

How to Obtain an SVO Assessment of the NAIC Regulatory Treatment for an Investment

Note: The text below explains a service provided by the SVO to any applicant. The service, referred to as the Regulatory Treatment Assessment Submission process or alternatively as the Emerging Investment Vehicle submission process is intended to permit the SVO to give any interested person an assessment of how a investment is likely to be treated by the NAIC under the existing regulatory framework. You should read and interpret this text along with the other material contained on this page. The text is taken from the December 31, 2008 publication of the *Purposes and Procedures of the NAIC Securities Valuation Office*. An update of the *Purposes and Procedures Manual* is published in July and December of each year. Please refer to the latest update to review changes to the cited language.

Part Two

Section 3

(f) Emerging Investment Vehicle

(i) Finding

The Task Force finds that the pace of financial innovation and extent of financial engineering requires close cooperation between regulated insurance companies, investment banks and other financial market participants and the regulators who must assess the solvency implications of financial innovation and engineering. This sub-section establishes the mechanism for an insurance company or another market participant (“Applicant”) to apply to the SVO for the purpose of determining the probable regulatory treatment to be accorded to an Emerging Investment Vehicle (“EIV”) before it is sold to an insurance company, or for any other security.

(ii) Definition of Probable Regulatory Treatment

For purposes of this sub-section, probable regulatory treatment means the professional opinion of the SVO as to the credit quality designation; and or asset classification for **statutory** reporting purposes; and or the valuation that would be accorded to the EIV under this Manual if it were purchased by an insurance company and reported to the SVO.

Probable regulatory treatment includes a statement by the SVO that in its opinion: (1) the existing regulatory framework already captures the risks posed by the security either through the mechanism of credit ratings, valuation policy or classification methodology, (2) that the existing regulatory framework does not capture the risks posed by the security and that it is necessary to apply to the VOS/TF to develop an appropriate

regulatory accommodation for the instrument or (3) that the SVO lacks an approved methodology that could be used to access the risks contained in the EIV and that it is necessary to apply to the Task Force to develop an appropriate methodology.

(iii) Definition of EIV

For purposes of this sub-section, an EIV is an investment security or other financial product that is newly offered and that contains characteristics or features not previously reviewed by the Task Force or the SVO for a determination of the probable regulatory treatment to be accorded to the EIV. An EIV may be “newly offered” in the sense that the security or financial product has not previously been known (and hence none of its characteristics or features are known) or in the sense that a security or financial product whose primary characteristics or features are understood has evolved to incorporate substantially different features or to contain significant innovation such that it should be considered as never having been reviewed by the Task Force or the SVO.

(iv) Who May Request an Analysis Under This Section

An EIV may be filed: by an insurance company or by another market participant (without the requirement of insurance company sponsorship); or by a state insurance regulator for any security owned by an insurance company under the authority and for purposes discussed in Part Four, Section 1 (b) of this Manual, subject only to the conditions imposed in this sub-section and in other referenced sections.

The SVO is not authorized to require anyone to file a transaction as an EIV. However, nothing in this sub-section limits the obligation or the authority of the SVO to report to the VOS/TF any transaction, whether or not filed with the SVO, that presents issues or contains features that require guidance from the VOS/TF, either pursuant to Section 3 (e) of this Part Two or otherwise.

(v) Submission Procedure

To request an analysis of probable regulatory treatment of an EIV, the Applicant submits an original completed Application for Regulatory Treatment Analysis Service ("Application") to the Managing Director, SVO (the "Managing Director"), or the Managing Director's designated representative. An Application shall be accompanied by written and substantially finalized documentation showing all material terms with the same specificity and clarity as the SVO requires to complete a purchased transaction. A copy of the prospectus or private placement memorandum will not be required if it is unavailable at the time of the filing of the

Application, however, it may be required before a determination on the EIV in question can be made by the SVO.

(vi) Requirement of a Substantially Finalized Transaction

Analysis of probable regulatory treatment will be provided only for securities and financial products that have been substantially finalized in all material respects. The SVO is not authorized to assist the Applicant to structure a transaction to attain specific regulatory objectives. The SVO shall have full discretion to determine that the terms of a security or financial product as reflected in the documentation submitted with the Application indicate that the security or financial product is not substantially finalized.

(vii) Expedited Review

An Applicant considering the purchase of an EIV that has previously been submitted to the SVO by the Applicant, another market participant or insurance company or any of their Agents, may request an expedited review of that EIV. To request an expedited review, the insurance company or its Agent must submit the Application and a prospectus or private placement memorandum of the EIV marked to show changes from the prospectus for the EIV previously reviewed by the SVO. The marked prospectus shall be accompanied by a letter, written on the letterhead of the insurance company or its Agent, certifying that the prospectus for the submitted EIV is substantially identical to the prospectus for the EIV previously reviewed by the SVO with the exception of names, dates, dollar amounts and other similar matters highlighted in the enclosed prospectus or private placement memorandum.

(viii) Discretion

The Managing Director shall have full discretion to reject an Application if, in the Managing Director's sole discretion, acceptance of the Application would not meet the objectives of the NAIC Financial Conditions Framework. The Managing Director will communicate any such rejection to the Applicant and will return the Application fee and may communicate such rejection to the VOS/TF for informational purposes.

(ix) Communication of Determination

At the conclusion of the processing of the EIV, the SVO will provide a letter to the EIV Applicant setting forth its conclusions with respect to the issue(s) raised by the EIV.

If the SVO concludes that this Manual does not provide sufficient guidance to determine an NAIC Designation, valuation or classification for the EIV, or that in its opinion the NAIC Financial Conditions Framework does not clearly specify standards or criteria for responding to the issue raised by the Applicant, it will so inform the Applicant and the VOS/TF pursuant to Part Two, Section 3 (e).

Information provided as part of the EIV Application shall be treated as confidential by the SVO. The Applicant may communicate the content of the letter to anyone provided the Applicant also communicates that the purpose of the analysis reflected in the letter is regulatory. The Applicant may also provide copies of the SVO letter to anyone provided a complete copy of the SVO letter must be given.

If, after the SVO has communicated its decision to the Applicant, an insurance company purchases the EIV and reports it to the SVO, either on its own initiative or at the direction of an insurance regulator, the SVO may be required to enter its determination into NAIC systems, including systems accessible to the market participants for regulatory purposes. This shall not be considered a breach of the agreement to hold our determination confidential.

The regulatory expectation is that Applicants who advise insurance companies will make full disclosure of the SVO determination to any insurance company that requests such information, even if the conclusion is contrary to the Applicant's initial expectations.

(x) Standing of EIV Application in the NAIC Financial Condition Framework

The activity authorized by this subsection is intended solely to facilitate the business and regulatory objectives of the NAIC and the financial solvency function of the VOS/TF. The SVO's acceptance of an Application does not convey any regulatory status or recognition to the EIV.

A preliminary NAIC Designation assigned under the procedure specified in this sub-section is only valid for the day issued as such designation reflects the preliminary draft of documents and other information that have been presented to the SVO.

A preliminary NAIC Designation will not be published in the VOS Products and, therefore, cannot be used to report the credit quality of the security to the NAIC or any state insurance department. Only NAIC

Designations published in the VOS Products may be used to report an investment to an NAIC member's state insurance department.

If an insurance company subsequently purchases the security, the purchasing company must file an Initial Report or, if the security is filing exempt, report the security in accordance with that procedure. The SVO shall apply its usual procedure for initially reported securities before assigning an NAIC Designation and publishing such NAIC Designation in the VOS Products.