after July 1, 2024. The Life Insurance and Annuities (A) Committee is expected to adopt the AG in January or February, followed by Executive/Plenary in March during the Spring National Meeting in Louisville, Kentucky.

## F. Other Items of Particular Interest

### 1. Reinsurance (E) Task Force Reminds States of Continuing Covered Agreement Obligations

On November 17, 2022, the **Reinsurance (E) Task Force** received a report noting that all 56 NAIC jurisdictions have adopted the 2019 amendments to the *NAIC Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786). However, NAIC staff reminded task force members that passing the 2019 Amendments was only the first part of the Covered Agreement implementation process and that each state is also required to timely implement those provisions. Staff also encouraged state insurance departments to send any and all Reciprocal Jurisdiction Reinsurer (RJR) applications to the **Reinsurance Financial Analysis (E) Working Group** (ReFAWG) for review (irrespective of whether the reinsurer-applicant is seeking to be approved for "passporting" by the ReFAWG) to ensure consistency across the states. Pursuant to the Covered Agreements, the Federal Insurance Office (FIO) was required to conduct a preemption analysis by September 2022. The associated FIO 2022 Preemption Report, published September 30, 2022, indicated that the FIO took no action regarding the preemption of any inconsistent state insurance measures as of the date of publication but that it anticipates publishing a more comprehensive update during 2023.

The task force also received a report from ReFAWG Chair Rolf Kaumann (CO), who noted that, as of November 17, the working group has approved 40 RJRs for passporting and that the NAIC RJR List now includes a column that displays the period for which the RJRs have satisfied the minimum standards for such status. Chair Kaumann also noted that the NAIC created a point-of-contact list that includes the best contact for RJR issues within each state's insurance department.

Finally, the task force received a report from **Mutual Recognition of Jurisdictions (E) Working Group** Chair Bob Wake (VT), who noted that the working group reapproved the status of Bermuda, France, Germany, Ireland, Japan, Switzerland and the United Kingdom (UK) as qualified jurisdictions (for Certified Reinsurer Status) and reapproved Bermuda, Japan and Switzerland as non-Covered Agreement Reciprocal Jurisdictions.

### 2. International Insurance Relations (G) Committee Discusses G-SII Termination; ICS/AM Comparable Outcomes

The **International Relations (G) Committee** met on December 13, 2022, and received a report from Committee Chair Commissioner Gary Anderson (MA), who "welcomed" the December 9, 2022 announcement by the Financial Stability Board (FSB) to discontinue global systemically important insurer (G-SII) designations in favor of the International Association of Insurance Supervisors' (IAIS) Holistic Framework for Systemic Risk in the Insurance Sector (Holistic Framework). The decision to discontinue the G-SII analysis came after the FSB, in consultation with the IAIS, announced in 2017 its decision not to publish a new list of G-SIIs due to the Holistic Framework work being undertaken by the IAIS. For background, the activities-based Holistic Framework has three components: (i) the Global Monitoring Exercise, (ii) enhanced macroprudential supervisory policy measures and (iii) a robust implementation assessment. Going forward, the FSB will utilize assessments available through the IAIS Holistic Framework to inform its considerations of systemic risk in the insurance sector. For additional information on the Holistic Framework, see our Client Alert.

Commissioner Anderson also discussed the ongoing IAIS Insurance Capital Standard (ICS) workstreams and, in particular, noted that the consideration of the ICS comparability criteria (i.e., the criteria to assess whether the ICS and US-led Aggregation Method (AM) yield comparable outcomes) would be pushed to March 2023 to give additional time for stakeholders to consider scenarios and sensitivity analysis that will be workable for the assessment process. For additional information on the Comparability Assessment, see our Client Alert.

## 3. UCAA Modernization Project to Include Uniform Form A; Electronic Biographical Affidavits

The **National Treatment and Coordination (E) Working Group** met on November 9, 2022, and received a report from NAIC staff regarding the Uniform Certificate of Authority Application (UCAA) website redesign. The project includes developing a uniform electronic "Form A" (acquisition of control) filing form and enabling insurers to submit UCAA primary applications and biographical affidavits electronically. The electronic primary application is currently in a pilot phase, and NAIC staff expect to circulate a Form A survey to state insurance departments in summer 2023 to identify state-specific requirements that will need to be incorporated into the electronic filing process. NAIC staff expect to finalize the UCAA redesign project by 2024.

## 4. Financial Regulation Standards and Accreditation (F) Committee Re-Accredits Puerto Rico

During its December 13, 2022 meeting, **Financial Regulation Standards and Accreditation (F) Committee** Chair, Commissioner Lori Wing-Heier (AK) reported that the committee held a regulator-only session the day prior when it voted to award continued accreditation to the insurance departments of Colorado, Nevada and North Dakota and to re-accredit Puerto Rico.

## 5. NAIC Elects 2023 Executive Officers

The NAIC elected the following NAIC Executive Officers for 2023, who assumed their roles on January 1, 2023:

- **President:** Director Chlora Lindley-Myers (Missouri Department of Commerce and Insurance)
- **President-Elect:** Commissioner Andrew Mais (Connecticut Insurance Department)
- **Vice President:** Commissioner Jon Godfread (North Dakota Insurance Department)
- **Secretary/Treasurer:** Commissioner Scott White (Virginia Bureau of Insurance)

## Contacts

If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed or the Eversheds Sutherland attorney with whom you regularly work.


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