

**Group Solvency Issues (EX) Working Group
Draft Proposal for Substantially Similar Provisions of Revised
Insurance Holding Company System Model Act (#440) and Regulation (#450)**

6. Insurance Holding Company Systems

State law should contain the NAIC Model Insurance Holding Company Systems Act or an act substantially similar, and the Department should have adopted the NAIC's model regulation relating to this law.

Reference

- a. Define control as presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person, which presumption may be rebutted by a showing that control does not exist in fact and define affiliate similar to Section 1?

- b. Define enterprise risk to include any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse affect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to,.....

- ~~b~~c. Insurer's investments in common stock, preferred stock, debt obligations, and other securities of subsidiaries, excluding investments in insurance subsidiaries, limited to the lesser of 10% of the insurer's assets or 50% of the insurer's surplus as regards policyholders except in instances where a greater investment has been approved by the commissioner?

- ~~e~~d. Filing requirements similar to those specified in Section 3A of the model, including any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer notice of its proposed divestiture?

~~de.~~ Statement filed in accordance with ~~de.~~ above required to include items similar to those specified in Section 3B ~~and 4L~~ of the model. ~~including information necessary to evaluate enterprise risk to the insurer?~~

~~—f.~~ Filing requirements similar to those specified in Section 4L of the model?

~~eg.~~ Approval and hearing provisions similar to those specified in section 3D of the model?

~~fh.~~ Authority to retain, at the acquiring person's expense, any experts as may be reasonably necessary in reviewing proposed change of control?

~~gi.~~ Jurisdiction and consent to service of process provisions similar to those specified in Section 3G of the model?

~~hj.~~ Require all insurers authorized to do business in the state which are members of an insurance holding company system to register with the Department annually, except foreign insurers subject to similar registration requirements in their jurisdiction of domicile?

~~ik.~~ Registration statements required to contain information similar to that required by Sections 4B and C of the model?

~~jl.~~ Transactions within an insurance holding company system subject to the following standards similar to Section 5A(1):

• The terms shall be fair and reasonable?

• Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner?

• Charges or fees for services performed shall be reasonable?

As Adopted by E Committee on 09/19/11

- Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied?

- The books, accounts, and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties?

- The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs?

mk. The following transactions involving a domestic insurer and any person in its insurance holding company system require notification of the Department at least thirty days prior to the transaction similar to Section 5A(2), including amendments or modifications of affiliate agreements:

- Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments provided such transactions are equal to or exceed: a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; b) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding?

- Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investment in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; b) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of December next preceding?
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• Reinsurance agreements or modifications thereto, with materiality thresholds similar to section 5A(2)(c)?

• ~~Reinsurance agreements or modifications thereto, including:~~

All reinsurance pooling agreements:

Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer?

- All management agreements, service contracts, tax allocation agreements, and all cost-sharing arrangements?
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As Adopted by E Committee on 09/19/11

- . Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders?
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n. Domestic insurers specifically prohibited from entering into transactions which are a part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid a statutory threshold amount and thus avoid the review that would otherwise occur?

no. Department notification required by a domestic insurer at least 30 days prior to paying an extraordinary dividend or making an extraordinary distribution?

np. Extraordinary dividend or distribution defined as any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of (1) ten percent of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities or an approved substantially similar alternative by the Financial Regulation Standards and Accreditation (F) Committee?

As Adopted by E Committee on 09/19/11

- oq. Authority to ~~order examine~~ any insurer registered ~~insurer and its affiliates to produce such records, books, or other information in the possession of the insurer or its affiliates as are reasonably necessary~~ to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis or to determine compliance with the holding company act?

- r. Access to books and records authority and compelling production authority similar to those specified in Section 6B and 6E of the model?

- s. Supervisory college concept similar to the language specified in Section 7 of the model?

- pt. Provisions for injunctions, prohibitions against voting securities, and sequestration of voting securities similar to Section ~~9-10~~ of the model?

- qu. Recovery provisions similar to Section ~~12-13~~ of the model?



~~fv.~~ Regulation setting forth rules and procedural requirements necessary to carry out the provisions of the holding company act and general requirements for reporting forms similar to those in the NAIC model regulation Sections 10, 11, 13, 14 and 15 for: Form A (Statement Regarding the Acquisition of Control by or Merger With a Domestic Insurer); Form B (Annual Registration Statement); Form C (Summary of Registration Statement); ~~and~~ Form D (Prior Notice of a Transaction); and Form F (Enterprise Risk Report)?

~~sw.~~ Regulation setting forth rules for disclaimers and terminations similar to Section 18 of the model regulation?

~~xt.~~ Regulation setting forth rules for filing extraordinary dividends and other distributions similar to Section ~~2120~~ of the model regulation?

y. Provisions for protecting confidential information submitted to the commissioner, including provisions maintaining confidentiality for information shared with state, federal and international regulators. If sharing confidential information with the NAIC is permitted, appropriate confidentiality protections should be included.

Complete the following if this is an Interim Annual Review:

YES

NO

Have there been any changes to your Insurance Holding Company Systems Authority since last year's review? If no, please do **NOT** attach copies of your statutes or regulations. If yes, please attach a copy of your statutes or regulations and ensure that they are clearly marked for the changes that have been made.
