The National Association of Insurance Commissioners (NAIC) held its 2019 Summer National Meeting from August 3 through August 6 in New York City. Typically the sleepier one among the NAIC’s three national meetings, this year the NAIC pushed ahead with marquee and interesting initiatives—including reinsurance collateral reform, capital standards, innovation and technology, annuity suitability and cannabis—and launched some notable new initiatives—including a look at changing laws for privacy, rebating and pet insurance. The year ahead looks to be a busy one for the NAIC, with regulators hoping to bring many of these initiatives to a close by year end.

The meeting kicked off with opening remarks from recently confirmed New York Department of Financial Service (DFS) Superintendent Linda A. Lacewell. Superintendent Lacewell mentioned the large number of financial institutions DFS regulates, including the largest number of domestic insurers in any state, and urged regulators to remember that at the end of every decision they make, there are real people who experience real-life consequences. She said consumers can’t be left out of the equation and emphasized that the role of consumer representatives at the NAIC is critical. She also used her opening remarks to note the small number of women insurance commissioners and the underrepresentation of women in the C-Suite within the insurance industry, and challenged the industry to change this.

The following are some highlights from the Summer National Meeting. We do not cover every meeting in this report; rather, we comment on select noteworthy developments and matters of interest to our clients.
A. Issues of General Interest

1. NAIC Works to Implement Reinsurance Collateral Provisions of Covered Agreements
   The Reinsurance (E) Task Force provided an update on continuing efforts to implement the reinsurance collateral provisions of the covered agreement between the United States and the European Union (and more recently, the covered agreement between the United State and the United Kingdom). For background on the EU/UK covered agreements, their reinsurance collateral provisions and their genesis, see this Eversheds Sutherland Legal Alert.

   Earlier this summer, the NAIC took the last step for final adoption of revisions to the Credit for Reinsurance Model Law and Regulation to address the reinsurance collateral provisions of the Covered Agreements. The NAIC’s efforts have now turned to ensuring that the revised Models are adopted by the various states, and to updating existing NAIC processes to conform to the revised Models. The Reinsurance Task Force discussed timing for adopting the revised Model Law and Regulation as an NAIC state accreditation standard so as to avoid federal preemption. Under the Covered Agreement, the Federal Insurance Office Director is to begin evaluating US state insurance laws and regulations for possible preemption by March 1, 2021, prioritizing those states with the highest volume of gross ceded reinsurance, and complete any necessary preemption determinations by September 1, 2022.

   Some industry representatives have advocated for an expedited accreditation process (which typically takes 5 years) to ensure that federal preemption does not occur, but so far the NAIC has indicated that the decision will follow the normal accreditation process. The Reinsurance Task Force’s stated plan is to make a formal recommendation for adoption of the revised Models as an accreditation standard at the 2020 NAIC Spring National Meeting, but NAIC General Counsel Kay Noonan indicated during the Reinsurance Task Force meeting that an accelerated process has not been ruled out. In the meantime, the NAIC is encouraging states to begin adopting the revised Models as soon as possible. The Financial Regulation Standards and Accreditation (F) Committee has confirmed that states that adopt the revised Models will remain in compliance with current NAIC accreditation standards.

   The Qualified Jurisdiction (E) Working Group is working on changes to the NAIC process for designating “qualified jurisdictions” and provided an update on its plans. The NAIC’s qualified jurisdiction process is being updated to “require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision and group capital standards, as well as require strengthening of the information-sharing requirements between the states and qualified jurisdictions,” in order for reinsurers domiciled in qualified jurisdictions to receive the same benefits of collateral elimination as are provided under the Covered Agreements for EU/UK domiciled reinsurers. As a first step, the Working Group is expected to review
and reapprove the current list of qualified jurisdictions before the end of 2019. For qualified jurisdictions that are parties to a Covered Agreement (France, Germany, Ireland and the UK), this review is expected to be completed fairly quickly. For qualified jurisdictions that are not parties to a Covered Agreement (Bermuda, Japan and Switzerland), the review process is still being finalized, but is expected to borrow heavily from the International Monetary Fund’s Financial Sector Assessment Program (FSAP). The Working Group also is expected to establish a process for selecting non-EU/UK reciprocal jurisdictions that are not qualified jurisdictions (or an accredited US state or territory). This process is expected to require that:

- A competent regulatory authority in the jurisdiction confirm in writing that it recognizes the US approach to group supervision and group capital standards;
- An equivalent solvency measurement be identified for the jurisdiction (i.e., one that is comparable to a Risk-Based Capital (RBC) ratio of 300% of the authorized control level and a Solvency Capital Requirement (SCR) of 100%); and
- The jurisdiction sign a memorandum of understanding whereby it agrees to provide information regarding reinsurers domiciled in the jurisdiction to US states where those reinsurers are doing business.

The Qualified Jurisdiction (E) Working Group is expected to complete its work by the end of 2019.

Finally, the Reinsurance Financial Analysis (E) Working Group is working on changes to its current methods of monitoring certified reinsurers domiciled in qualified jurisdictions to provide similar treatment for qualified reinsurers domiciled in reciprocal jurisdictions. The Working Group is scheduled to complete its work by the 2019 Fall National Meeting.

2. Working Group Continues to Gather Information for White Paper Addressing Insurance Business Transfer and Division Laws

The Restructuring Mechanisms (E) Working Group was formed with a charge to evaluate and prepare a white paper that summarizes the existing state restructuring statutes and addresses the perceived need for these statutes, the issues the statutes are designed to remedy, alternatives that insurers are currently employing to achieve similar results and the legal issues posed by one state’s approval order affecting the policyholders of other states. The Working Group is also charged with reviewing and proposing changes to the NAIC’s Guaranty Association Model Act to ensure continuation of policyholder guaranty fund protection following a restructuring, reviewing and proposing changes to the Protected Cell Companies Model Act (Model #290) to allow for restructuring mechanisms, and developing financial solvency and reporting requirements for companies in runoff. The Working Group is currently in an information-gathering stage and does not appear to have begun work on a draft white paper, which is planned for completion by the 2020 Summer National Meeting.

The Working Group was formed in response to the recent enactment of state laws establishing procedures for insurance business transfers (IBTs) or corporate divisions of insurance companies into two or more successor companies (Divisions). At last count, IBT laws have been enacted in Arizona, Oklahoma, Rhode Island and Vermont. Division laws have been enacted in Arizona, Connecticut, Georgia, Illinois, Iowa and Michigan (and are similar to an older Pennsylvania law applicable to business corporations generally).

The Working Group held three interim conference calls between the Spring and Summer meetings during which it received presentations about restructuring and insurance business transfer mechanisms. Since its formation, the Working Group has heard from three different insurance departments that have experience with these laws (Connecticut, Illinois and Pennsylvania), the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA), National Conference of Insurance Guaranty Funds (NCIGF), Lloyd’s of London, ProTucket and Swiss Re. During the meeting, the Working Group heard from officials of Enstar and Aon, who described benefits that transfers of portfolios to runoff aggregators offer to policyholders and insurers alike, and explained the desirability of having finality for transfers not available using traditional loss portfolio transfer agreements. Experiences with UK Part VII transfers and similar mechanisms available in other non-US jurisdiction were discussed. Questions from Working Group members focused on the participation rights of policyholders and reinsurers in the formal review proceedings for these transfers, and on guaranty fund coverage.

During an interim meeting of a restructuring mechanisms subgroup of the Working Group, one of the co-chairs announced that it had distributed a survey to the various states to gather information on best practices that will be used to develop more formalized practices for restructuring transactions. The survey results were not discussed during the meeting, but presumably will be discussed during a future meeting after states have responded and NAIC staff has analyzed the results.

3. IAIS Continues Work to Update ComFrame Materials, the Holistic Framework and Other International Standards

The International Insurance Relations (G) Committee heard presentations from the IAIS Secretary General Jonathan Dixon and IAIS Deputy Secretary General Romain Paserot regarding the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame), the insurance capital standard (ICS) version 2.0, and the holistic framework to assess and mitigate systemic risk, as well as related international regulatory initiatives.
ICS is a risk-based, group-wide global insurance capital standard for Internationally Active Insurance Groups (IAIGs) that is expected to be included in ComFrame. ICS version 2.0 will be conducted in two phases: (i) a five-year “monitoring period” beginning in January 2020, during which ICS will be used only for confidential reporting to the group-wide supervisor and discussion in supervisory colleges and not as a basis to trigger supervisory action; and (ii) implementation of ICS as a group-wide prescribed capital requirement.

A panel that included large US insurance groups with international operations all expressed support for the group capital aggregation method—which utilizes existing regulatory capital calculations for all entities within the holding company structure—and the need for the IAIS to assess, during the monitoring period, whether it provides comparable outcomes to the ICS so that it will be considered an outcome-equivalent approach.

Regarding the holistic framework, in November 2018, the IAIS released for public comment a consultation paper on a proposed holistic framework intended to assess and mitigate systemic risk in the insurance sector through a sector-wide, activities-based approach, rather than through the entity-based approach that results in additional policy measures being imposed on only a relatively small group of insurers identified as global systemically important insurers (G-SII), including three based in the United States. The holistic framework consists of five key elements: (i) an enhanced set of supervisory policy measures; (ii) a global monitoring exercise by the IAIS; (iii) supervisory powers of intervention; (iv) mechanisms that help ensure the global consistent application of the framework; and (v) an assessment by the IAIS of the consistent implementation. The IAIS is expected to adopt the holistic framework in November, 2019 at the Annual General Meeting in Abu Dhabi and implement it in 2020.

As a result of this new approach to systemic risk, the Financial Stability Board (FSB), in consultation with the IAIS and national authorities, opted to not identify G-SIIs in 2018. Once the holistic framework is finalized later this year, the FSB plans to assess whether to suspend G-SII identification for 2020. Additionally, in 2022, based on a review of the initial implementation of the holistic framework, the FSB intends to decide whether to discontinue or reestablish identifying G-SIIs annually.

Proportionality was a hot button issue as it gives insurance supervisors the flexibility to customize their implementation of supervisory requirements and their application of insurance supervision to achieve desired outcomes set out by the IAIS. Proportionality allows principles and standards to be integrated into a jurisdiction’s supervisory framework in a manner appropriate to its legal structure, market conditions and consumers. Proportionality also allows a supervisor to increase or decrease the intensity of supervision according to the risks inherent to insurers, and the risks posed by insurers to policyholders, the insurance sector or the financial system as a whole.

2019 has been and will continue to be a busy year for the IAIS, with ComFrame scheduled for a final consultation, before adoption in the fall. Further, field-testing of ICS version 2.0 is underway with 50 volunteer insurance groups participating, and ICS version 2.0 is expected to be adopted for the monitoring period in November 2019. This is the last year of field-testing for the ICS, which is intended to help inform decisions being made on the design elements of ICS version 2.0 for the monitoring period.

Further, the IAIS Secretariat Q&A Session with Interested Parties offered an opportunity to address the IAIS Secretary General and Deputy Secretary General as a follow-on to the panels in the International Insurance Relations (G) Committee meeting. Industry representatives continued to express their perspectives on the ICS and holistic framework, including the concern for improving and increasing stakeholder input and the need for real dialogue on the strategic plan initiatives. The IAIS Secretary General and Deputy Secretary General announced that there would be two roundtables—one on cyber issues and one on innovation and technology—to be held later in the fall.

### 4. Development of US Group Capital Calculation Tool Continues

The **Group Capital Calculation (E) Working Group** is currently overseeing the field-testing of the NAIC’s Group Capital Calculation (GCC). Working Group Chairman David Altmaier (FL) said, during the Committee meeting, that the Working Group’s goal is to complete field-testing in 2019; however, he acknowledged that the Working Group would reopen field-testing after 2019 if necessary. The NAIC posted a press release, in June, indicating that the GCC is “expected to be adopted in 2020.” Commissioner Altmaier said that timetable is still “on track,” subject to some caveats due to the ongoing field-testing exercise.

Some companies who are not among the 33 firms that volunteered to participate in the field-testing exercise are performing their own shadow-testing of the GCC testing template and instructions. The National Association of Mutual Insurance Companies made a presentation to the Working Group summarizing the preliminary feedback from a group of its member insurers doing their own testing and pointed out that there will be a big learning curve once the GCC is adopted by the NAIC and handed off to the states.
The Working Group also discussed the need for confidentiality protections for the GCC once it is adopted. A draft referral letter to the Group Solvency Issues (E) Working Group was circulated before the meeting in New York, which recommended that the Insurance Holding Company System Regulatory Act (Model #440) be modified to incorporate such protections. Interested parties submitted written comments strenuously supporting the recommendation and requested that the protections be in place before the GCC goes into effect. In addition, the American Council of Life Insurers and a coalition of ten companies asked that individual companies be prohibited from disclosing their GCC. Commissioner Altmaier said he would schedule a conference call toward the end of August to discuss the confidentiality issues further and whether the Working Group should go as far as to prohibit insurance companies from releasing their own GCC.

### B. NAIC Continues Focus on Innovation and Technology

#### 1. Regulators Continue Work to Facilitate Review of Predictive Models

The Big Data (EX) Working Group turned its attention to the use of data and predictive analytics in fraud detection. It heard presentations from executives from ISO Claims Solutions, Verisk Weather and ClaimXperience systems. They reported annual estimates of $80 billion in losses attributable to fraud and said that 66% of respondents in an industry survey report that fraud has increased. They described how their systems present claims information used for fraud detection in a condensed format for speedier claims processing.

The Working Group also heard a presentation from the National Insurance Crime Bureau (NICB) on its work to identify fraud during the claims settlement process. The presentation showed how aerial imagery can be used with the assistance of new technology to investigate post-catastrophe losses to identify potential fraud and speed up the claim settlement process.

The questions from Working Group members revealed their policy concerns. One regulator asked if the Verisk program uses credit scores to detect fraud (they do not). Another asked for an explanation of what data determines speedy versus slow claims processing and indicated they are concerned with reliance on correlative data that is not causative. Another member asked about reliance on ZIP Codes for fraud detection. Despite the probing, the responses from the presenters did not seem to give regulators fuel for concerns that their fraud detection programs contain embedded biases.

The Life Insurance and Annuities (A) Committee, chaired by Iowa Insurance Commissioner Doug Ommen, who also chairs the Big Data (EX) Working Group, discussed the use of data models in life insurance underwriting and whether such innovations warrant the development of additional regulatory tools. Fred Andersen (MN) noted that the Life Actuarial Task Force (LATF) is focusing on the actuarial soundness of the new data being used and potential for long term solvency issues. Mr. Andersen made a motion that the Life Insurance and Annuities (A) Committee work in collaboration with LATF to study the use of external data and data analytics in accelerated life underwriting, and draft and propose appropriate state guidance on best practices. The motion to create a new Accelerated Underwriting (A) Working Group passed unanimously. It will be chaired by Illinois Insurance Director Robert Muriel. James Regalbuto (NY), Deputy Superintendent of Insurance for the DFS, observed that DFS has already been working on these issues and referred to the Circular Letter #1, entitled “Use Of External Consumer Data And Information Sources In Underwriting For Life Insurance.” His comments were focused on discrimination and he noted that data can come from external vendors who discriminate, whether knowingly or not, and that insurers must be diligent to prevent that result.

The Casualty Actuarial and Statistical (C) Task Force provided an update on its ongoing work on a predictive analytics white paper that will set out best practices guidance for regulatory review of generalized linear models in private passenger automobile and homeowners rating plans. A draft of the white paper was exposed earlier in the year and comments were received from various state insurance departments, actuaries and insurance industry and consumer representatives. A new draft was circulated just before the meeting with two new sections; proposed changes to the NAIC Product Filing Review Handbook that incorporate the white paper’s recommendations and a new section with proposed state guidance. The Task Force voted to expose the two new sections for a 45-day comment period.

The white paper sets out best practices for the review of predictive models and identifies approximately 80 separate “information elements” that “a regulator may need to review,” ranked according to importance to the review. Among the recommendations in the initial exposure draft is that the review should determine that individual input characteristics to a predictive model and rating factors derived from the model are related to the expected loss or expense differences in risk, and to that end declares that each input characteristic should have an intuitive or demonstrable actual relationship to the expected loss or expense. Some commenters—including some state regulators, actuaries and insurers—objected to a requirement to demonstrate intuitive relationships. Among the specific comments: “intuitive” is not an actuarial standard; risk classifications may not always be intuitive; actuarial standards should be the same for a rate plan with or without the model. Others have commented that industry should provide a plausible or intuitive explanation for why a risk characteristic should be used and that actuarial standards may be outdated for today’s needs. Consumer representatives commented that even if a regulator cannot require intuitive explanation under current rating standards, they nonetheless can question whether a statistical relationship is spurious or real.
During the meeting, the chair indicated that a new draft that addresses the various comments will be released in September to be exposed for further comment.

2. NAIC Re-Evaluating Anti-Rebating Laws

The Innovation and Technology (EX) Task Force voted to submit a request to the NAIC’s Executive (EX) Committee for approval to amend and update the anti-rebating provisions of the NAIC’s Model Unfair Trade Practice Act (Model #880) (UTPA). This action was prompted by complaints from insurers, brokers and insurtech firms regarding the inconsistent application of the UTPA’s prohibition on rebating by different states, which creates regulatory hurdles to innovative insurance products and solutions, many of which link insurance to products and services involving new technology.

At a meeting in June, the Task Force received presentations from all segments within the industry calling for reform of state anti-rebating laws. To advance discussion at the Summer National Meeting, Task Force Chair Jon Godfread (ND) circulated proposed guidance on rebating prepared by the North Dakota Insurance Department staff, which he described as a work-in-progress that had not been finalized. Commissioner Godfread offered the idea of a guidance document as a near-term measure or alternative to the more onerous process of changing the model law.

The guidance circulated by North Dakota would authorize insurers and agents to offer value-added products, services or programs in connection with insurance at no additional charge or at a discounted price, so long as the products and services are specified in the insurance policy, align with the type of insurance offered, and either: (a) mitigate loss or provide loss control that aligns with the risks of the policy; or (b) assess risk, identify sources or risk, or develop strategies for eliminating or reducing those risks that aligns with the risks of the policy. The American Property Casualty Insurance Association (APCIA) expressed preference for the approach taken by the Ohio Insurance Department in Bulletin 2019-14, which interprets the anti-rebating laws to allow value-added products or services at no or reduced cost using the concepts similar to those in the North Dakota draft, but without the requirement that it be specified in the policy. Task Force members appeared to recognize and accept as valid a distinction between products and services that improve safety or are tied to underwriting (e.g., leak detection equipment) and a "gift" intended solely to induce or reward a purchase (e.g., sporting event tickets).

Regulators on the Task Force felt the existing language of the model would constrain regulators' ability to issue interpretive guidance that relaxes the prohibition. One commissioner commented that a change in intent and meaning requires changes to the model; another called it archaic and declared it needs updating. Birny Birnbaum from the Center for Economic Justice (CEJ) opposed opening the UTPA as not necessary. He indicated the CEJ has not seen evidence that anti-rebating laws hinder innovation, and that the laws do not say that insurers cannot provide consideration, but that they "cannot do it on an ad hoc basis," which is the reason he asserted it needs to be in the policy. The Task Force members were not moved by these arguments and agreed to proceed with the request to amend the model.

The Task Force will proceed with the development of guidelines in parallel with the request for a model law change, and subsequent to the meeting exposed a revised draft for comment. Notably, the revised draft does not include a requirement that value-added products, services or programs offered in connection with an insurance policy be specified in the policy.

It authorizes, more generally, products, services or programs "that are intended to educate about, assess, monitor, control or otherwise mitigate risk of loss to persons or property" and only requires that a description be provided to the commissioner for review. Comments on the draft are due September 6, 2019.

The Task Force discussed work currently underway at the National Council of Insurance Legislators (NCOIL) to address rebating as part of its insurance law modernization project. It was reported that a proposal is expected by December. During discussion of whether a model should be pursued, Task Force members acknowledged that a change to the UTPA would be in parallel to the work at NCOIL.

3. Privacy Update

The Innovation and Technology (EX) Task Force received a report from NAIC staff on the different NAIC model laws and regulations addressing privacy (Health Information Privacy Model Act (Model #55), the Insurance Information & Privacy Protection Model Act (Model #670), the Privacy of Consumer Financial & Health Information Regulation (Model #672), the Standards for Safekeeping Consumer Information Model Regulation (Model #673) and the Data Security Model Law (Model #668)) and their origins with Federal programs (FCRA, Privacy Act of 1974, HIPAA, GLB). The report also addressed the impact of GDPR and the CCPA and recent legislative proposals in various states.

The Chair then proposed a referral to the NAIC Market Regulation and Consumer Affairs (D) Committee, to be charged with a review of state privacy measures—including review of the Insurance Information & Privacy Protection Model Act (Model #670), the Privacy of Consumer Financial & Health Information Regulation (Model #672)—and to make recommendations by the 2020 Summer National Meeting. Birny Birnbaum of the CEJ suggested not limiting the recommendation to those two models, but to consider a model law to address privacy. However, the Task Force considered the charge to be broad enough, and the referral passed without objection.
4. Working Group to Study Artificial Intelligence

The Innovation and Technology (EX) Task Force also voted to form a new working group to address artificial intelligence, with a charge to provide recommendations by the 2020 Summer National Meeting. Commissioner Godfread (ND) will chair the working group. He suggested the working group should focus on the adoption of OECD Principles for Artificial Intelligence, tailored to the insurance industry.

C. Issues of Particular Interest to Life Insurers

1. Continued Push for Annuity Best Interest Standard

The NAIC’s Annuity Suitability (A) Working Group met to continue discussions on proposed revisions to the Suitability in Annuity Transactions Model Regulation (Model #275). Jillian Froment (OH), the Chair of the Working Group, once again emphasized that the goal is to define a ‘best interest’ standard as one that is less than fiduciary, but more than suitability. Director Froment kept Working Group and interested party comments tightly focused on certain “parking lot” issues identified at the Working Group’s June 20, 2019, interim meeting in Columbus, Ohio. The issues discussed are included in the Duties of Insurers and of Insurance Producers that appear in Section 6 of the current model regulation and relate to obligations of care, documentation and supervision.

James Regalbuto pointed out that New York’s Suitability and Best Interest in Life Insurance and Annuity Transactions Regulation (Regulation 187), under which only the interests of consumers are to be considered, had taken effect on August 1 for annuities. A day before that, on July 31, the New York State Supreme Court dismissed two legal challenges to Regulation 187 finding that it was a proper exercise of the powers granted to the DFS Superintendent, that it was not an attempt by DFS to improperly legislate, and that it was neither arbitrary nor capricious. Therefore, Mr. Regalbuto suggested, the NAIC should pursue a real, meaningful standard because New York has already implemented one.

Director Froment plans to form a small technical drafting group to develop an initial draft of proposed revisions to the existing Suitability in Annuity Transactions Model Regulation based on the items that the Working Group agreed on during its June 20 meeting, the July 23 and July 29 conference calls, and the August 3 meeting during the NAIC Summer National Meeting. She would like this done by early September so that there is a “strawman” document to review and comment on by mid-September. Director Froment said she plans to establish an aggressive call schedule on a standard day and time to allow multiple weeks for the Working Group and interested parties to review and discuss the draft that is produced. She would like to have a final draft completed by late October/early November so that the Working Group can present it to the Life Insurance and Annuities (A) Committee for its consideration before or at the 2019 Fall National Meeting.

2. Review of Longevity Risk Factors Continues

The Life Risk-Based Capital (E) Working Group heard an update from the NAIC Longevity Risk (A/E) Subgroup, chaired by Rhonda Ahrens (NE), on the American Academy of Actuaries’ recommendations for correlation of longevity risk. Chair Ahrens said the Subgroup still isn’t “in love with” the Academy’s recommendations. Paul Navratil, Chairperson of the Academy’s Longevity Risk Task Force, presented an update on their work related to the correlation between longevity and mortality C-2 RBC charges. The Academy is recommending a correlation of -33% consistent with the overall 95th percentile objective across a wide range of company sizes. Mr. Navratil stated that the Academy’s Longevity Risk Task Force concluded that it would not be appropriate for the NAIC to adopt a proposed Longevity C-2 factor without also reflecting correlation with mortality risk. Ms. Ahrens questioned whether introducing a new C-2 factor with a correlation between mortality and longevity of -33% might not be too precise. She suggested that it might be better to use a diversification factor.

Philip Barlow (DC), Chair of the Life Risk-Based Capital (E) Working Group, did not formally expose the Academy report or ask for comments. The next call of the NAIC Longevity Risk (A/E) Subgroup may determine next steps with respect to whether the Subgroup or the Life Risk-Based Capital Working Group will continue consideration of this matter.

The Working Group also reviewed pending items for consideration, including the Allstate proposal to update the RBC charge for unaffiliated common stock supporting long-horizon contractual commitments, which was exposed on July 22, 2019, for 60 days.

The Group Solvency (E) Issues Working Group adopted the report of the ORSA Implementation (E) Subgroup and discussed the effectiveness of the Form F Implementation Guide in clarifying expectations regarding the Form F filing and improving its overall effectiveness and value. Justin Schrader (NE), Chairman of the Working Group, said he had found the Guide helpful and encouraged other states to use it as a resource.

The Working Group heard an update on the recent group-related activities of the IAIS including a proposed supervisory college workshop to identify best practices for IAIGs and a regulator FAQ document to assist in implementing ComFrame.

The Working Group discussed a referral from the recently disbanded Operational Risk (E) Subgroup recommending ongoing study and monitoring of methodologies used in measuring, quantifying and mitigating operational risk. Chairman Schrader noted that the Working Group is not under any timeline to address this referral.

Finally, the Working Group discussed comments received during the exposure of the group-related analysis guidance developed for inclusion in the NAIC’s Financial Analysis Handbook. Kathy Belfi (CT) expressed concern about its impact on accreditation but other Working Group members didn’t appear to share that concern. The Working Group agreed to refer the proposed revisions to the Financial Analysis Solvency Tools (E) Working Group for adoption.

4. Work Continues on Disclosure Regulation and Related Guidance

The Life Insurance and Annuities (A) Committee adopted the report of the Annuity Disclosure (A) Working Group. Chairman Mike Yanacheak (IA) requested and received an extension to continue work on proposed revisions to the Annuity Disclosure Model Regulation (Model #245) Impacting Fixed Index Annuity Illustrations. The Working Group reported that only a few open issues remain.

The Life Insurance Illustration Issues (A) Working Group reported that it is continuing to make progress on the development of a 1- to 2-page consumer-oriented policy overview document to achieve its charge of improving the understandability of the life insurance policy summaries already required in the Life Insurance Illustrations Model Regulation (Model #582) and the Life Insurance Disclosure Model Regulation (Model #580). The Working Group is grappling with access issues (delivery of the summary is currently tied to the Buyers Guide, which doesn’t account for innovations such as electronic delivery). They aim to have a draft to Life Insurance and Annuities (A) Committee by the end of the year. Consumer advocate Birny Birnbaum weighed in on what he described as opposite approaches being taken by the Annuity Disclosure Working Group and the IUL Illustration (A) Subgroup. He urged the Life Insurance and Annuities (A) Committee to take a “broader” look and aim for a more consistent approach and result. He also focused on the delivery issue, saying that if the policy overview is delivered with the Buyers Guide, that is after the consumer has made a decision, which is not helpful—it should be provided before the decision has been made. The Working Group discussed and exposed the April 24 draft revisions to the Life Insurance Disclosure Model Regulation (Model #580) for a public comment period ending June 21. The Working Group plans to meet via conference call on September 3 to continue its work.

D. Issues of Particular Interest to Property/Casualty Insurers

1. Working Group Discusses Reauthorization of TRIA

The Terrorism Insurance Implementation (C) Working Group heard updates on federal and state activities related to terrorism insurance, including reauthorization of the US Treasury Department’s Terrorism Risk Insurance Act (TRIA) Program and the terrorism risk insurance data call for 2019. The Program was last reauthorized in 2015 and is set to expire on December 31, 2020.

With the TRIA Program set to expire in less than 18 months, reauthorization is garnering increased attention in Washington. In June, the Senate Banking Committee held a hearing on TRIA reauthorization, and in May a Congressional roundtable was held where industry representatives widely expressed their support for reauthorization. The NAIC supports long-term reauthorization of TRIA for 7 to 10 years because “state insurance regulators have not seen evidence to suggest that the insurance marketplace is capable of voluntarily taking on a substantial portion of the risk of terrorist attacks.” The APCIA similarly supports long-term reauthorization of TRIA, and is advocating for TRIA to be reauthorized in 2019 so as to avoid market disruptions.

The Working Group briefly presented the preliminary results of the 2019 terrorism risk insurance data call, and noted concerns about the accuracy and completeness of the data. For 2019 (as was the case in 2018), data was collected through a joint state insurance regulator/US Department of the Treasury reporting template. The deadline for completing the Joint Reporting Template was May 15, and the state supplement that collects ZIP Code-level data is due September 30.
The NAIC’s Center for Insurance Policy and Research also held a Policy Workshop to discuss key issues in advance of the Program’s reauthorization. The Workshop addressed issues related to terrorism risk insurance take-up rates (which are reported to be relatively high in most higher-risk markets), insurer terrorism risk management best practices, recent trends in US terrorism events, TRIA coverage for cyber risks, and different approaches to terrorism risk insurance around the globe.

2. Developments of the Surplus Lines Task Force

The Surplus lines (C) Task Force adopted new charges for 2020 that include “develop or amend relevant NAIC model laws, regulations and/or guidelines.” In response to a question from the APCIA, the Task Force confirmed that, at this time, the charge is not intended to address any one specific item but noted that the NAIC Nonadmitted Insurance Model Act (Model #870) has not been updated since 2004.

The Task Force also exposed a proposal to modify annual and quarterly financial statement Schedule T (Exhibit of Premiums Written) for a 60-day public comment period. If adopted, the proposal would add a new Schedule T Part 3 for reporting the allocation of surplus lines premiums to each state based on the definition of “home state” under the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA). The NRRA provides that only an insured’s “home state” may tax a nonadmitted insurance placement. The NAIC’s proposal summary indicates that the proposal is intended to “provide a basis for state regulators to reconcile broker reported surplus lines premium with company provided information to better ensure that states are receiving the proper amount of surplus lines premium taxes.” If adopted, the updated Schedule T is expected to first be required as part of 2020 year-end filings.

E. Briefly Noted

1. Adoption of NAIC Cannabis White Paper

Property and Casualty Insurance (C) Committee adopted a white paper titled “Regulatory Guide: Understanding the Market for Cannabis Insurance.” The white paper was drafted by the Cannabis Insurance (C) Working Group and outlines the insurance regulatory issues surrounding legalized cannabis businesses. The Cannabis Insurance (C) Working Group was formed in August 2018 to identify insurance issues, gaps and opportunities facing the cannabis industry and to identify best regulatory practices to address these issues—starting with developing a white paper. This white paper provides information to state insurance regulators, insurers, and the broader public about the architecture of the cannabis business supply chain, types of insurance needed by the cannabis industry, the availability of cannabis business insurance in state insurance markets and the extent of insurance gaps, and best practices that state insurance regulators can adopt to encourage insurers to write insurance for the cannabis industry. The white paper, deliberately, does not address safety issues associated with auto insurance or workers’ compensation.

2. FSOC Proposes Activities-Based Approach for Non-Bank SIFI Designations

The Financial Stability Task Force (FSTF) received an update from Superintendent Eric Cioppa (ME), the NAIC President, on the activities of the Financial Stability Oversight Council (FSOC). He noted that FSOC continues to consider guidance on non-bank financial company designations in addition to issues regarding leveraged lending.

Eric Kolchinsky, Director of Capital Markets and Structured Securities at the SVO, presented a PowerPoint update on Leveraged Loans. He described leveraged loans as loans to below investment grade companies that are purchased directly by insurance companies or that are pooled in Collateralized Loan Obligations (CLOs) in which insurance companies invest. Insurance company CLO exposure was identified at approximately $122 billion, $97 billion of which were NAIC 1. The concern is that because CLO performance is dependent on the performance of the underlying collateral pool, during a recession CLOs could underperform compared to historical levels. The NAIC has been running insurance company CLO investments through stress-testing and the results will be provided to regulators only in the late summer/early fall. Upon being asked by NAIC President Cioppa how worried the regulators should be, Mr. Kolchinsky responded that this is not an industry-wide concern; rather it will impact a few companies that have concentrated on these investments.

3. National Flood Insurance Program

The Catastrophe Insurance (C) Working Group heard an update on federal developments and National Flood Insurance Program (NFIP) reauthorization. Multiple bills have been introduced in Congress that would reauthorize the NFIP, but Congress has left for summer recess, so no progress will be made this month. On July 1, 2019, the federal banking regulators’ rule supporting lender acceptance of private flood insurance policies went into effect. The NAIC is interested in receiving feedback from industry on the usefulness of the claims data FEMA has released.
4. Pet Insurance White Paper Adopted and Request for NAIC Model Law Development

Joint Meeting of Executive (EX) Committee and Plenary adopted a new NAIC white paper, A Regulator's Guide to Pet Insurance. This white paper provides an overview of the pet insurance industry and information on coverage options, product approval, marketing, ratemaking, claims practices and regulatory concerns.

The Property and Casualty Insurance (C) Committee further adopted a Request for NAIC Model Law development related to pet insurance. The NAIC Model Law development related to pet insurance was requested at the Property and Casualty Insurance (C) Committee Conference Call on July 18, 2019. During that call, it was stated that the Pet Insurance (C) Working Group had met on May 14, 2019, via conference call to review the pet insurance white paper. The Pet Insurance (C) Working Group voted to adopt the request for NAIC Model Law development as it felt data should be collected before drafting a model. A model law on pet insurance would likely include issues, such as producer licensing, policy terms, coverages, claims handling, premium taxes, disclosures, arbitration and preexisting conditions.

5. Antifraud Plan Repository

The Antifraud (D) Task Force adopted the report of the Antifraud Technology Working Group, which is working on an Antifraud Plan Repository. Insurers could use the repository to create and store electronic fraud plans. Currently twenty-one states require the filing of insurer antifraud plans. To advance the development of the repository, the Antifraud Technology Working Group will survey state fraud directors to compile the various fraud plan requirements and aim to provide a model plan for consideration at the Winter National Meeting.

6. Surplus Lines Broker License Requirements to be Updated

The Producer Licensing (D) Task Force is drafting amendments to the NAIC Uniform Licensing Standards and State Licensing Handbook that would permit an accident and health license to fulfill the underlying resident producer license requirement before a surplus lines license is issued. Currently, an underlying property/casualty license is required.

7. NAIC Clarifies Standards for Financial Statement Reporting of Affiliate Transactions

The NAIC adopted revisions to SSAP No. 25 – Affiliates and Other Related Parties that clarify the continued application of the SSAP, as well as an “affiliated” classification, when a transaction is in substance a related-party transaction, even if there is a non-related intermediary. The revisions provide that, in determining whether a transaction is a related-party transaction, consideration shall be given to the substance of the agreement and the parties whose actions or performance materially impact the reporting entity under the transaction (even if a non-related intermediary is involved).

8. Capital Adequacy (E) Task Force to Consider RBC Treatment for Investments in Bond Mutual Funds

The Capital Adequacy (E) Task Force received referrals on structured notes and comprehensive funds. The comprehensive fund referral is a request for assignment of risk-based capital charges to ensure consistent treatment for investments in funds that only hold bond portfolios across all schedules. Currently, under SSAP No. 26R, the Securities Valuation Office (SVO) may designate bond exchange-traded funds (ETFs) to be reported as bonds. Generally, Bond ETFs are given the same RBC treatment as their underlying assets. Therefore, if the ETF holds only NAIC-1 rated bonds, the ETF is given the same RBC charge as NAIC-1 rated bonds. The referral asks the Task Force to consider extending this treatment to bond mutual funds. During the meeting, Task Force members discussed that it may be appropriate to extend the same RBC treatment to bond mutual funds as to bond ETFs, in the short-term, but in the long-term, it may be necessary to re-examine the RBC treatment for all open-ended bond funds. The Task Force indicated they would further discuss this issue during a future meeting.

9. Retirement Security Initiative

The Life Insurance and Annuities (A) Committee has turned its attention to the NAIC Continuing Retirement Security Initiative, which includes what was described as “an ambitious work plan” to:

- draft a white paper describing retirement challenges;
- revise laws and identify where new laws are needed;
- develop a curriculum for retirement security education;
- develop requirements for producers;
- establish an Innovation Forum for new products, etc.;
- focus on anti-fraud measures;
- partner with ICC on replacement products;
- convene a national dialogue on the challenges.

James Regalbuto emphasized that producers need to look like the many varied and diverse communities, and that retirement security must be made available to all. The Committee further voted to appoint a new working group, chaired by Stephen C. Taylor (DC), to implement the Committee’s charge on retirement security.
10. Climate Risk and Resilience Update

The Climate Risk and Resilience (C) Working Group received a report from Ricardo Lara (CA) on lessons learned from the 2018 California wildfires. He noted as key insurance issues affordability and availability of coverage, claims processes, underinsurance, insurer of last resort, and promoting pre-disaster hardening of insured properties. He reported a new partnership between the State of California and the United Nations Environmental Program to develop a sustainable insurance roadmap and action plan to address growing risks from climate change, including rising seas, extreme heat and wildfire.

Working Group Chair Mike Kreidler (WA) reported that NAIC staff sent its annual Climate Risk Disclosure Survey in July to participating states (California, Connecticut, Minnesota, New Mexico, New York and Washington). He reported responses are due August 31 and insurers responding to the survey were encouraged to refer to the guidelines of the Task Force for Climate Related Financial Disclosure when completing the survey. The Insurer Climate Risk Disclosure Survey was initially adopted by the NAIC in 2010 to be an insurer reporting mechanism to provide regulators with a window into how insurers assess and manage risks related to climate change. The survey asks insurers to provide a description of how they incorporate climate risks into their mitigation, risk-management and investment plans and to identify steps taken to engage key constituencies and policyholders on the topic of climate change. According to the California Department of Insurance (CDI) website, the CDI and other participating states administer the survey to all insurance licensed that write at least $100 million in annual premiums. The results are published on the CDI website.

Contacts

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