The National Association of Insurance Commissioners (NAIC) held its 2023 Spring National Meeting March 21-25 in Louisville, Kentucky.

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 Spring National Meeting and those preceding the National Meeting. Notable developments include the following:

- The Privacy Protections (H) Working Group discussed a draft Insurance Consumer Privacy Protection Model Law (#674) that is extraordinarily broad in scope and, if adopted as drafted, could fundamentally change the manner in which insurance regulated entities conduct business. Industry stakeholders expressed concern with the initial draft, and many questioned whether it is a workable starting point. The Working Group expects to hold a number of public comment periods to further refine the draft model, including a two-day in-person meeting in June. A final version of the draft is expected to receive a vote in November 2023.

- The Financial Stability (E) Task Force and the Macropreudential (E) Working Group (MWG) met jointly and received a report on developments related to the Regulatory Considerations Applicable (But Not Exclusive) to Private Equity (PE) Owned Insurers, including recent developments related to asset manager affiliates and disclaimers of affiliation, privately structured securities, reliance on rating agencies and offshore/complex reinsurance.

- The Valuation of Securities (E) Task Force and the Risk-Based Capital Investment Risk and Evaluation (E) Working Group continued discussions of an ‘interim’ RBC proposal for residual tranches of asset-backed securities and a ‘long-term’ RBC solution for collateralized loan obligations.

- The Innovation, Cybersecurity, and Technology (H) Committee received an update from the NAIC’s Collaboration Forum on Algorithmic Bias, which is in the process of drafting a model interpretative bulletin that will provide regulatory guidance with respect the use of big data/artificial intelligence-driven decisional systems by insurers. The Committee anticipates that it will expose an initial draft bulletin for public consideration by “early summer” 2023.

- The Big Data and Artificial Intelligence (H) Working Group received a report on its development of a draft Model and Data Regulatory Questions Memo to be used by state insurance regulators as part of the insurer examination process. The questions purport to better evaluate insurers’ use of models and big data, including those obtained from unaffiliated third parties. Revised questions are expected to be exposed for public comment in May 2023.

- The Accelerated Underwriting (A) Working Group voted to expose a Regulatory Guidance and Considerations document related to accelerated underwriting programs used by life insurers. Among other things, the regulatory guidance provides sample questions and areas for insurance department review.

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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1. Privacy Protections (H) Working Group Exposes Draft Consumer Privacy Protection Model Law

The Privacy Protections (H) Working Group met on March 21 to discuss the draft Insurance Consumer Privacy Protection Model Law (#674) that was exposed for public comment during the National Meeting. At the outset of the meeting, Chair Katie Johnson (VA) reiterated that the exposure draft was an “initial” version of the draft that was intended to “put a stake in the ground” and encourage interested stakeholders to come to the table. Nevertheless, the current version of the draft – which is intended to replace the Insurance Information and Privacy Protection Model Act (#670) and the Privacy of Consumer Financial and Health Information Regulation (#672) – is extraordinarily broad in scope and, if adopted as drafted, could fundamentally change the manner in which insurance regulated entities conduct business.

Industry stakeholders expressed concern with the initial draft, with some questioning whether it is a workable starting point. Stakeholders took specific issue with a number of the draft’s requirements. Comments included that (i) the proposed marketing restrictions would hamper insurers’ ability to seek out underserved markets and prevent joint marketing activities; (ii) requiring prior consent of overseas data processing would be too burdensome for large international companies and impede the ability to provide effective customer service; (iii) the 90-day automatic deletion of customer data would require costly upgrades to insurers’ systems; and (iv) increased notice requirements, including proposed annual privacy notices, would create more confusion for consumers than they would resolve. In addition, there was uniform opposition among industry representatives to the optional Model Law language that would create a private cause of action.

In terms of next steps, Chair Johnson noted that the Working Group will continue to hold one-on-one discussions with interested parties and that it expects to hold biweekly virtual listening sessions (beginning April 18) and at least one in-person meeting (to be held in Kansas City, Missouri, June 4-6) to further refine the draft model. The Working Group currently expects to finalize the Model Act in November 2023. Comments on the current version of the draft Model Law are due by April 3. For more information on the draft Model Act, see our client alert.

2. Innovation, Cybersecurity, and Technology (H) Committee Drafting Artificial Intelligence/Machine Learning Model Bulletin; Contemplates “Independent Data Set” to Test for Unfair Bias

During the March 22 Innovation, Cybersecurity, and Technology (H) Committee meeting, Chair Commissioner Kathleen Birrane (MD) provided an update on behalf of the Collaboration Forum on Algorithmic Bias, which is in the process of drafting a model interpretative bulletin that will “provide regulatory guidance respecting the use of Big Data/Artificial Intelligence (AI)-Driven Decisional Systems by Insurers.” Commissioner Birrane reiterated prior comments that the bulletin would be principles-based, include testing and validation standards, and apply to insurance regulated entities rather than unregulated third-party service providers. The Committee anticipates that it will expose an initial draft bulletin for public consideration by “early summer” 2023.

The Committee also received a report from the Chair of Workstream Four of the Big Data and Artificial Intelligence (H) Working Group, Commissioner Amy Beard (IN), who announced that the Workstream was in the early stages of considering how to work with neutral third parties (e.g., academics) to develop an “independent data set” for the testing of unfair bias in regulated entity models and algorithms. Workstream Chair Beard and Committee Chair Birrane stressed that the consideration and development of such a data set were simply an announcement that regulators are thinking about the topic, and that additional information was not yet available.

3. Big Data and Artificial Intelligence (H) Working Group Discusses AI/ML Reports for Home and Life Sectors

The Big Data and Artificial Intelligence (H) Working Group met on March 22 to receive reports on its ongoing analysis of the use of artificial intelligence (AI) and machine learning (ML) technology within the auto, home and life insurance lines of business. As background, in late 2022, the Workstream published a report and associated memo on the use of AI/ML by private passenger auto insurers and issued a second data call containing questions on the use of AI/ML by home insurers. Responses to the home insurance data call were due on December 15, 2022, and the Workstream expects to publish a report available to the public prior to the NAIC Summer National Meeting.

The Working Group also received a report on the development of the more comprehensive data call template for life business. With respect to that process, Workstream Chair Commissioner Kevin Gaffney (VT) explained that 14 states developed the survey, which is intended to gather information about how life insurers are deploying AI/ML technologies in pricing and underwriting, marketing, and loss prevention. Similar to the auto and home surveys, the goal of the life survey is to learn from the industry about the current level of risk and exposure associated with their use of AI/ML, how the industry is managing or mitigating risks, and what might be the most meaningful regulatory approach for overseeing the industry’s use of AI/ML. Chair Gaffney noted that 192 life insurers – consisting of companies with more than $250 million in premium on individual policies, term life insurers writing business on more than 10,000 lives, and one InsurTech insurer – are expected to receive formal data call letters on May 1. Responses to the data call are due by May 31. The final AI/ML life survey is available here.


The Big Data and Artificial Intelligence (H) Working Group also received a report from Workstream Two on its development of a draft Model and Data Regulatory Questions Memo (BDAI Questions Memo) to be used by state insurance regulators as part of the insurer examination process. The BDAI questions purport to better evaluate insurers’ use of models and big data (including those obtained
from unaffiliated third parties). Workstream Chair Commissioner Doug Ommen (IA) noted that the current iteration of the BDAI Questions Memo contains two Questions sections, a Main General section, 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 memo also contains a Definitions section, which includes definitions of AI, bias, ML, model, and governance framework and controls, among others.

During the meeting, Commissioner Ommen repeated that the BDAI questions represent a “starting point” and that additional work is necessary, including consideration of how work on the BDAI questions overlaps with the work of the Casualty Actuarial and Statistical (C) Task Force (regarding predictive models), the Accelerated Underwriting (A) Working Group (regarding potential standards for accelerated underwriting) and the H Committee’s broader work regarding a big data/AI model bulletin. Commissioner Ommen noted that the Definitions section, in particular, is in need of additional refinement and that it will take some time for the Workstream to settle on definitions of certain key terms included in the BDAI Questions Memo. A revised draft BDAI Questions Memo is expected to be exposed for public comment in May 2023.

5. Cybersecurity (H) Working Group Focuses on Breach Notification and Vendor Risk

The Cybersecurity (H) Working Group met on March 7 to discuss and advance its work plan for 2023. The primary focus of the work plan is to develop a “cybersecurity incident response plan” that will aid state insurance regulators in receiving and responding to reports of cybersecurity incidents by regulated entities. The plan would provide guidance on how regulators should respond to such reports, including addressing communication between state and federal regulators and the affected entity. It would also provide guidance on issues regulators should be focusing on when working with reporting entities, including organizational security, risk assessment, audits, and notification of affected consumers. As part of this work stream, the Working Group has published a request for input regarding developing a template for states to use when gathering information on cybersecurity incidents from regulated entities. Input will be accepted through May 1.

The Working Group additionally heard a report on the U.S. Department of the Treasury’s recent report on The Financial Services Sector’s Adoption of Cloud Services, which highlighted risks associated with the increased adoption of cloud services and the concentration of critical services in a small number of cloud providers. As a result of this discussion, the Working Group is considering whether insurers should be required to submit System Summary Grids annually to facilitate better risk monitoring by regulators, including risks related to the use of cloud services. The Working Group has also requested input on this proposal by May 1.

Finally, the Working Group discussed a draft referral to the IT Examination (E) Working Group, which will ask it to consider updating the cybersecurity related guidance currently contained in the Financial Condition Examiners Handbook to reflect developments in cybersecurity best practices, including based on guidance from the federal Cybersecurity and Infrastructure Security Agency (CISA).

B. Environmental, Social and Corporate Governance (ESG)

1. Climate and Resiliency (EX) Task Force Receives Updates on Climate-Related Referrals

The Climate and Resiliency (EX) Task Force met on March 24 and received an update from its Solvency Workstream. Chair Commissioner Birrane (MD) reported that all three climate-related referrals that the Solvency Workstream developed in 2022 have been sent to their respective working groups. These include referrals to the Financial Analysis Solvency Tools (E) Working Group (available here), the Financial Condition Examiners Handbook (E) Technical Group (available here), and the Own Risk and Solvency Assessment Implementation (E) Subgroup of the Group Solvency Issues (E) Working Group (available here). 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 Solvency Workstream is also considering how a climate scenario analysis (a process of planning for plausible future large-scale climate change scenarios) could be a potential financial oversight tool for regulators. After holding three public panels on the topic in November 2022, the Workstream is now preparing a survey of industry and interested parties on whether a climate scenario analysis could be a viable tool for regulators. The Workstream also reported that it planned to hold public climate stress testing panels in 2023 to determine if climate stress tests would be a useful tool for regulators.

2. International Association of Insurance Supervisors Exposes Public Consultation on Climate Risk

A topic of informal discussion during the Spring National Meeting was the International Association of Insurance Supervisors’ (IAIS) exposure of part one of a Public Consultation on Climate Risk Supervisory Guidance (Consultation Paper). The Consultation Paper finds that climate change is a source of risk to insurer financial stability and details the initiatives undertaken by the IAIS to address the issue. As part of that work, the IAIS published the Consultation Paper to consider “limited changes” to various IAIS Insurance Core Principles (ICPs) and supporting guidance to promote a globally consistent supervisory response to climate change. The Consultation Paper includes questions seeking stakeholder feedback on IAIS’ overall climate-related work. Responses to the questions raised in the Consultation Paper are due to the IAIS by May 16.
C. Financial Issues of Particular Interest

1. Macroprudential (E) Working Group Provides Update on Regulatory Considerations List

The Financial Stability (E) Task Force and the Macroprudential (E) Working Group (MWG) met jointly on March 22. During the meeting, MWG Chair Bob Kasinow (NY) provided a summary of a recent status report on developments related to the Regulatory Considerations Applicable (But Not Exclusive) to Private Equity (PE) Owned Insurers. Notable developments include:

- **Item #9 (Asset Manager Affiliates and Disclaimers of Affiliates)**
  » The MWG will pause additional activity with respect to Item #9, “to realize the benefits of the recently implemented Schedule Y, Part 3,” and other changes under consideration by the NAIC working groups and task forces. Among other things, Schedule Y, Part 3 requires insurers to identify all entities with greater than 10% ownership (regardless of any disclaimer of affiliation) and whether there is a disclaimer of control or disclaimer of affiliation in effect.

- **Item #10 (Privately Structured Securities)**
  » MWG members intend to “wait on any further work or referrals” until they have an opportunity to analyze data provided as a result of Actuarial Guideline 53 (AG 53) and Blanks (E) Working Group Proposal 2023-06BWG. AG 53, which is effective for year-end 2022 reporting, requires disclosures related to insurer privately structured securities risks and how they are modeled. If approved, Proposal 2023-06BWG would essentially split Schedule D, Part 1 of the annual statement into two sections, one for issuer credit obligations and another for asset-backed securities. For more information on Proposal 2023-06BWG, see Section C.7 below.

- **Item #11 (Reliance on Rating Agencies)**
  » The MWG sent a referral to the Valuation of Securities (E) Task Force (VOSTF) indicating the MWG’s agreement to monitor the work of its ad hoc group addressing credit rating agency considerations. The VOSTF has also drafted a list of questions (on pages 54-56) to discuss with each rating agency in future regulator-only meetings and adopted a new charge for 2023 to establish criteria to permit NAIC staff discretion over the assignment of NAIC designations for securities subject to the filing exempt process (i.e., the use of credit rating agencies’ ratings to determine an NAIC designation) to ensure greater consistency, uniformity and appropriateness to achieve the NAIC’s financial solvency objectives. Those criteria have not yet been exposed for public comment.

- **Item #13 (Offshore/Complex Reinsurance)**
  » The MWG is endeavoring to understand the true economic impact of offshore reinsurance transactions and has drafted a Cross-Border Affiliated Reinsurance Comparison Worksheet that is intended to be a tool to help regulators understand the impacts of reinsurance transactions. The Worksheet was referred to the Reinsurance (E) Task Force. The MWG also met with the Cayman Island Monetary Authority and the Bermuda Monetary Authority (BMA). Among other items, the regulators discussed the BMA’s recently released consultation paper on proposed enhancements to the Bermudan regulatory regime.

2. Regulators, NAIC Staff Continue Discussion of Asset-Backed Securities RBC Project

The NAIC’s risk assessment of structured securities – including an “interim” risk-based capital (RBC) proposal for residual tranches of asset-backed securities (ABS) and a “long-term” RBC solution for collateralized loan obligations (CLOs) – continued to be a topic of discussion across multiple task forces and working groups during the Spring National Meeting. Although the majority of the discussion to date has focused on amendments to the RBC framework for CLOs, the Risk-Based Capital Investment Risk and Evaluation (E) Working Group (RBCIRE WG) Chair, Philip Barlow (DC), reiterated during the National Meeting that the “interim solution” would apply to residual tranches of all ABS and that the ultimate objective of the project is to develop modeling methodologies and RBC charges for all ABS. To that end, Barlow noted that any interim change to residual tranches of ABS RBC charges “could stick around for some time for assets that do not have a lot of volume” as regulators focus their initial attention on the development of a long-term modeling methodology and RBC factors for CLOs. The RBCIRE WG and the VOSTF expect the CLO modeling methodology to serve as a template for how to financially model additional structured securities.

Additional details on this project follow.

i. **RBCIRE WG Discussion of Interim RBC Charge for Residual Tranches of Asset-Backed Securities**

The RBCIRE WG continued its discussion of the NAIC Investment Analysis Office (IAO) proposal to change the RBC charge for the residual tranches of all ABS investments on an interim basis and issued a “long-term” solvency solution for CLOs contemplated by the VOSTF and the RBCIRE WG. The RBCIRE WG anticipates that the interim proposal will be adopted in time for year-end 2023 filings. Although no formal vote was taken during the Spring National Meeting, there appeared to be consensus among Working Group members on setting a single RBC charge for all residual tranches across all types of ABS investments. There was less of a consensus, however, on what the capital charge should be.

There also appears to be a growing contingent of Working Group members who are concerned about the scope of the “interim proposal” project and the necessity of an “interim solution” in the first place. Chair Philip Barlow (DC) noted that he was operating on the assumption that the Financial Condition (E) Committee directed the Working Group to propose a new RBC charge for ABS. Other members, including Valuation of Securities (E) Task Force Chair Carrie Mears (IA) and Kevin Clark (IA), suggested that there is a lack of clarity regarding the Financial Condition (E) Committee’s specific charge and suggested that the Working Group take a more cautious approach to adopting a capital charge through a process that deviates from the RBCIRE WG’s standard process.

Members also recommended that the Working Group table the discussion of a new capital charge until the group has the opportunity to review the magnitude of insurer ABS investments on an industrywide and insurer-specific basis. The Working Group expects to hold a regulator-only call during the first week of April to review the ABS investment data that was included (for the first time) in insurers’ 2022 year-end reports. The Working Group also expects to expose the RBC Instructions structural change to add one RBC charge for
all ABS residual tranches and a sensitivity test proposal submitted by the American Council of Life Insurers within the coming weeks. The structural change must be adopted before May 1 in order for insurers’ reporting vendors to account for the change in year-end 2023 financial statements. The capital charge itself must be determined prior to July 1 for the change to be effective for year-end 2023.

ii. American Academy of Actuaries Presentation to RBCIRE WG Regarding “Long-Term” CLO RBC Solution

The RBCIRE WG also received a report from the American Academy of Actuaries (AAA), which is drafting a report for the RBCIRE WG regarding potential options for a revised RBC structure for CLOs. The AAA noted that it is currently focused on two issues: (i) developing a model specs document that will outline the AAA’s recommendation on how CLOs should be modeled for RBC purposes, and (ii) defining “RBC arbitrage” for purposes of determining what constitutes arbitrage in the context of CLOs. With respect to the first issue, the AAA anticipates that it will utilize a “ground up” modeling approach, i.e., it will disregard existing CLO models (including the NAIC’s existing CLO stress testing model) in favor of developing a model that reflects the AAA’s testing and analysis. That model is expected to serve as a benchmark for the CLO modeling methodology under consideration by VOSTF and the Structured Securities Group (SSG). The AAA did not note a specific timeline for completion, but indicated that it was a “long-term project.”

With respect to the second issue, per the AAA, there is no agreed-upon metric or definition for what constitutes RBC arbitrage, which has led to inconsistent conclusions about whether RBC arbitrage is possible under the current CLO RBC framework. The AAA expects to submit a definition to the RBCIRE WG for consideration in April or May of 2023.

iii. Valuation of Securities (E) Task Force Establishment of CLO Modeling Ad Hoc Technical Group

The VOSTF met on February 21 and again on March 23. During the February 21 meeting, the VOSTF voted to amend the Purposes and Procedures Manual of the NAIC Investment Analysis Office (P&P Manual) to include CLOs as a Financially Modeled Security, effective as of January 1, 2024. Those amendments remove CLO investments from the list of filing exempt securities and require that they be subjected to rating by the NAIC SSG in order to determine an NAIC rating designation. The P&P Manual amendments were subsequently adopted by the Financial Condition (E) Committee on March 24.

During the February 21 meeting, the VOSTF also voted to establish an ad hoc modeling group consisting of NAIC staff, regulators and interested parties that will consider certain technical items associated with the SSG’s proposed CLO Modeling Methodology (excluding scenarios and probabilities). Ad hoc group meetings will be open to the public, but participation will be limited to ad hoc group members. The ad hoc group will commence work on the Methodology’s “Maturities and Prepayment” to demonstrate quantitative impact on CLO tranche losses beginning the week of April 3. An intermediate goal of the group is to model “dummy” scenarios that can be independently validated by interested parties.

3. Valuation of Securities (E) Task Force Defers Adoption of “Structured Equity and Funds” Amendments to P&P Manual; Directs NAIC Staff to Review Private Letter Rulings

The VOSTF deferred adoption of P&P Manual amendments that would include a definition of “Structured Equity and Fund” investments and remove those investments from being eligible to use credit rating agency ratings to assign an NAIC designation (i.e., the filing exempt process). As background, a February 2 proposal from the NAIC Securities Valuation Office (SVO) to the VOSTF 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 that itself invests, directly or indirectly, in one or more funds or other equity investments, and that such structures (1) circumvent regulatory guidance, (2) present RBC arbitrage opportunities and (3) lack transparency.

The proposed amendments would permit the SVO to apply any methodology it deems appropriate to assess the credit risk of a structured equity and fund issuance and the underlying assets identified pursuant to a look-through assessment (including, but not limited to, a weighted average rating factor methodology or a credit rating agency’s rating rationale analysis of the issuance), notched as the SVO deems appropriate to eliminate any RBC 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).

During the March 23 meeting, the SVO reasserted that the current regulatory approach to structured equity and funds (which, as noted above, utilizes the filing exempt (FE) process) provides a means to exploit the system to avoid the intended regulatory treatment and, as a result, fails to satisfy the NAIC’s stated objective of assessing regulatory risk. The VOSTF was expected to vote on the amendment at the Spring National Meeting but instead directed the SVO to outline its specific concerns and draft an amendment outlining recommended procedural steps for reviewing FE investment securities about which it has concerns and the steps insurers could take to clarify and rebut the SVO’s concerns.

4. Financial Condition (E) Committee Receives Referral to Include Additional Market-Data Fields for Bond Investments in the Annual Statement Instructions

The Financial Condition (E) Committee met on March 24, where it received a referral from the VOSTF to consider and comment on the proposal by the NAIC Investment Analysis Office (IAO) to include additional market-data fields for bond investments in the annual statement instructions. Task Force Chair Carrie Mears (IA) noted that the SVO would benefit from certain market value-based data and proposed that the SVO house a data repository that would permit regulators to access a number of investment-related data points that would assist with insurer oversight and regulation. Although an initial proposal suggested that data be collected through annual reporting requirements, subsequent discussions found such a process to be unduly burdensome. As a result, the referral asks the E Committee to consider whether there are investment data or projection capabilities that would be useful that could be provided by commercially available data sources or investment models. Comments on the referral are due from members of the Committee by May 15.

During its March 22 meeting, the Financial Regulation Standards and Accreditation (F) Committee discussed comment letters received in response to proposed revisions to the Part A Insurance Holding Company Systems Accreditation Standard regarding the 2020 amendments to the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450) (the 2020 amendments), which require that the ultimate controlling person of each insurance holding company file annually a group capital calculation and implement the NAIC's Liquidity Stress Test Framework. As proposed, the amendments to the Part A Accreditation Standard will become accreditation standards effective as of January 1, 2026. It is expected that the Part A revisions will be considered for adoption by the NAIC Executive and Plenary at the 2023 NAIC Summer National Meeting. As of December 2022, the NAIC reports that 23 jurisdictions have adopted the 2020 amendments.

6. Capital Adequacy (E) Task Force Adopts RBC Changes to Affiliated Investments Structure and Instructions; Establishes Ad Hoc Group to Review Long-standing RBC Formulas

The Capital Adequacy (E) Task Force (CATF) voted to adopt Proposal 2022-09-CA (Revised Affiliated Investments Structure and Instructions), which has been under consideration for the Task Force for some time. The proposal purports to improve the RBC formulas and provide consistent treatment of affiliates for all lines of business. CATF Chair Tom Botsko (OH) also noted that the CATF will be getting a referral from the Statutory Accounting Principals Working Group (SAPWG) on negative interest maintenance reserve, on which the Task Force will send a referral to the Life Risk-Based Capital (E) Working Group. CATF Chair Tom Botsko (OH) also announced that he plans to establish an ad hoc group, with both regulator and industry members, to review RBC formulas initially established in the early 1990s. He would like the ad hoc group to determine whether there are some additional risks that should be included in the RBC calculation. All three formulas (life, health and P&C) will be evaluated.

7. Statutory Accounting Principles (E) and Blanks (E) Working Groups Consider Bond Project Proposals

The SAPWG voted to expose proposed revisions to SSAP No. 26R, SSAP No. 21R, SSAP No. 43R and other impacted SSAPs that would refine guidance for the principles-based bond project. The proposed revisions are intended to determine what constitutes a qualifying bond and identify different types of investments more clearly. Comments on the exposure are due by April 28.

Similarly, the Blanks (E) Working Group has developed two bond-related proposals. Proposal 2023-06BWG proposes to split Schedule D, Part 1 into two sections: one for issuer credit obligations and a second for ABS. Proposal 2023-06BWG also updates other parts of the annual statement that reference the bond lines of business. Comments on Proposal 2023-06BWG are due by June 30. The Blanks Working Group also exposed Proposal 2023-07BWG, which was also drafted in response to discussions about the bond project to make the investment schedules consistent. Comments on Proposal 2023-07BWG are due by April 28. The anticipated effective date for both of the Blanks Working Group proposals is January 1, 2025.


The Risk-Focused Surveillance (E) Working Group exposed proposed amendments to the Financial Analysis Handbook and Financial Condition Examiners Handbook for a 45-day public comment period ending May 9. The exposed draft includes additional guidance to assist regulators in their review of affiliate transactions, particularly agreements with market-based reimbursement structures. The Working Group also discussed a potential referral from the MWG concerning affiliate agreements with private equity companies and, in particular, whether the terms of an investment agreement between a private equity company and its insurance affiliate reflect the terms that would be agreed to in an arms'-length transaction. The Working Group agreed to postpone consideration of this referral until the updates to the general guidance on affiliate transactions in the exposed draft have been finalized. It expects to begin looking into the subject later in 2023.

9. Macroprudential Working Group to Reconsider Counterparty Exposure and Concentration Risk in Light of Banking Sector Concerns

During the MWG meeting on March 22, Chair Bob Kaisnow (NY) advised that the MWG recently “revitalized” the NAIC’s initiative to identify potential systemic issues related to counterparty aggregation risk and exposures, and concentration risk among industry sectors that are insured. As background, an initial analysis of potential counterparty and concentration exposures was conducted in 2017 as part of the broader Macroprudential Initiative that was designed to consider new or improved tools to better monitor and respond to (i) the impact of external financial and economic risks on the insurance industry and (ii) risks emanating from or amplified by the insurance industry that might be transmitted externally and result in significant market impact risks to the insurance industry. In January 2023, NAIC staff developed a questionnaire that was used by states to collect data on liquidity stress test (LST) eligible insurers in order to understand potential asset sales that were reported in LST scenarios. Responses from that data call indicated that there was no material impact on the insurer liquidity profiles. During the March 22 meeting, the MWG directed NAIC staff to conduct a thorough review of academic literature on counterparty risk assessment.
D. Property and Casualty Insurance Items of Particular Interest

1. Property and Casualty (C) Committee Adopts Nonadmitted Insurance Model Act

The Property and Casualty (C) Committee met on March 23. Among other items, the Committee voted to adopt amendments to the Nonadmitted Insurance Model Act (#870). The amendments generally align the Model Act with the federal Nonadmitted and Reinsurance Reform Act (NRRA), which was passed into law in 2010 as part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. However, the Model Act amendments go further than the NRRA in some respects. For example, the amended Model Act defines certain terms that are not defined by the NRRA (e.g., “principal place of business” and “principal residence”). The amended Model Act also contemplates a domestic surplus line insurer regime and adds a drafting note to clarify that the NRRA does not preempt state laws restricting the placement of workers’ compensation business with nonadmitted insurers.

The amended Model Act now goes to the NAIC Executive and Plenary for final approval. It is expected that the Executive and Plenary will consider adoption at the 2023 NAIC Summer National Meeting.


The Mortgage Guaranty Insurance (E) Working Group met on March 22, where it continued its discussion of the draft Mortgage Guaranty Insurance Model Act (#630). Interested party comments focused on Section 10 of the model regarding treatment of contingency reserves (i.e., the additional premium reserve established to protect policyholders against adverse economic cycles) and specifically whether collateral separately held in a trust or segregated account by a reinsurer provides reinsurance credit.

Another topic of discussion was whether the model should expressly state that it does not provide a private right of action. The Working Group expects to complete its work on the Model Act in April or May of 2023 and hold a vote to adopt the model during the 2023 NAIC Summer National Meeting.

E. Life Insurance Items of Particular Interest

1. Accelerated Underwriting (A) Working Group Votes to Expose Accelerated Underwriting Regulatory Guidance

The Accelerated Underwriting (A) Working Group (AUWG) met on February 22. Among other items, the Working Group voted to expose a Regulatory Guidance and Considerations document that presents regulatory guidance for insurance departments when reviewing accelerated underwriting programs used by life insurers. The regulatory guidance expounds on the recommendations the AUWG made in its educational paper and provides sample questions and areas for insurance department review. The Regulatory Guidance and Considerations document also (i) establishes baseline expectations for accelerated underwriting programs and (ii) provides a list of questions and requests regulators may want to submit to life insurers when reviewing accelerated underwriting programs.

The AUWG also made a referral to the Market Conduct Examination Guidelines (D) Working Group with suggested additions to the NAIC’s Market Regulation Handbook that are based on a conclusion by the AUWG that it would be beneficial to include additional guidance to address questions involving accelerated underwriting in life insurance. The Regulatory Guidance and Considerations were exposed for a 45-day public comment period ending April 15.

2. Executive and Plenary Adopts Amendments to Actuarial Guideline 49-A Regarding IUL Illustrations

On March 25, the NAIC Executive and Plenary adopted amendments to Actuarial Guideline (AG) 49-A to address a concern regarding the use of illustrations for indexed universal life insurance (IUL) policies with uncapped volatility-controlled indexes that allow for crediting fixed bonuses under the policies. Insurer issuers of IUL policies using uncapped volatility-controlled indexes have been able to illustrate those policies at higher rates of return than illustrations for IUL policies without volatility-controlled indexes because of the fixed bonus features. For additional information, see our client alert.

3. Executive and Plenary Adopts Actuarial Guideline 54 Regarding Index-Linked Variable Annuities or Registered Index-Linked Annuities

On March 25, the NAIC Executive and Plenary adopted Actuarial Guideline (AG) 54 - Nonforfeiture Requirements for Index Linked Annuity Products, addressing index-linked variable annuities (ILVAs) or registered index-linked annuities (RILAs), effective July 1, 2024. AG 54 promotes consistency, while allowing for reasonable product variation, outlining that interim values should provide equitable treatment to the contract holder and the insurance company. Now that AG 54 has been finalized, the action will move to the Interstate Insurance Product Regulation Commission (Compact), which has created an ILVA subgroup to develop a uniform standard for ILVAs/RILAs.
F. Other Items of Particular Interest

1. Reinsurance Task Force Sees Growing Number of Reciprocal Jurisdiction Reinsurers; Monitoring Bermuda Monetary Authority Developments

The Reinsurance (E) Task Force met on March 6 and received a report from the Reinsurance Financial Analysis (E) Working Group (ReFAWG). Chair Rolf Kaumann (CO) noted that the ReFAWG approved a total of 41 certified reinsurers and 55 reciprocal jurisdiction reinsurers for NAIC “passporting” in 2022. Kaumann also noted that the ReFAWG anticipates meeting several times in 2023 and that the total number of certified reinsurers and reciprocal jurisdiction reinsurers approved for passporting will continue to grow throughout the year. Mutual Recognition of Jurisdictions (E) Working Group Chair Bob Wake (VT) also reported to the ReFAWG that the Working Group reapproved seven certified jurisdictions (Bermuda, France, Germany, Ireland, Japan, Switzerland, United Kingdom) and three reciprocal jurisdictions (Bermuda, Japan, Switzerland). Unlike European Union Member States and the United Kingdom, the referenced reciprocal jurisdictions have not entered into a covered agreement with the United States and must obtain NAIC approval to be designated as a reciprocal jurisdiction.

Wake also advised that the Bermuda Monetary Authority (BMA) recently shared with the Working Group the Consultation Paper on Proposed Enhancements to the BMA Regulatory Regime for commercial insurers and insurance groups. The proposed changes focus primarily on the regulatory framework for life insurers and cover enhancements to the Bermuda Solvency Capital Requirement calculation and shift the risk margin calculation from a groupwide to an entity basis (i.e., determined as the sum of legal entity risk margin), among many other technical changes. Wake noted that any changes to the BMA insurance laws would be assessed by the Working Group during the certified and reciprocal jurisdiction review process prior to the 2023 NAIC Fall National Meeting.

2. International Insurance Relations (G) Committee Applauds IAIS Adoption of Final ICS/AM Comparability Criteria

The International Relations (G) Committee met on March 22 and received an update from Committee Chair Commissioner Gary Anderson (MA), who noted that the IAIS approved the final comparability criteria to assess whether the US-led Aggregation Method (AM) provides comparable outcomes to the IAIS-developed Insurance Capital Standard (ICS). The final comparability criteria – which were applauded by the NAIC – represent years of work by insurance supervisors to fulfill the Financial Stability Board’s charge to develop a comprehensive, groupwide supervisory and regulatory framework for internationally active insurance groups (IAIG), including a quantitative groupwide capital standard. The final decision of whether the ICS and the AM provide comparable outcomes will be made in 2024. In the interim, it is expected that specifications for the ICS and AM will be released in April 2023, with data due by August 31. It is also anticipated that ICS data collection will include a “candidate,” or hypothetical, ICS to be used for the comparability assessment that will be exposed for public comment in June 2023. A press release from the IAIS regarding the AM/ICS resolution is available here.


Proposal 023-01BWG removes Pet Insurance from the Inland Marine line of business and adds a new line of business to the Blanks Appendix – P/C Lines of Business Definition. If adopted, the proposal would add (i) a Pet Insurance line within the existing P/C Blank for the Underwriting and Investment Exhibits, Exhibit of Premiums and Losses; (ii) an Insurance Expense Exhibit; and (iii) new Schedule P Parts 1 through 4 that are specific to Pet Insurance. Comments on the proposal are due by April 28.

4. Executive (EX) Committee Approves Request to Reopen Property and Casualty Insurance Guaranty Association Model Act to Authorize Guaranty Association to Cover Admitted Cyber Products

The Executive (EX) Committee voted to reopen the Property and Casualty Insurance Guaranty Association Model Act (#540) to consider amendments to clarify that cyber insurance policies issued in the admitted marketplace are subject to guaranty fund coverage. It is expected that the amendments will be incorporated into the Model Act and submitted to the NAIC Executive and Plenary for final approval in 2023.

5. Valuation of Securities Task Force Exposes Amendment to Remove Distressed Banks from Qualified US Financial Institutions List

The VOSTF voted to expose amendments to the P&P Manual to update the Notice of Credit Deterioration for the List of Qualified U.S. Financial Institutions (List). The List identifies US financial institutions that are eligible to issue letters of credit as collateral for reinsurance transactions with US cedents, and the proposed amendments were prompted by the recent banking crisis until recently, Silicon Valley Bank speared on the List. The proposed amendments would compel the SVO to remove any bank from the List if the bank’s primary regulator takes certain adverse action against the bank (i.e., closes the bank, places it into receivership or conservatorship, or provides notice that any such action is forthcoming). The amendments are exposed for a 15-day public comment period ending April 10. The Task Force also directed staff to refer the amendment to the Reinsurance (E) Task Force for consideration.

6. NAIC CEO Mike Consedine to Step Down; Search Firm to Conduct Search for Replacement

The NAIC announced on March 16 that Mike Consedine is stepping down as CEO effective April 30. Consedine has served in that role since January 2017. During the Spring National Meeting, the Executive (EX) Committee voted to appoint Andy Beal as acting CEO. Beal, whose extensive tenure at the NAIC includes roles as COO and General Counsel, has served as acting NAIC CEO previously. The Executive Committee also authorized the NAIC to hire a search firm to identify potential candidates to fill the CEO position. No timeline to permanently fill the position was announced.
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