

3/26/11

FINAL
2011 Spring National Meeting
Austin, TX

EXECUTIVE (EX) COMMITTEE
Sunday, March 27, 2011
1:30 – 2:30 p.m.
Austin Convention Center—Ballroom D—Level 4

ROLL CALL

- | | | |
|-------------|----------------|--------------------|
| 1. Alabama | 7. Iowa | 13. New York |
| 2. Alaska | 8. Kentucky | 14. North Carolina |
| 3. Arizona | 9. Louisiana | 15. North Dakota |
| 4. Florida | 10. Maine | 16. South Dakota |
| 5. Illinois | 11. Montana | 17. West Virginia |
| 6. Indiana | 12. New Jersey | |

**Per NAIC Bylaws, "a member of the Executive (EX) Committee may not vote by proxy in a meeting of the Executive (EX) Committee or its subcommittees."*

AGENDA

- | | |
|--|----------------|
| 1. Consider Motion to Adopt March 26 Report of the Jt. Executive (EX) Committee/Internal Administration (EX1) Subcommittee— <i>Commissioner Susan E. Voss (IA)</i> | Handout One |
| 2. Consider Motion to Adopt Nov. 10, 2010 Conference Call Minutes— <i>Commissioner Susan E. Voss (IA)</i> | Attachment One |
| 3. Consider Motion to Adopt Report of 2011 NAIC Committee Structure Changes— <i>Commissioner Susan E. Voss (IA)</i> | Handout Two |
| 4. Consider Motion to Adopt 2011 Proposed Charges of Executive (EX) Committee Task Forces— <i>Commissioner Susan E. Voss (IA)</i> | Attachment Two |
| 5. Consider Motion to Adopt Report of Task Forces | Handout Three |
| • AIG Managing (EX) Task Force— <i>Superintendent James J. Wrynn (NY)</i> | |
| • Government Relations (EX) Leadership Council— <i>Commissioner Susan E. Voss (IA)</i> | |
| • International Insurance Relations (EX) Leadership Group— <i>Commissioner Susan E. Voss (IA)</i> | |
| • Long-Term Care (EX) Task Force— <i>Commissioner Kevin M. McCarty (FL)</i> | |
| • Producer Licensing (EX) Task Force— <i>Commissioner Roger A. Sevigny (NH)</i> | |
| • Professional Health Insurance Advisors (EX) Task Force— <i>Commissioner Kevin M. McCarty (FL)</i> | |
| • Solvency Modernization Initiative (EX) Task Force— <i>Director Christina Urias (AZ)</i> | |
| • Speed to Market (EX) Task Force— <i>Administrator Teresa D. Miller (OR)</i> | |
| • Surplus Lines Implementation (EX) Task Force— <i>Commissioner James J. Donelon (LA)</i> | |
| 6. Report of Model Law Development Efforts— <i>Commissioner Susan E. Voss (IA)</i> | Handout Four |
| 7. Hear Oral Report from the National Insurance Producer Registry (NIPR) Board of Directors— <i>Director Linda S. Hall (AK)</i> | |
| 8. Hear Oral Report from the System for Electronic Rate and Form Filing (SERFF) Board— <i>Director Teresa D. Miller (OR)</i> | |
| 9. Hear Oral Report from the Interstate Insurance Product Regulation Commission (IIPRC)— <i>Commissioner Roger A. Sevigny (NH)</i> | |
| 10. Any Other Matters Brought Before the Committee— <i>Commissioner Susan E. Voss (IA)</i> | |
| 11. Adjournment | |

**JOINT MEETING OF THE
EXECUTIVE (EX) COMMITTEE AND
INTERNAL ADMINISTRATION (EX1) SUBCOMMITTEE
March 26, 2011**

Meeting Summary

The Executive (EX) Committee and Internal Administration (EX1) Subcommittee met in joint session March 26, 2011. The meeting was held in regulator-to-regulator session in accordance with the exceptions contained in the NAIC Policy Statement on Open Meetings (i.e., internal or administrative matters of the NAIC, as well as consultations with NAIC staff members).

During the joint meeting, the Committee and Subcommittee:

1. Adopted the minutes of its Feb. 4th meeting. During the Feb. 4th meeting, the Committee and Subcommittee:
 - Approved the filing of an amicus brief in *Solis v. The Home Insurance Company*, pending before the United States District Court for the District of New Hampshire; and
 - Approved a change in the name of the New York office from Securities Valuation Office (SVO) to Capital Markets and Investment Analysis Office, for the purpose highlighting the expansion of regulatory services, capital markets and federal/international regulatory analysis supported by the New York office. The SVO will continue as a division of the NAIC located in the New York office.
2. Adopted the report of the Audit Committee, which included:
 - A report from the NAIC's independent auditors from Mayer Hoffman McCann, regarding the financial statement audit, including an unqualified audit opinion and no deficiencies noted in the NAIC's internal control structure;
 - A recommendation to reallocate the NAIC's investment portfolio to 55% equity/45% fixed income (from the current 50%/50% allocation) on a short-term basis, within current investment policy thresholds; and
 - A recommended \$200,000 contribution to the NAIC's defined benefit plan in April 2011.
3. Approved a line of credit request from the IIPRC in the amount of \$400,000 for the purpose of supporting the IIPRC's projected 2011 financial operations.
4. Received a report on the NAIC's 2010 RMBS and CMBS modeling projects, including preliminary planning for these projects in 2011.

W:/National Meetings/2011/Spring/Summaries/EX-EX1.doc

Draft: 2/3/11

Executive (EX) Committee
Conference Call
November 10, 2010

The Executive (EX) Committee met via conference call Nov. 10, 2010. The following Committee members participated: Jane L. Cline, Chair (WV); Susan E. Voss, Vice Chair (IA); Kevin M. McCarty, Vice President (FL); Kim Holland, Secretary-Treasurer (OK); Roger A. Sevigny, Immediate Past President (NH); Linda S. Hall (AK); Thomas R. Sullivan (CT); Michael T. McRaith (IL); Mila Kofman (ME); Monica J. Lindeen (MT); Thomas Considine (NJ); Mary Jo Hudson (OH); Scott H. Richardson (SC); Merle D. Scheiber (SD); and Leslie A. Newman (TN).

1. Proposed Changes to the NAIC *Insurance Holding Company System Regulatory Act* (#440)

Commissioner Cline noted the purpose of the call was for the Executive (EX) Committee to expose for comment the pending revisions to the *Insurance Holding Company System Regulatory Act* (#440). The pending revisions were drafted by the Group Solvency Issues (EX) Working Group and approved at the Summer National Meeting followed by Financial Condition (E) Committee approval at the Fall National Meeting (Attachment One-A). The Executive (EX) Committee is conducting another comment period specifically to address industry concerns related to centralized filings with the NAIC and the confidentiality of data.

Commissioner Cline provided background on the development process and substance of the proposed amendments. The amendments were developed to address concerns arising during the financial crisis and in ongoing discussions within the international regulatory community concerning enhancing group supervision. Between May 2009 and June 2010, the Working Group and the Financial Condition (E) Committee held a series of public conference calls, meetings and a hearing to discuss the comment letters received from regulators, the industry and interested parties. It was decided that the issues of centralized data collection and confidentiality should be considered by the Executive (EX) Committee.

The pending amendments were originally drafted under the chairmanship of former Director Ann Frohman (NE) who subsequently proposed additional amendments which are presented for this Committee's consideration (Attachment One-B). Former Director Frohman's proposal substitutes the lead state for the NAIC as the recipient of the enterprise risk filing and requires substantial similarity in state confidentiality laws for sharing the filed information.

Upon a motion by Commissioner Considine, seconded by Director Richardson, the Committee voted to expose the proposed revisions for an additional 10-day written comment period.

Having no further business, the Executive (EX) Committee adjourned.

W:\National Meetings\2011\Spring\Cmte\Ex\11-10exmin.doc

Model #440 08/05/10 - As Adopted by Financial Condition (E) Committee

Model Regulation Service—October 2010

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

| | |
|-------------------|--|
| Section 1. | Definitions |
| Section 2. | Subsidiaries of Insurers |
| Section 3. | Acquisitions of Control of or Merger With Domestic Insurer |
| Section 3.1 | Acquisitions Involving Insurers Not Otherwise Covered |
| Section 4. | Registration of Insurers |
| Section 5. | Standards and Management of an Insurer Within an <u>Insurance</u> Holding Company System |
| Section 6. | Examination |
| <u>Section 7.</u> | <u>Supervisory Colleges</u> |
| Section 8. | Confidential Treatment |
| Section 9. | Rules and Regulations |
| Section 10. | Injunctions, Prohibitions against Voting Securities, Sequestration of Voting Securities |
| Section 11. | Sanctions |
| Section 12. | Receivership |
| Section 13. | Recovery |
| Section 14. | Revocation, Suspension, or Nonrenewal of Insurer's License |
| Section 15. | Judicial Review, Mandamus |
| Section 16. | Conflict with Other Laws |
| Section 17. | Separability of Provisions |
| Section 18. | Effective Date |
| Appendix. | Alternate Provisions |

Section 1. Definitions

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

- A. "Affiliate." An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. "Commissioner." The term "commissioner" shall mean the insurance commissioner, the commissioner's deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

- C. "Control." The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- D. "Insurance Holding Company System." An "insurance holding company system" consists of two (2) or more affiliated persons, one or more of which is an insurer.

- E. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to “Chapter” are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

- ~~(1) — Agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; or~~
~~(2) — Fraternal benefit societies.~~

- F. “Enterprise Risk.” “Enterprise risk” shall mean 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, anything that would cause the insurer’s Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner’s authority over companies deemed to be in hazardous financial condition].

- G. “Person.” A “person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

- H. “Securityholder.” A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

- I. “Subsidiary.” A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

- J. “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

- A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

- B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer’s assets or fifty percent (50%) of the insurer’s surplus as regards policyholders, provided that after such investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to meet its financial needs. In calculating the amount

11/10/10

of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

- (a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
- (b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term “health maintenance organizations” in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

- (2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, “the total investment of the insurer” shall include:
 - (a) Any direct investment by the insurer in an asset, and
 - (b) The insurer’s proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary’s investment by the percentage of the ownership of the subsidiary;
- (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs.

- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following: _____].

Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

- D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

A. Filing Requirements.

- (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.
- ~~(2) For purposes of this section, 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, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.~~
- ~~(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).~~
- (4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~However, the person shall file a pre-acquisition notification with the commissioner containing the information set forth in Section 3.1C(1) sixty (60) days prior to the proposed effective date of the acquisition. Failure to file is subject to Section 3.1E(3).~~ For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:

- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the “acquiring party”), and
 - (a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;
 - (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person’s subsidiaries; and a list of all individuals who are or who have

11/10/10

been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

- (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;
- (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
- (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
- (5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;
- (6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
- (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;
- (8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
- (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;
- (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;
- (11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;
~~and~~

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4B(8), for so long as control exists;

(13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(124) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

(1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:

(a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;

(ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and

- (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
 - (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
 - (d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 - (e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 - (f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.
- (2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.
- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.
- (5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

E. Exemptions. The provisions of this section shall not apply to:

- (1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

- (2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.
- F. Violations. The following shall be violations of this section:
- (1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or
 - (2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.
- G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

- A. Definitions. The following definitions shall apply for the purposes of this section only:
- (1) “Acquisition” means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.
 - (2) An “involved insurer” includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
- B. Scope
- (1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.
 - (2) This section shall not apply to the following:
 - (a) ~~An acquisition subject to approval or disapproval by the commissioner pursuant to Section 3;~~
 - (a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless the commissioner of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

11/10/10

- (b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with [Section 3.1C\(1\)](#) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of [Section 3.1B\(2\)](#);
- (c) The acquisition of already affiliated persons;
- (d) An acquisition if, as an immediate result of the acquisition,
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
 - (ii) There would be no increase in any market share, or
 - (iii) In no market would
 - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
 - (II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;
- (e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
- (f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by [Section 3.1B](#) may be subject to an order pursuant to [Section 3.1E](#) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in [Section 8](#) of this Act.

- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under [Subsection 3.1B\(2\)\(d\)](#), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of [Section 3.1D](#). The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.
- (2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or

termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

- (1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.
- (2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

(a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

- (i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 4% | 4% or more |
| 10% | 2% or more |
| 15% | 1% or more |

- (ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 5% | 5% or more |
| 10% | 4% or more |
| 15% | 3% or more |
| 19% | 1% or more |

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

- (i) There is a significant trend toward increased concentration in the market;
 - (ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
 - (iii) Another involved insurer's market is two percent (2%) or more.
- (c) For the purposes of Section 3.1D(2):
- (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
 - (ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;
 - (iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.
- (d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (3) An order may not be entered under Section 3.1E(1) if:
- (a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
 - (b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

- (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:
 - (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

- (ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
 - (b) Such an order shall not be entered unless:
 - (i) There is a hearing;
 - (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
 - (iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.
- Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- (c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.
 - (2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:
 - (a) A monetary penalty of not more than \$10,000 for every day of violation; or
 - (b) Suspension or revocation of the person's license.
 - (3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections [10B](#), [10C](#), and [12](#) do not apply to acquisitions covered under Section 3.1B.

Section 4. Registration of Insurers

- A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:
 - (1) Section 4;
 - (2) Section 5A(1), 5B, 5D; and
 - (3) Either [Section 5A\(2\)](#) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an [insurance](#) holding company system, and which is not subject to registration under this section, to furnish a copy of the registration

statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. Information and Form Required. Every insurer subject to registration shall file the -registration statement with the commissioner and the NAIC on a form and in a format prescribed by the NAIC, which shall contain the following current information:

- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) The identity and relationship of every member of the insurance holding company system;
- (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:
 - (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (b) Purchases, sales or exchange of assets;
 - (c) Transactions not in the ordinary course of business;
 - (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (e) All management agreements, service contracts and all cost-sharing arrangements;
 - (f) Reinsurance agreements;
 - (g) Dividends and other distributions to shareholders; and
 - (h) Consolidated tax allocation agreements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
- (5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;
- (6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

Alternative Section 4B(7):

- (7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have

approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

Drafting Note: An insurer required to file information pursuant to sub-section 4B(8) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (8) An annual report of the ultimate controlling person to the best of its knowledge and belief, identifying the material risks within the insurance holding company system that could pose enterprise risk to the insurer; and
- (9) Any other information required by the commissioner by rule or regulation.
- C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection 4B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.
- E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.
- I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.
- J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.
- K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

- L. Violations. The failure to file a registration statement or any summary of the registration statement required by this section within the time specified for filing shall be a violation of this section.

Section 5. Standards and Management of an Insurance Holding Company System

A. Transactions Within an Insurance Holding Company System

- (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
- (a) The terms shall be fair and reasonable;
 - (b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;
 - (c) Charges or fees for services performed shall be reasonable;
 - (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
 - (e) 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; and
 - (f) 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 meet its financial needs.
- (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.
- (a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
 - (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the 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 investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

- (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (c) Reinsurance agreements or modifications thereto, including:
- (i) All reinsurance pooling agreements;
 - (ii) 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, equals or exceeds five percent (5%) 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 non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
 - (e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;
 - (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

- (g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

- (3) A domestic insurer may not enter into transactions which are 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 the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.

- (4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
- (5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes 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 (12) months exceeds the lesser of:

- (1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or
- (2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-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.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the

voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for ~~recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit,~~ nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
- (5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

- D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:
 - (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
 - (2) The extent to which the insurer's business is diversified among several lines of insurance;
 - (3) The number and size of risks insured in each line of business;
 - (4) The extent of the geographical dispersion of the insurer's insured risks;
 - (5) The nature and extent of the insurer's reinsurance program;
 - (6) The quality, diversification and liquidity of the insurer's investment portfolio;
 - (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
 - (8) The surplus as regards policyholders maintained by other comparable insurers;
 - (9) The adequacy of the insurer's reserves; and
 - (10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of

11/10/10

insurers, the commissioner shall have the power to examine ~~order any insurer registered under Section 4~~ and its affiliates 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.

B. Access to Books and Records.

(1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ~~ascertain the financial condition of the insurer or to determine compliance with this Chapter.~~

(2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$[insert amount] for each day's delay, or may suspend or revoke the insurer's license.

C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

E. Compelling Production. In the event the insurer fails to comply with ~~the an~~ order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

A. Power of Commissioner. With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

(1) Initiating the establishment of a supervisory college;

(2) Clarifying the membership and participation of other supervisors in the supervisory college;

- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
 - (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
 - (5) Establishing a crisis management plan.
- B. Expenses. Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.
- C. Supervisory College. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 8. Confidential Treatment

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported pursuant to Section 3B(12) and (13), Section 4 and Section 5 shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.
- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
- (1) May ~~upon request be required to~~ share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information, and has the legal authority to maintain confidentiality, unless the commissioner determines in his or her sole discretion that sharing such information would unreasonably interfere with any examination conducted pursuant to Section 6;

- (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection, including with respect to the participation in supervisory colleges in accordance with Section 7.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.
- E. Documents, materials or other information filed with the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Section 9. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

Section 10. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

- A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.
- B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.
- C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner

hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.
- C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.
- D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than \$[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than \$[insert amount] or be imprisoned for not more than one to three (3) years or both.
- E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined \$[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.
- F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision].

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

- A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.
- B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
- D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the commissioner that any person has committed a violation of this Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Judicial Review, Mandamus

- A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.
- B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an

- opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.
- C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

**APPENDIX
ALTERNATE PROVISIONS**

Alternative Section 1. Findings

- A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
- (1) Engage in activities which would enable them to make better use of management skills and facilities;
 - (2) Diversify into new lines of business through acquisition or organization of subsidiaries;
 - (3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;
 - (4) Implement sound tax planning conclusions; and
 - (5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;
 - (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
 - (3) An insurer which is part of an insurance holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable;
or

- (4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.
- C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:
- (1) Facilitating the achievement of the objectives enumerated in Subsection A;
 - (2) Requiring disclosure of pertinent information relating to changes in control of an insurer;
 - (3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and
 - (4) Providing standards governing material transactions between the insurer and its affiliates.
- D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
 - (3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
 - (4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
 - (7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
 - (8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

- (9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Legislative History (all references are to the Proceedings of the NAIC).

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37, 178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).

W:\National Meetings\2011\Spring\Cmte\Ex\Att 01 440-adopted by E.doc

Model #440 08/05/10 - As Adopted by Financial Condition (E) Committee

AMENDMENTS PROPOSED BY DIRECTOR FROHMAN (Highlighted in Gray)

Model Regulation Service—[October 2010](#)

INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

Table of Contents

| | |
|-----------------------------|---|
| Section 1. | Definitions |
| Section 2. | Subsidiaries of Insurers |
| Section 3. | Acquisitions of Control of or Merger With Domestic Insurer |
| Section 3.1 | Acquisitions Involving Insurers Not Otherwise Covered |
| Section 4. | Registration of Insurers |
| Section 5. | Standards and Management of an Insurer Within an Insurance Holding Company System |
| Section 6. | Examination |
| Section 7. | Supervisory Colleges |
| Section 8. | Confidential Treatment |
| Section 9. | Rules and Regulations |
| Section 10. | Injunctions, Prohibitions against Voting Securities, Sequestration of Voting Securities |
| Section 11. | Sanctions |
| Section 12. | Receivership |
| Section 13. | Recovery |
| Section 14. | Revocation, Suspension, or Nonrenewal of Insurer’s License |
| Section 15. | Judicial Review, Mandamus |
| Section 16. | Conflict with Other Laws |
| Section 17. | Separability of Provisions |
| Section 18. | Effective Date |
| Appendix. | Alternate Provisions |

Section 1. Definitions

As used in this Act, the following terms shall have these meanings unless the context shall otherwise require:

- A. “Affiliate.” An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- B. “Commissioner.” The term “commissioner” shall mean the insurance commissioner, the commissioner’s deputies, or the Insurance Department, as appropriate.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word “commissioner” appears.

- [C.](#) “Control.” The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 4K that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

- D. “Insurance Holding Company System.” An “insurance holding company system” consists of two (2) or more affiliated persons, one or more of which is an insurer.
- E. “Insurer.” The term “insurer” shall have the same meaning as set forth in Section [insert applicable section] of this Chapter, except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

Drafting Note: References in this model act to “Chapter” are references to the entire state insurance code.

Drafting Note: States should consider applicability of this model act to fraternal societies and captives.

- ~~(1) — Agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; or~~
~~(2) — Fraternal benefit societies.~~
- F. “Enterprise Risk.” “Enterprise risk” shall mean 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, anything that would cause the insurer’s Risk-Based Capital to fall into company action level as set forth in [insert cross reference to appropriate section of Risk-Based Capital (RBC) Model Act] or would cause the insurer to be in hazardous financial condition [insert cross reference to appropriate section of Model Regulation to define standards and commissioner’s authority over companies deemed to be in hazardous financial condition].
- G. “Person.” A “person” is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.
- H. “Securityholder.” A “securityholder” of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.
- I. “Subsidiary.” A “subsidiary” of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.
- J. “Voting Security.” The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

Section 2. Subsidiaries of Insurers

- A. Authorization. A domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries. The subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

Drafting Note: This bill neither expressly authorizes noninsurance subsidiaries nor restricts subsidiaries to insurance related activities. It is believed that this is a policy decision which should be made by each individual state. Attached as an appendix are alternative provisions which would authorize the formation or acquisition of subsidiaries to engage in diversified business activity.

- B. Additional Investment Authority. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this Chapter, a domestic insurer may also:
- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer’s assets or fifty percent (50%) of the insurer’s surplus as regards policyholders, provided that after such

investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there shall be included:

- (a) Total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and
- (b) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

Drafting Note: When considering whether to amend its Holding Company Act to exempt health maintenance organizations and other similar entities from certain investment limitations, a state should consider whether the solvency and general operations of the entities are regulated by the insurance department. In addition to, or in place of, the term "health maintenance organizations" in Paragraph (1) above, a state may include any other entity which provides or arranges for the financing or provision of health care services or coverage over which the commissioner possesses financial solvency and regulatory oversight authority.

- (2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer provided that each subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) or in Sections [insert applicable section] through [insert applicable section] of this Chapter applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:
 - (a) Any direct investment by the insurer in an asset, and
 - (b) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;
 - (3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- C. Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this Chapter applicable to such investments of insurers [except the following:].

Note: The last phrase is optional in those states having certain special qualitative limitations, such as prohibitions on investments in stock of mining companies, which the state may wish to retain as a matter of public policy.

- D. Qualification of Investment; When Determined. Whether any investment made pursuant to Subsection B meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- E. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment shall have been

made, the investment shall have met the requirements for investment under any other section of this Chapter, and the insurer has so notified the commissioner.

Section 3. Acquisition of Control of or Merger with Domestic Insurer

A. Filing Requirements.

- (1) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner prescribed in this Act.
- (2) For purposes of this section, 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, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The commissioner shall determine those instances in which the party(ies) seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in Paragraph (1) is otherwise filed, this paragraph shall not apply.
- (3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the commissioner, which shall contain the information set forth in Section 3.1C(1). A failure to file the notification may be subject to penalties specified in Section 3.1E(3).
- (4) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person, as determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~However, the person shall file a pre-acquisition notification with the commissioner containing the information set forth in Section 3.1C(1) sixty (60) days prior to the proposed effective date of the acquisition. Failure to file is subject to Section 3.1E(3).~~ For the purposes of this section, “person” shall not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

B. Content of Statement. The statement to be filed with the commissioner shall be made under oath or affirmation and shall contain the following:

- (1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in Subsection A is to be effected (hereinafter called the “acquiring party”), and
 - (a) If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years;

- (b) If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for the lesser period as the person and any predecessors shall have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;
- (2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing consideration; provided, however, that where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests;
 - (3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party (or for such lesser period as the acquiring party and any predecessors shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;
 - (4) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;
 - (5) The number of shares of any security referred to in Subsection A which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Subsection A, and a statement as to the method by which the fairness of the proposal was arrived at;
 - (6) The amount of each class of any security referred to in Subsection A which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;
 - (7) A full description of any contracts, arrangements or understandings with respect to any security referred to in Subsection A in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;
 - (8) A description of the purchase of any security referred to in Subsection A during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;
 - (9) A description of any recommendations to purchase any security referred to in Subsection A made during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;
 - (10) Copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in Subsection A, and (if distributed) of additional soliciting material relating to them;
 - (11) The term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Subsection A for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;
~~and~~

Drafting Note: An insurer required to file information pursuant to sub-sections 3B(12) and 3B(13) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- (12) An agreement by the person required to file the statement referred to in Subsection A that it will provide the annual report, specified in Section 4B(8), for so long as control exists;
- (13) An acknowledgement by the person required to file the statement referred to in Subsection A that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- (124) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in Subsection A is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Subsection A is a corporation, the commissioner may require that the information called for by Paragraphs (1) through (14) shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.

C. Alternative Filing Materials.

If any offer, request, invitation, agreement or acquisition referred to in Subsection A is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Subsection A may utilize the documents in furnishing the information called for by that statement.

D. Approval by Commissioner: Hearings.

- (1) The commissioner shall approve any merger or other acquisition of control referred to in Subsection A unless, after a public hearing, the commissioner finds that:
 - (a) After the change of control, the domestic insurer referred to in Subsection A would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
 - (b) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly. In applying the competitive standard in this subparagraph:
 - (i) The informational requirements of Section 3.1C(1) and the standards of Section 3.1D(2) shall apply;
 - (ii) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by Section 3.1D(3) exist; and

- (iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
 - (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
 - (d) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 - (e) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 - (f) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.
- (2) The public hearing referred to in Paragraph (1) shall be held within thirty (30) days after the statement required by Subsection A is filed, and at least twenty (20) days notice shall be given by the commissioner to the person filing the statement. Not less than seven (7) days notice of the public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty (60) day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the [insert title] Court of this state. All discovery proceedings shall be concluded not later than three (3) days prior to the commencement of the public hearing.
- (3) If the proposed acquisition of control will require the approval of more than one commissioner, the public hearing referred to in Paragraph (2) may be held on a consolidated basis upon request of the person filing the statement referred to in Subsection A. Such person shall file the statement referred to in Subsection A with the National Association of Insurance Commissioners (NAIC) within five (5) days of making the request for a public hearing. A commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within ten (10) days of the receipt of the statement referred to in Subsection A. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. Such commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.
- (4) In connection with a change of control of a domestic insurer, any determination by the commissioner that the person acquiring control of the insurer shall be required to maintain or restore the capital of the insurer to the level required by the laws and regulations of this state shall be made not later than sixty (60) days after the date of notification of the change in control submitted pursuant to Section 3A(1) of this Act.
- (5) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

- E. Exemptions. The provisions of this section shall not apply to:
- (1) [Any transaction which is subject to the provisions of Sections [insert applicable section] and [insert applicable section] of the laws of this state, dealing with the merger or consolidation of two or more insurers].

Note: Optional for use in those states where existing law adequately governs standards and procedures for the merger or consolidation of two or more insurers.

- (2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

- F. Violations. The following shall be violations of this section:

- (1) The failure to file any statement, amendment or other material required to be filed pursuant to Subsection A or B; or
- (2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given approval.

- G. Jurisdiction, Consent to Service of Process. The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to the person at his last known address.

Section 3.1 Acquisitions Involving Insurers Not Otherwise Covered

- A. Definitions. The following definitions shall apply for the purposes of this section only:

- (1) “Acquisition” means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.
- (2) An “involved insurer” includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

- B. Scope

- (1) Except as exempted in Paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.
- (2) This section shall not apply to the following:
 - (a) ~~An acquisition subject to approval or disapproval by the commissioner pursuant to Section 3;~~
 - (a) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under Section 1C, it is not solely for investment purposes unless

the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

- (b) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner in accordance with Section 3.1C(1) thirty (30) days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of Section 3.1B(2);
- (c) The acquisition of already affiliated persons;
- (d) An acquisition if, as an immediate result of the acquisition,
 - (i) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market,
 - (ii) There would be no increase in any market share, or
 - (iii) In no market would
 - (I) The combined market share of the involved insurers exceeds twelve percent (12%) of the total market, and
 - (II) The market share increase by more than two percent (2%) of the total market.

For the purpose of this Paragraph (2)(d), a market means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

- (e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;
- (f) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

C. Pre-acquisition Notification; Waiting Period. An acquisition covered by Section 3.1B may be subject to an order pursuant to Section 3.1E unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in Section 8 of this Act.

- (1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners (NAIC) relating to those markets which, under Subsection 3.1B(2)(d), cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of Section 3.1D. The required information may include an opinion of an

economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

- (2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.

D. Competitive Standard

- (1) The commissioner may enter an order under Section 3.1E(1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with Section 3.1C.
- (2) In determining whether a proposed acquisition would violate the competitive standard of Paragraph (1) of this subsection, the commissioner shall consider the following:

- (a) Any acquisition covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

- (i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 4% | 4% or more |
| 10% | 2% or more |
| 15% | 1% or more |

- (ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

| Insurer A | Insurer B |
|-----------|------------|
| 5% | 5% or more |
| 10% | 4% or more |
| 15% | 3% or more |
| 19% | 1% or more |

A highly concentrated market is one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two columns in the table is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market shall be deemed to be Insurer A.

- (b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the

eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under Section 3.1B involving two (2) or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standard in Paragraph (1) of this subsection if:

- (i) There is a significant trend toward increased concentration in the market;
 - (ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and
 - (iii) Another involved insurer's market is two percent (2%) or more.
- (c) For the purposes of Section 3.1D(2):
- (i) The term "insurer" includes any company or group of companies under common management, ownership or control;
 - (ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;
 - (iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.
- (d) Even though an acquisition is not *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under Paragraphs (2)(a) and (2)(b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.
- (3) An order may not be entered under Section 3.1E(1) if:
- (a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or
 - (b) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

E. Orders and Penalties

- (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:
 - (i) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or
 - (ii) Denying the application of an acquired or acquiring insurer for a license to do business in this state.
- (b) Such an order shall not be entered unless:
 - (i) There is a hearing;
 - (ii) Notice of the hearing is issued prior to the end of the waiting period and not less than fifteen (15) days prior to the hearing; and
 - (iii) The hearing is concluded and the order is issued no later than sixty (60) days after the date of the filing of the pre-acquisition notification with the commissioner.

Every order shall be accompanied by a written decision of the commissioner setting forth findings of fact and conclusions of law.
- (c) An order pursuant to this paragraph shall not apply if the acquisition is not consummated.
- (2) Any person who violates a cease and desist order of the commissioner under Paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:
 - (a) A monetary penalty of not more than \$10,000 for every day of violation; or
 - (b) Suspension or revocation of the person's license.
- (3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than \$50,000.

F. Inapplicable Provisions. Sections [10B](#), [10C](#), and [12](#) do not apply to acquisitions covered under Section 3.1B.

Section 4. Registration of Insurers

- A. Registration. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:
- (1) Section 4;
 - (2) Section 5A(1), 5B, 5D; and

- (3) Either [Section 5A\(2\)](#) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of each change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by [insert date] of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer authorized to do business in the state which is a member of an [insurance holding company system](#), and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in Section 4C or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

B. **Information and Form Required.** Every insurer subject to registration shall file the registration statement ~~with the commissioner and the NAIC~~ on a form ~~and in a format~~ prescribed by the NAIC, which shall contain the following current information:

- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) The identity and relationship of every member of the insurance holding company system;
- (3) The following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:
 - (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (b) Purchases, sales or exchange of assets;
 - (c) Transactions not in the ordinary course of business;
 - (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (e) All management agreements, service contracts and all cost-sharing arrangements;
 - (f) Reinsurance agreements;
 - (g) Dividends and other distributions to shareholders; and
 - (h) Consolidated tax allocation agreements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;
- (5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC;

- (6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner;

Drafting Note: Neither option below is intended to modify applicable state insurance and/or corporate law requirements.

- (7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

Alternative Section 4B(7):

- (7) Statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

Drafting Note: An insurer required to file information pursuant to sub-section 4B(8) may satisfy the requirement by providing the commissioner with the most recently filed parent corporation reports that have been filed with the SEC, if appropriate.

- ~~(8) An annual report of the ultimate controlling person to the best of its knowledge and belief, identifying the material risks within the insurance holding company system that could pose enterprise risk to the insurer; and~~
(9) Any other information required by the commissioner by rule or regulation.

- C. Summary of Changes to Registration Statement. All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- D. Materiality. No information need be disclosed on the registration statement filed pursuant to Subsection 4B if the information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise; sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent (.5%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.
- E. Reporting of Dividends to Shareholders. Subject to Section 5B, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof.
- F. Information of Insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this Act.
- G. Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- H. Consolidated Filing. The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement.
- I. Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection A and to file all information and material required to be filed under this section.
- J. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section.

K. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. The commissioner shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

L. Enterprise Risk Filing. The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

M. Violations. The failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing shall be a violation of this section.

Section 5. Standards and Management of an Insurance Holding Company System

A. Transactions Within an Insurance Holding Company System

- (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
 - (a) The terms shall be fair and reasonable;
 - (b) Agreements for cost sharing services and management shall include such provisions as required by rule and regulation issued by the commissioner;
 - (c) Charges or fees for services performed shall be reasonable;
 - (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
 - (e) 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; and
 - (f) 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 meet its financial needs.
- (2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (a) through (g). may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior thereto, or such shorter

period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

- (a) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (b) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the 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 investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:
 - (i) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders as of the 31st day of December next preceding;
 - (ii) With respect to life insurers, three percent (3%) of the insurer's admitted assets as of the 31st day of December next preceding;
- (c) Reinsurance agreements or modifications thereto, including:
 - (i) All reinsurance pooling agreements;
 - (ii) 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, equals or exceeds five percent (5%) 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 non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
- (e) Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph;
- (f) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired

pursuant to Section 2 of this Act (or authorized under any other section of this Chapter), or in non-subsidiary insurance affiliates that are subject to the provisions of this Act, are exempt from this requirement; and

Drafting Note: When reviewing the notification required to be submitted pursuant to Section 5A(2)(f), the commissioner should examine prior and existing investments of this type to establish that these investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in Section 5B. However, an investment in a controlling person or in an affiliate shall not be considered a dividend or distribution to shareholders when applying Section 5B of this Act.

- (g) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this paragraph shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

- (3) A domestic insurer may not enter into transactions which are 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 the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under Section 11.
- (4) The commissioner, in reviewing transactions pursuant to Subsection A(2), shall consider whether the transactions comply with the standards set forth in Subsection A(1) and whether they may adversely affect the interests of policyholders.
- (5) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

B. Dividends and other Distributions

No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

For purposes of this section, an extraordinary dividend or distribution includes 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 (12) months exceeds the lesser of:

- (1) Ten percent (10%) of the insurer's surplus as regards policyholders as of the 31st day of December next preceding; or
- (2) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-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.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two (2) calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval, and the declaration shall confer no rights upon shareholders until (1) the commissioner has approved the payment of the dividend or distribution or (2) the commissioner has not disapproved payment within the thirty-day period referred to above.

Drafting Note: The following Subsection C entitled "Management of Domestic Insurers Subject to Registration" is optional and is to be adopted according to the needs of the individual jurisdiction.

C. Management of Domestic Insurers Subject To Registration.

- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this Act.
- (2) Nothing in this section shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of Section 5A(1).
- (3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.
- (4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for ~~recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit,~~ nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.
- (5) The provisions of Paragraphs (3) and (4) shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of Paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

D. Adequacy of Surplus. For purposes of this Act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) The extent to which the insurer's business is diversified among several lines of insurance;

- (3) The number and size of risks insured in each line of business;
- (4) The extent of the geographical dispersion of the insurer's insured risks;
- (5) The nature and extent of the insurer's reinsurance program;
- (6) The quality, diversification and liquidity of the insurer's investment portfolio;
- (7) The recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) The surplus as regards policyholders maintained by other comparable insurers;
- (9) The adequacy of the insurer's reserves; and
- (10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

Section 6. Examination

- A. Power of Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under Sections [insert applicable sections] relating to the examination of insurers, the commissioner shall have the power to examine ~~order any insurer registered under Section 4 and its affiliates 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.~~
- B. Access to Books and Records.
- (1) The commissioner may order any insurer registered under Section 4 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ~~ascertain the financial condition of the insurer or to~~ determine compliance with this Chapter.
 - (2) To determine compliance with this Chapter, the commissioner may order any insurer registered under Section 4 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of \$[insert amount] for each day's delay, or may suspend or revoke the insurer's license.
- C. Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection A above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.
- D. Expenses. Each registered insurer producing for examination records, books and papers pursuant to Subsection A above shall be liable for and shall pay the expense of examination in accordance with Section [insert applicable section].

E. **Compelling Production.** In the event the insurer fails to comply with ~~the~~an order, the commissioner shall have the power to examine the affiliates to obtain the information. The commissioner shall also have the power to issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. Every person shall be obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in [insert appropriate statutory reference to trial-level court in that state], which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.

Section 7. Supervisory Colleges

A. **Power of Commissioner.** With respect to any insurer registered under Section 4, and in accordance with Subsection C below, the commissioner shall also have the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this Chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) Initiating the establishment of a supervisory college;
- (2) Clarifying the membership and participation of other supervisors in the supervisory college;
- (3) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- (4) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
- (5) Establishing a crisis management plan.

B. **Expenses.** Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with Subsection C below, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

C. **Supervisory College.** In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with Section 6, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with Section 8C providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 8. Confidential Treatment

A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported pursuant to Section 3B(12) and (13), Section 4 and Section 5 shall be confidential by law and privileged, shall not be subject to [insert open

records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.

- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
- (1) May ~~upon request be required to~~ share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information, and has the legal authority to maintain confidentiality, unless the commissioner determines in his or her sole discretion that sharing such information would unreasonably interfere with any examination conducted pursuant to Section 6;
 - (2) Notwithstanding C(1) above, the commissioner may only share confidential and privileged documents, materials, or information reported pursuant to Section 4(L) with commissioners of states having statutes or regulations substantially similar to Section 8(A).
 - (3) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
 - (4) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection, including with respect to the participation in supervisory colleges in accordance with Section 7.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.
- E. Documents, materials or other information held by ~~filed with~~ the NAIC pursuant to this Act shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

Section 9. Rules and Regulations

The commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as shall be necessary to carry out the provisions of this Act.

Section 10. Injunctions, Prohibitions Against Voting Securities, Sequestration of Voting Securities

- A. Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this Act or of any rule, regulation or order issued by the commissioner hereunder, the commissioner may apply to the [insert title] Court for the county in which the principal officer of the insurer is located or if the insurer has no office in this state then to the [insert title] Court for [insert county] County for an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this Act or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.
- B. Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this Act or of any rule, regulation or order issued by the commissioner hereunder; the insurer or the commissioner may apply to the [insert title] Court for the county in which the insurer has its principle place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Section 3 or any rule, regulation or order issued by the commissioner thereunder to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.
- C. Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this Act or any rule, regulation or order issued by the commissioner hereunder, the [insert title] Court for [insert county] County or the [insert title] Court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate the provisions of this Act.

Notwithstanding any other provisions of law, for the purposes of this Act the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

Section 11. Sanctions

- A. Any insurer failing, without just cause, to file any registration statement as required in this Act shall be required, after notice and hearing, to pay a penalty of \$[insert amount] for each day's delay, to be recovered by the commissioner of Insurance and the penalty so recovered shall be paid into the General Revenue Fund of this state. The maximum penalty under this section is \$[insert amount]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.
- B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 4A, 5A(2), or 5B, or which violate this Act, shall pay, in their individual capacity, a civil forfeiture of not more than \$[insert amount] per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

- C. Whenever it appears to the commissioner that any insurer subject to this Act or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to Section 5 of this Act and which would not have been approved had the approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.
- D. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this Act, the commissioner may cause criminal proceedings to be instituted by the [insert title] Court for the county in which the principal office of the insurer is located or if the insurer has no office in this state, then by the [insert county] Court for [insert title] County against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates this Act may be fined not more than \$[insert amount]. Any individual who willfully violates this Act may be fined in his or her individual capacity not more than \$[insert amount] or be imprisoned for not more than one to three (3) years or both.
- E. Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this Act, upon conviction shall be imprisoned for not more than [insert amount] years or fined \$[insert amount] or both. Any fines imposed shall be paid by the officer, director or employee in his or her individual capacity.
- F. Whenever it appears to the commissioner that any person has committed a violation of Section 3 of this Act and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with [insert appropriate statutory reference related to orders of supervision].

Section 12. Receivership

Whenever it appears to the commissioner that any person has committed a violation of this Act which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the commissioner may proceed as provided in Section [insert applicable section] of this Chapter to take possessions of the property of the domestic insurer and to conduct its business.

Section 13. Recovery

- A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, (i) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, or (ii) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (i) or (ii) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections B, C, and D of this section.
- B. No distribution shall be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid shall be liable up to the amount of distributions or payments under Subsection A which the person received. Any person who otherwise controlled the insurer

at the time the distributions were declared shall be liable up to the amount of distributions that would have been received if they had been paid immediately. If two (2) or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

- D. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.
- E. To the extent that any person liable under Subsection C of this section is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 14. Revocation, Suspension, or Nonrenewal of Insurer's License

Whenever it appears to the commissioner that any person has committed a violation of this Act which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for such period as the commissioner finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

Section 15. Judicial Review, Mandamus

- A. Any person aggrieved by any act, determination, rule, regulation or order or any other action of the commissioner pursuant to this Act may appeal to the [insert title] Court for [insert county] County. The court shall conduct its review without a jury and by trial *de novo*, except that if all parties, including the commissioner, so stipulate, the review shall be confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial *de novo* as to those parties so stipulating.
- B. The filing of an appeal pursuant to this section shall stay the application of any rule, regulation, order or other action of the commissioner to the appealing party unless the court, after giving the party notice and an opportunity to be heard, determines that a stay would be detrimental to the interest of policyholders, shareholders, creditors or the public.
- C. Any person aggrieved by any failure of the commissioner to act or make a determination required by this Act may petition the [insert title] Court for [insert county] County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make a determination.

Section 16. Conflict with Other Laws

All laws and parts of laws of this state inconsistent with this Act are hereby superseded with respect to matters covered by this Act.

Section 17. Separability of Provisions

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and for this purpose the provisions of this Act are separable.

Section 18. Effective Date

This Act shall take effect thirty (30) days from its passage.

**APPENDIX
ALTERNATE PROVISIONS**

Alternative Section 1. Findings

- A. It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders and shareholders to permit insurers to:
- (1) Engage in activities which would enable them to make better use of management skills and facilities;
 - (2) Diversify into new lines of business through acquisition or organization of subsidiaries;
 - (3) Have free access to capital markets which could provide funds for insurers to use in diversification programs;
 - (4) Implement sound tax planning conclusions; and
 - (5) Serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.
- B. It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:
- (1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders or shareholders;
 - (2) Acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this state;
 - (3) An insurer which is part of an [insurance](#) holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or
 - (4) An insurer pays dividends to shareholders which jeopardize the financial condition of such insurers.
- C. It is hereby declared that the policies and purposes of this Act are to promote the public interest by:
- (1) Facilitating the achievement of the objectives enumerated in Subsection A;
 - (2) Requiring disclosure of pertinent information relating to changes in control of an insurer;
 - (3) Requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and
 - (4) Providing standards governing material transactions between the insurer and its affiliates.
- D. It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and unless otherwise provided in this Act, not over nondomestic insurers, with respect to the matters contained herein.

Alternative Section 2. Subsidiaries of Insurers

- A. Authorization. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (2) Acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;
 - (3) Investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;
 - (4) Management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;
 - (7) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;
 - (8) Ownership and management of assets which the parent corporation could itself own or manage;

Drafting Note: The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph should not exceed the limitations applicable to such investments by the insurer.

- (9) Acting as administrative agent for a governmental instrumentality that is performing an insurance function;
- (10) Financing of insurance premiums, agents and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

Legislative History (all references are to the Proceedings of the NAIC).

1969 Proc. II 736, 737, 738-751, 756 (adopted).
1972 Proc. I 14, 16, 443, 449 (corrected).
1980 Proc. II 22, 26, 29, 42-46 (amended, added Section 3.1).
1983 Proc. I 6, 37, 96, 99 (amended).
1985 Proc. I 19, 37, 178, 183-200 (amended and reprinted).
1985 Proc. II 11, 24-25, 74, 75-92 (amended and reprinted).
1986 Proc. I 10, 25, 72 (amended).
1986 Proc. II 12, 19-20, 93-94, 94-109 (amended and reprinted).
1993 Proc. 4th Quarter 16, 31, 57, 61-62 (amended).
1995 Proc. 4th Quarter 11, 33, 307, 310, 312-328 (amended and reprinted).
1996 Proc. 1st Quarter 124, 270, 272-275 (amendments adopted later printed here).
1997 Proc. 4th Quarter 11 (amendments adopted).
1999 Proc. 4th Quarter 15, 364, 369, 379-380 (amended).
2001 Proc. 2nd Quarter 11, 14, 319, 339, 342-348 (amended).

W:\National Meetings\2011\Spring\Cmte\Ex\Att 02 440-adopted by E-amended.doc

Restructuring of Executive (EX) Committee Task Forces for 2011

Changes affecting Executive (EX) Committee Task Forces:

- Recommendation – Disband the Climate Change and Global Warming (EX) Task Force and move charges to the Examination Oversight (E) Task Force.
- Recommendation – Disband the Health Care Reform Cost Containment (EX) Subgroup and move charges to the Health Insurance and Managed Care (B) Committee.
- Recommendation – Disband the Health Care Reform Interstate Compact Standards (EX) Subgroup and reassign charges/work to the Exchanges (B) Subgroup of the Health Insurance and Managed Care (B) Committee.
- Recommendation – Disband the SVO Initiatives (EX) Working Group.
- Recommendation - The Life and Health Actuarial Task Force be divided into two separate task forces:
 - 1) Life Actuarial Task Force will report to the Life Insurance and Annuities (A) Committee.
 - 2) Health Actuarial Task Force will report to the Health Insurance and Managed Care (B) Committee.

Existing Task Forces in an “Inactive” Status (no current charges):

- Market Regulation and Accreditation Task Force
- Multi-state Enforcement Task Force
- Regulatory Modernization Task Force

Remaining Executive (EX) Committee Task Forces with Charges in place for 2011:

- AIG Managing Task Force
- Government Relations Leadership Council
- International Insurance Relations Leadership Group
- Long-Term Care Task Force
- Producer Licensing Task Force
- Professional Health Insurance Advisors Task Force
- Solvency Modernization Initiative Task Force
- Speed to Market Task Force
- Surplus Lines Implementation Task Force

W:\National Meetings\2011\Spring\Cmte\Ex\EXCmteTFRestructuring.doc

Draft 3/15/11

2011 PROPOSED CHARGES OF EXECUTIVE (EX) COMMITTEE TASK FORCES

AIG MANAGING (EX) TASK FORCE

Historical Reference: June 15, 2009, this task force was appointed during the Executive (EX) Committee meeting. Commissioner Sevigny reported the Executive Committee voted electronically on April 3, 2009 to reformulate the AIG Special (E) Task Force and establish a charge for the AIG Managing (EX) Task Force.

The mission of the AIG Managing (EX) Task Force is to oversee the regulatory activities related to the AIG insurance subsidiaries and coordinating interaction among state regulators, federal government officials, company representatives, and international regulatory interests.

Ongoing Support of NAIC Programs, Products, or Services:

1. This Task Force is charged with managing the NAIC and state regulatory activities related to the AIG insurance subsidiaries—*Essential*
2. The Task Force will utilize the **AIG Special Working Group** (name change from the existing all-member AIG Special Task Force) to coordinate interaction among state regulators, federal government officials, company representatives, and international regulatory interests—*Essential*
3. The Task Force will utilize a **Form A Subgroup** to manage the communication of information and coordination of activities related to the change in ownership approval process for insurers proposed to be sold by AIG holding company—*Essential*
4. The Task Force will utilize an **AIG Life Working Group** to ensure the specific regulatory concerns regarding the 17 life insurers in the AIG group are adequately addressed in the overall AIG plan and its implementation—*Essential*

Staff Support: Todd Sells

GOVERNMENT RELATIONS (EX) LEADERSHIP COUNCIL

Historical Reference: January 2003, first established as the Government Affairs (EX) Task Force to consolidate the NAIC's focus on state and federal legislative and policy issues. It evolved out of the Financial Services Task Force, which had been the focus of much of the NAIC's Gramm-Leach-Bliley Act (GLBA) implementation efforts.

March 11, 2007, Commissioner Bell reported that the Task Force changed its structure to be a 15 Commissioner body composed of the leadership, two members of each zone and two additional commissioners. The NAIC President would chair the group; 2) The Task Force has proposed a name change to reflect the new structure, the Government Relations Leadership Council (GRLC).

The mission of the Government Relations Leadership Council (GRLC) is to develop, coordinate, and implement the NAIC's legislative, regulatory, and grassroots initiatives. The Leadership Council will devise strategies for NAIC action and promote the participation of all NAIC members in the NAIC's government relations initiatives.

Ongoing Support of NAIC Programs, Products, or Services:

1. Monitor and analyze federal and state legislative/regulatory actions regarding financial services and other issues of importance to the NAIC membership—*Essential*
2. Work with other standing committees, task forces, and working groups to help develop and communicate NAIC's policy views to federal and state officials on pending legislation and regulatory issues by personal involvement of NAIC members through testimony, correspondence, and attendance at hearings—*Essential*
3. Develop a strategy and program for directly engaging NAIC members with Congress to advocate the benefits and efficiencies of state regulation—*Essential*
4. Oversee the development of the NAIC's grassroots program—*Essential*
5. Secure broader participation from NAIC membership on all government affairs advocacy initiatives—*Essential*
6. Report to the Executive (EX) Committee on all activities and matters relating to the annual charges of the Government Relations Leadership Council—*Essential*

Staff Support: Ethan Sonnichsen

INTERNATIONAL INSURANCE RELATIONS (EX) LEADERSHIP GROUP

Historical Reference: September 23, 2008, Commissioner Praeger indicated that the Executive (EX) Committee agreed to establish the International Insurance Relations Leadership (EX) **Council** to provide commissioner-driven leadership to coordinate and be responsive to international initiatives and development. Commissioner Praeger stated that the **Council** will work closely with the International Insurance Relations (G) Committee, the Executive (EX) Committee and the Government Relations Leadership Council, as well as other standing committees involved in international issues, to coordinate and develop strategies for NAIC action and to promote the participation of all members in the organization's international relations initiatives. Commissioner Holland made a motion to ratify establishing the International Insurance Relations Leadership (EX) **Council** and to adopt its charges.

As determined by the NAIC President in 2008, this leadership group shall be composed of the NAIC officers, and additional members as designated by the NAIC President. The NAIC president and president-elect shall serve as chair and vice chair.

The mission of the International Insurance Relations (EX) Leadership Group (IIRLG) is to develop, coordinate, and implement the NAIC's international initiatives, and to coordinate between NAIC standing committees, including the International Insurance Relations (G) Committee and the Executive (EX) Committee. The Leadership Group will devise strategies for NAIC action and promote the participation of all NAIC members in the NAIC's international relations initiatives.

Ongoing Support of NAIC Programs, Products, or Services:

1. Monitor and analyze federal legislative/regulatory actions with international implications regarding financial services and other issues of importance to the NAIC membership—*Essential*
2. Work with other standing committees, task forces, and working groups to help develop and communicate NAIC's policy views to the IAIS during regulator-to-regulator dialogues, and in other international organizations on pending standard-setting issues by personal involvement of NAIC members through leadership roles, presentations, correspondence, and attendance at meetings—*Essential*
3. Develop a strategy and program for directly engaging NAIC members with non-U.S. insurance supervisors and international organizations in coordination with other NAIC standing committees and groups, where appropriate—*Essential*
4. Promote the benefits of the U.S. insurance regulatory system and importance of being active internationally—*Essential*
5. Report to the Executive (EX) Committee on all activities and matters relating to the annual charges of the International Insurance Relations Leadership Group—*Essential*

Staff Support: George M. Brady

LONG-TERM CARE (EX) TASK FORCE

Historical Reference: Adopted September 22, 2009, this task force was established relating to long-term care insurance, specifically with regard to closed blocks of long-term care business. As determined by the NAIC President in 2010, this task force shall be composed of 10 members as assigned by the president and president-elect.

The mission of the Long-Term Care (EX) Task Force is to identify and analyze issues, and make recommendations, relating to long-term care insurance; specifically with regard to open and/or closed blocks of long-term care business.

Ongoing Support of NAIC Programs, Products, or Services:

1. Whether there is anything the NAIC can or should do to address possible reserve deficiencies and rating issues, such as mitigation against rate increases and death spirals—*Essential*
2. In line with the NAIC's current model law, explore options where appropriate, and monitor efforts, to ensure the fair or equal treatment of policyholders, including those in situations where policyholders live in multiple states—*Essential*
3. How regulators should treat the spin-off or transfer of closed blocks of business to another entity, including process issues related thereto—*Essential*
4. Prepare a report summarizing the Task Force's findings. This report may include a description of the major issues and problems in the long-term care marketplace as it relates to pricing and/or closed blocks, the major factors contributing to these problems, the challenges facing state regulators in adequately addressing these problems, and recommendations for state regulators and/or the NAIC—*Important*

Staff Support: Jane Sung/John Engelhardt

PRODUCER LICENSING (EX) TASK FORCE

Historical Reference: March 16, 2009 the Executive Committee ratified the Producer Licensing Task Force. The task force was charged to provide greater clarity and coordination of producer licensing activities by consolidating all producer licensing activities under one common task force. The Task Force would provide formal coordination with the Producer Licensing Coalition and the NIPR Board of Directors.

As determined by the NAIC President, this task force shall be composed of thirteen (13) members. The NAIC president and president-elect assign position of chair and vice chair.

The mission of the Producer Licensing (EX) Task Force is to: 1) develop and implement uniform standards, interpretations and treatment of producer and adjuster licensees and licensing terminology; 2) monitor and respond to developments related to licensing reciprocity; 3) coordinate with industry and consumer groups regarding priorities for licensing reforms; and 4) coordinate and consult with the National Insurance Producer Registry (NIPR) Board of Directors to develop and implement uniform producer licensing initiatives, with a primary emphasis on encouraging the use of electronic technology.

Ongoing Support of NAIC Programs, Products, or Services:

1. Monitor progress on recommendations to the NIPR, which include the following: 1) work closely with the NAIC Market Regulation Division and the Producer Licensing (EX) Working Group to identify areas in the states' electronic business rules that do not appear to comply with reciprocity or uniformity standards; 2) develop a uniform set of electronic processing standards (business rules) to facilitate "true" uniformity vs. "virtual" uniformity; 3) create a central location for the submission of company contract information (i.e., appointments/contracts database); 4) create a central location for the submission of national criminal background-check status information; and 5) create a central location for the submission of continuing-education and pre-licensing course information—*Essential*
2. In conjunction with the Producer Licensing Coalition, work closely with the NIPR to encourage full utilization by all of the states and producers of NIPR products and services, including individual and business entity resident and nonresident licensing, address change requests, Attachments Warehouse and reporting of administrative actions—*Essential*
3. Finalize the evaluation of the key findings and issues regarding disparate business entity licensing laws, regulations and practices identified in the state producer licensing assessments by comparing the administrative burdens with the consumer protections arising from the licensing of business entities, and provide policymaking recommendations for simplifying and standardizing the business entity licensing process, considering all options ranging from the elimination of the licensing of business entities to the elimination of components of the process, such as licensing by line of authority or by each branch location—*Essential*
4. Finalize a strategy plan to implement fingerprinting in all of the states, the suggested deadline for implementation and identify what additional resources from state insurance regulators, the industry and consumer groups could be committed to this effort—*Essential*
5. Facilitate roundtable discussions, as needed, with the state producer licensing directors for the exchange of views, opinions and ideas on producer-licensing activities in the states and at the NAIC—*Essential*
6. Appoint the NARAB (EX) Working Group to complete state reciprocity recertification based on the Working Group's 2009 reciprocity report and adopt a final report for recertification of the states' compliance with the reciprocity mandates of the federal Gramm-Leach-Bliley Act—*Essential*

PRODUCER LICENSING (EX) TASK FORCE *(Continued)*

7. Appoint the Producer Licensing (EX) Working Group to:
Finalize the review of limited-line licensing issues, with particular focus on the following: 1) individually review the licensing requirements for each core limited line; 2) review other limited lines and determine what licensing requirements should apply to them; and 3) determine if another “catchall” limited line is needed to address licensing requirements for insurance products not already encompassed within the list of limited lines—*Essential*
- Continue to review the process for examination development and delivery of education materials for pre-licensing education and provide recommendations for best practices to ensure the timely review and updates of exam material and a process geared toward testing the qualifications for an entry-level position as a producer—*Essential*
 - Continue to provide oversight and ongoing updates, as needed, to the *State Licensing Handbook*—*Essential*
 - Provide ongoing maintenance and review of reciprocity guidelines and uniform application forms for continuing-education providers and state review and approval of courses—*Important*
 - Provide input and feedback to NAIC/NIPR staff regarding the development of electronic-licensing applications, such as a centralized filing point for notification of administrative/criminal actions and Personalized Information Capture System (PICS) alerts for state insurance regulators—*Essential*
 - Serve as an informal focus group with NAIC staff for the development and delivery of a *State Licensing Handbook* training class for state insurance departments—*Essential*
 - Review the Large Deductible (EX) Working Group’s suggested revisions of the NAIC’s *Third-Party Administrator Statute* (#90) and provide final recommendations to the Producer Licensing (EX) Task Force for review—*Essential*
 - Coordinate with other NAIC parent committees and working groups to review and provide recommendations on any new producer training requirements or continuing-education requirements, which are included in NAIC model acts, regulations and/or standards—*Essential*
8. Receive updates from the NAIC/Industry Producer Licensing Coalition on its work to:
- Continue to serve as the forum for the NAIC membership and industry to exchange views, opinions and ideas on producer-licensing priorities, such as professional standards of producers, state licensing laws, state administrative procedures and federal legislation—*Essential*
 - Continue discussions on ways to further improve processes the industry believes are administratively burdensome to producers, including the appointment process, the examination/testing process and ways to encourage state and local industry organizations to actively support full adoption of the major lines of authority and elimination of non-core limited lines of authority—*Essential*
 - Continue to track state legislative initiatives to implement uniform and reciprocal licensing standards and coordinate regulator and industry support for such initiatives—*Essential*

New Objectives and Goals *(representing new NAIC programs, services or initiatives):*

9. Review and provide guidance regarding the U.S. Financial Sector Assessment Program (FSAP) recommendations to strengthen the approach to producer regulation, including the following: “(i) to extend broker trust fund arrangements across states (where not already in place) to ensure that client funds are fully protected; (ii) to develop a uniform approach to the regulation of major brokers which reflects the important role which large brokers play in the commercial lines market; and (iii) to complete the current work on a consistent approach to the regulation of commission disclosure. In addition, producers should be required to make disclosures to customers of the status under which they are doing business, including which insurance companies have appointed them”—*Essential*

Staff Support: Timothy B. Mullen/Brady R. Kelley

PROFESSIONAL HEALTH INSURANCE ADVISORS (EX) TASK FORCE

Historical Reference: Adopted by the Jt. Executive (EX) Committee/Plenary on December 16, 2010

New Objectives and Goals (*representing new NAIC programs, services or initiatives*):

1. The Executive Committee Task Force on Professional Health Insurance Advisors shall work in an expedient manner to identify, analyze and recommend options to the Executive Committee for addressing the negative impacts on health insurance brokers/agents, insurance consumers and insurance markets, prior to and as a result of, the Medical Loss Ratio (MLR) requirements of the Patient Protection and Affordable Care Act (PPACA) and the regulation as issued by the U.S. Department of Health and Human Services (HHS).—*Important*

Staff Support: Timothy B. Mullen/Andrew J. Beal

SOLVENCY MODERNIZATION INITIATIVE (EX) TASK FORCE

Historical Reference: March 16, 2009, this task force was formed to coordinate efforts toward the solvency modernization initiatives commenced in June of last year. The Task Force would use the technical expertise of NAIC groups in the five focus areas of the initiatives: capital requirements, international accounting, insurance valuation, reinsurance and group regulation. The Task Force would also coordinate input to the International Association of Insurance Supervisors (IAIS) on solvency-related papers. The input would encompass projects already underway at the NAIC, and would be informed by international insolvency regulator efforts, such as Basel 2 for banking regulation, Solvency II for insurance regulation and ongoing work at the IAIS.

The mission of the Solvency Modernization Initiative (EX) Task Force is to coordinate all NAIC efforts to successfully accomplish the goals of the Solvency Modernization Initiative. The Task Force will coordinate, collaborate and utilize the technical expertise of other NAIC groups, particularly for the five focus areas of the Solvency Modernization Initiative, as follows:

- Capital Requirements: Capital Adequacy (E) Task Force;
- Governance and Risk Management: Corporate Governance (EX) Working Group and the Group Solvency Issues (EX) Working Group
- Group Supervision: Group Solvency Issues (EX) Working Group;
- Statutory Accounting and Financial Reporting (including international accounting and valuation issues): the International Solvency and Accounting Standards (EX) Working Group and the Principles-Based Reserving (EX) Working Group; and,
- Reinsurance: Reinsurance (E) Task Force.

Ongoing Maintenance of NAIC Programs, Products or Services:

1. Provide oversight to the International Solvency and Accounting Standards Working Group and its charges to do the following:

- Assist the Task Force with the Statutory Accounting and Financial Reporting focus area in the Solvency Modernization Initiative.
- Critically review and provide input and drafting to the IAIS Insurance Contracts Subcommittee and IAIS Solvency and Actuarial Issues Subcommittee, and on IAIS papers as assigned by the parent Task Force. From this work, identify future initiatives to improve our regulatory solvency system.
- Analyze other financial supervisory modernization initiatives, to the extent appropriate. Analysis should include the International Accounting Standards Board (IASB) accounting standards development.
- Monitor and provide comments directly or to the IAIS on the IASB developments and on the IASB and Financial Accounting Standards Board (FASB) joint convergence projects related to insurance accounting issues. Coordinate with the Statutory Accounting Principles (E) Working Group to provide responses to the FASB on joint projects; and
- Report findings relative to these developing issues to the Accounting Practices and Procedures (E) Task Force.
- In consultation with the Statutory Accounting Principles (E) Working Group, monitor international and national accounting standards development and SEC policy decisions and develop a recommendation to the NAIC membership regarding the future of U.S. statutory accounting.

—*Essential*

SOLVENCY MODERNIZATION INITIATIVE (EX) TASK FORCE *(Continued)*

2. Provide oversight to the Group Solvency Issues Working Group and its charges to do the following:

- Assist the Task Force with the group focus area in the Solvency Modernization Initiative.
- Study the need to develop group-wide supervision, which may include group-wide capital requirements. The study should consider possible approaches to such capital requirements, including how capital for financial conglomerates and non-regulated entities is calculated.
- Monitor state insurance regulators supervisory college activity and recommend courses of action for other methods of communication and coordination among cross-border (including cross-state) and cross-sectoral supervisors, if needed.
- Critically review and provide input and drafting to the IAIS Insurance Groups and Cross-Sectoral Issues Subcommittee or on other IAIS papers as assigned by the parent Task Force. From this work, identify future initiatives to improve our regulatory solvency system.
- Consider the development of a regulatory resource such as the Own Risk and Solvency Assessment (ORSA) to assess and monitor insurers' and groups' risk management processes.

—*Essential*

3. Provide oversight to the Principles-Based Reserving Working Group and its charges to do the following:

- Serve as a coordinating body with all NAIC technical groups involved with projects related to a principle-based approach to regulation and assist the Task Force with the “insurance valuation” focus area in the Solvency Modernization Initiative.
- Consider policy and practice issues related to principle-based regulation for life insurance, including but not limited to the impact on areas such as corporate governance, examination and analysis, as well as staff resources and other insurance department administrative concerns.
- Focus on balancing theoretical approaches with effective regulatory practices to achieve desired end-results in solvency monitoring efforts, and further coordinate with NAIC leadership to provide direction to NAIC technical groups, including, setting timelines for such pursuit, and ensuring other issues are addressed concurrently with implementation of principle-based approaches by the technical groups.
- Evaluate necessary changes to existing state insurance laws, regulations or administrative policies to effectuate a principle-based regulatory framework
- Critically review and provide input and drafting on the IAIS papers, as assigned by the parent Task Force. From this work, identify future initiatives to improve our regulatory solvency system.

—*Essential*

4. Provide oversight to the Corporate Governance Working Group and its charges to do the following:

- Outline high-level corporate governance principles. Determine the appropriate methodology to evaluate adherence to such principles, giving due consideration to development of a model law.
 - Analyze the requirements, regulatory initiatives and best practices of the states, other countries and regulators, and the insurance industry, to assist in principle development.
 - Develop additional regulatory guidance including detailed best practices for the corporate governance of insurers.

SOLVENCY MODERNIZATION INITIATIVE (EX) TASK FORCE *(Continued)*

- Review the current IAIS principles and standards related to corporate governance. Critically review and provide input and drafting to the IAIS Governance and Compliance Subcommittee, and on other IAIS papers as assigned by the parent Task Force. From this work, identify future initiatives to improve our regulatory solvency system.
- Consider the development of insurance regulatory education for members of insurers' Boards of Directors.

—*Essential*

5. Monitor solvency-related IAIS work products and assign papers to working groups to submit comments to the IAIS. Additionally, the Working Groups should review the papers and recommend whether and/or how the ideas in those papers should be implemented in the U.S. regulatory solvency system.—*Essential*
6. Communicate and coordinate with the International Insurance Relations (G) Committee and provide technical support to the Committee as needed.—*Essential*
7. Report the status of its work to the Executive Committee at each National Meeting.—*Essential*
8. Address the relevant Financial Sector Assessment Program (FSAP) recommendations in the NAIC Implementation Plan.—*Essential*

Staff Support: Kris DeFrain/George Brady/Todd Sells

SPEED TO MARKET (EX) TASK FORCE

Historical Reference: January 16, 2004 in a memorandum to NAIC Members, President Ernst Csiszar noted the task force will consist of the Improvements to State-Based Systems Working Group, Filing Submission Uniformity/Metrics Subgroup, Property and Casualty Uniformity Subgroup, Review Standards Checklists Subgroup, SERFF Enhancements Subgroup, Interstate Compact; National Standards, and the CARFRA Working Group. This would provide a single group to address national standards, product filing and speed to market concerns. The task force will meet at national meetings to receive reports from any of its appointed subsidiaries that meet by conference call between meetings. The task force convened on March 16, 2004 to review charges.

The mission of the Speed to Market (EX) Task Force is to serve as the NAIC focal point for modernization of the insurance product filing and review processes. The Task Force will monitor the development and implementation of speed to market operational efficiencies and will support the development of national standards in conjunction with the IIPRC. The Task Force also will support IIPRC initiatives that require uniformity and policy changes within the states.

Ongoing Support of NAIC Programs, Products or Services:

1. Provide a forum for the review, discussion and recommendation regarding rate and form filing needs as impacted by the federal Patient Protection and Affordable Care Act (PPACA), including:
 - a. Provide policy support and guidance regarding SERFF enhancements necessary for the states to comply with state law, federal law and/or contractual obligations—*Essential*
 - b. Provide a discussion forum for the review of the Rate Filing Disclosure Form required to be filed with the U.S. Department of Health and Human Services (HHS) for filings that exceed an unreasonable threshold (as defined by HHS)—*Essential*
 - c. Provide input and guidance to other NAIC committees related to PPACA—*Essential*
2. Appoint a National Standards (EX) Working Group to coordinate with/work jointly with the IIPRC Interstate Compact National Standards Working Group in accelerating the drafting of national standards for insurance products that are eligible for inclusion in the IIPRC, with the emphasis on group life, individual annuity, group annuity, disability income and long-term care insurance product standards. Report the results of this ongoing charge at each national meeting—*Essential*
3. Appoint an Operational Efficiencies (EX) Working Group to oversee the implementation and ongoing maintenance/enhancement of speed to market operational efficiencies that have been adopted. Report the results of this ongoing charge at each national meeting—*Essential*
 - a. Update the speed to market assessment tool that includes a nationwide summary and individual state summaries of speed to market compliance; report at each national meeting.
 - b. Facilitate proposed changes to the Product Coding Matrices (PCM) on an annual basis, including the review, approval and notification of changes. Monitor, assist with and report on state implementation of any PCM changes—*Essential*
 - c. Facilitate proposed changes to the Uniform Transmittal Document (UTD) on an annual basis, including the review, approval and notification of changes. Collaborate with the SERFF Board to ensure incorporation of UTD changes in SERFF—*Essential*
 - d. Use SERFF data to develop, refine, implement, collect and distribute common filing metrics that provide a tool to measure the success of the speed to market modernization efforts, with an emphasis on data that monitors state regulatory and insurer responsibilities for speed to market for insurance products and ensure full and complete communication of any change in filing requirements—*Essential*

SPEED TO MARKET (EX) TASK FORCE *(Continued)*

- e. Facilitate the review and revision of the *Product Filing Review Handbook*, which contains an overview of all of the operational efficiency tools and describes best practices for industry filers and state reviewers with regard to the rate and form filing and review process—*Essential*
 - f. In collaboration with the National Treatment and Coordination (E) Working Group, evaluate synergies between corporate changes/amendments and rate and form filing review and approval to improve efficiency—*Important*
 - g. Serve as the clearinghouse for input from the SERFF Board regarding the SERFF electronic filing speed to market tool—*Essential*
 - h. Provide oversight in evaluating filing efficiency issues for regulators and the industry—*Important*
 - Continue work on the development of uniform rate and form terminology for dispositions, filing objections, filing statuses and deemer provisions designed to further advance speed to market for rate and form filing and review.
 - Survey the states and industry to gather information regarding common filing issues and develop recommendations for resolution.
3. As desired by the IIPRC, encourage state participation in the IIPRC and receive reports, at each national meeting, of legislative activity for non-compacting states—*Essential*
 4. As desired by the IIPRC, assist with marketing efforts promoting industry use of the IIPRC speed to market tool—*Essential*
 5. As desired by the IIPRC, participate in dialogue with active supporters of the IIPRC—such as the National Conference of State Legislators, National Conference of Insurance Legislators, state executive branch organizations, National Governors Association and National Association of Attorneys General—to provide background information and reasons in favor of all states joining the IIPRC—*Essential*

Staff Support: Julienne L. Fritz/Joe Bieniek

SURPLUS LINES IMPLEMENTATION (EX) TASK FORCE

Historical Reference: August 14, 2010, the Executive Committee approved the establishment of a Surplus Lines Implementation (EX) Task Force to develop and oversee implementation of state-based solutions addressing the surplus lines subtitle of the NRRRA and to request the chair of the Surplus Lines (C) Task Force submit recommendations for membership.

The mission of the Surplus Lines Implementation (EX) Task Force is to Develop and oversee implementation of state-based solutions addressing the surplus lines subtitle of the Nonadmitted and Reinsurance Reform Act.

Staff Support: John Bauer

W:\National Meetings\2011\Spring\Cmte\Ex\Att 02 2011 Charges of EX Task Forces.doc

3/27/11

*2011 Spring National Meeting
Austin, TX*

EXECUTIVE (EX) COMMITTEE
Sunday, March 27, 2011
1:30 – 2:30 p.m.
Austin Convention Center—Ballroom D—Level 4

Executive (EX) Committee Task Force and Working Group Reports

AIG Managing (EX) Task Force—The AIG Managing (EX) Task Force has met as needed, in regulator-to-regulator sessions, pursuant to the NAIC Policy Statement on Open Meetings, to continue to monitor issues related to American International Group (AIG).

Government Relations (EX) Leadership Council (GRLC)—The Government Relations (EX) Leadership Council will meet March 28. The Leadership Council will receive presentations from Eric Thompson (staff, U.S. Rep. Spencer Bachus of Alabama) and James Segel (former staff, U.S. Rep. Barney Frank of Massachusetts) regarding implementation of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The GRLC also will hear updates on financial legislation, health care implementation and other emerging issues in our nation's capital.

International Insurance Relations (EX) Leadership Group (IIRLG)—The International Insurance Relations (EX) Leadership Group meets weekly via conference call to discuss strategic issues related to the NAIC's involvement in international activities. The IIRLG will not meet at the Spring National Meeting.

The IIRLG continues to press for the United States to be recognized as "equivalent" under Solvency II. This position was put forth at the urging of the vast majority of insurers doing business in the United States with transatlantic operations, and to avoid a potential disruption to U.S.-EU insurance operations. The IIRLG also has discussed issues and the agenda in advance of the NAIC-EU Insurance Regulatory Dialogue in early March, where U.S. and EU insurance regulators exchanged views on a variety of issues, including solvency modernization and group supervision.

The IIRLG also continues its focus on the strategic planning process at the International Association of Insurance Supervisors (IAIS), in particular the Financial Stability Committee, Internal Review Task Force and Common Framework Task Force. The Financial Stability Committee has worked extensively on language set forth in Financial Stability Board documents on the supervision of systemically important financial institutions (SIFIs).

Long-Term Care (EX) Task Force—The Long-Term Care (EX) Task Force will not meet during the Spring National Meeting, but plans to reconvene by conference call next month. On the next call, the Task Force plans to continue discussion of recommendations by the Long-Term Care Pricing (B) Subgroup of the Health Actuarial (B) Task Force regarding a proposed definition of moderately adverse long-term care claims experience, as well as continue discussion of proposed consumer disclosures regarding rate increases.

Producer Licensing (EX) Task Force—The Producer Licensing (EX) Task Force met Oct. 20, 2010, during the Fall National Meeting. During this meeting, the Task Force adopted its Sept. 15, 2010, conference call minutes and its 2011 Proposed Charges. The Producer Licensing (EX) Task Force will meet March 27 at the Spring National Meeting. During this meeting, the Task Force will 1) Consider adoption of its Nov. 10, 2010, and Nov. 23, 2010, conference call minutes; 2) Consider adoption of Third-Party Administrator (TPA) Guidelines; 3) Discuss 2011 priorities; 4) Discuss Uniform Standards for Business Entity Licensing; 5) Receive reports from the NARAB (EX) Working Group and Producer Licensing (EX) Working Group; and 6) Receive an update on NIPR activities.

Professional Health Insurance Advisors (EX) Task Force—The Professional Health Insurance Advisors (EX) Task Force met by conference call Feb. 28 to discuss its proposed work plan. The Task Force circulated draft model language March 3, which would exempt commissions from the calculation of the medical loss ratio (MLR) requirements of the federal Patient Protection and Affordable Care Act (PPACA).

The Professional Health Insurance Advisors (EX) Task Force will hold a public hearing March 27 to receive testimony from interested parties regarding the impact of the MLR requirements on health insurance brokers/agents, insurance consumers and insurance markets. In particular, the Task Force is interested in comments to address the following questions: 1) What is or is likely to be the impact of removing commissions from what is defined as premium under the MLR requirements? 2) Have commissions been reduced since the passage of the federal law? If so, what is the impact of present and potential future commission reductions? Will this cause access issues? Is it likely that agents/brokers will abandon health insurance markets? 3) What will be the impact of a legislative change that treats producer commissions in the same manner as federal and state taxes for purposes of calculating the MLR? and 4) What is the optimal solution to balance health plan/insurer concerns, consumer interests and the interests of agents/brokers?

Solvency Modernization Initiative (EX) Task Force—The Solvency Modernization Initiative (EX) Task Force met Oct. 20, 2010. During this meeting, the Task Force adopted its 2011 Proposed Charges, its Sept. 24, 2010 conference call minutes, and the reports of its working groups and subgroup. The Task Force also discussed the U.S. priorities and focus for the International Association of Insurance Supervisors' (IAIS) Common Framework Task Force project for internationally active groups and the U.S. Financial Sector Assessment Program's (FSAP) recommendations assigned to the Task Force and its working groups by the Executive (EX) Committee.

The Task Force will meet March 28, and will hear a presentation from Therese M. (Terri) Vaughan, Ph.D. (NAIC CEO) about the international differences of opinion on regulatory issues, will consider adoption its March 7 conference call minutes (including modification of the Task Force's 2011 Charges), and will receive reports from its working groups. The Task Force will discuss the Solvency Modernization Initiative (SMI) Roadmap document and discuss the need for a white paper to feature the critical review of the U.S. Solvency Framework, going beyond a description of what insurance regulators do, by addressing *why* insurance regulator do what they do. The Working Groups will discuss significant issues spanning topics such as the impact study of principle-based reserving, the newly proposed Own Risk and Solvency Assessment (ORSA), the newly proposed group capital requirements and a white paper on corporate governance.

Speed to Market (EX) Task Force—The Speed to Market (EX) Task Force met Oct. 20, 2010, at the Fall National Meeting and Oct. 5, 2010, via conference call. During these meetings, the Task Force 1) Discussed and adopted the Rate Filing Disclosure Form, referring it to the Health Insurance and Managed Care (B) Committee; 2) Adopted its 2011 Proposed Charges; 3) Adopted its Oct. 5 conference call minutes; 4) Adopted the reports of the Operational Efficiencies (EX) Working Group and National Standards (EX) Working Group; 5) Received reports from the IIPRC and the SERFF Board; and 6) Heard reports from NAIC staff on health reform impacts and SERFF activity.

The Task Force will meet March 28. During meeting, the Task Force will 1) Appoint 2011 Working Groups; 2) Discuss 2011 Charges; 3) Hear an update on SERFF implementation projects related to PPACA; 4) Consider adoption of its working group reports; 5) Receive reports from the IIPRC and on SERFF activity; and 6) Receive comments from members of the SERFF Board.

Surplus Lines Implementation (EX) Task Force—Since the NAIC membership's endorsement in December of the recommendation to pursue the Nonadmitted Insurance Multi-State Agreement (NIMA) as the means for implementing the surplus lines provisions of the federal Nonadmitted and Reinsurance Reform Act, the Surplus Lines Implementation (EX) Task Force has been overseeing efforts to implement NIMA in those states that choose to participate.

The Surplus Lines Implementation (EX) Task Force is overseeing a three-pronged approach to implementation: 1) the Task Force created a Clearinghouse Plan of Operation (EX) Subgroup to develop a proposed plan of operation related to the functions of the clearinghouse to be created by NIMA; 2) the Task Force tasked a group of insurance department attorneys with drafting the template for the agreement to be entered into between the state and the clearinghouse, as contemplated by NIMA; and 3) the Task Force released a Request for Information on March 18 in order to obtain information from and solicit interest among potential clearinghouse vendors.

In addition, the NAIC Legal Division has been working with the states to review legislative proposals and respond to interested party comments at the state legislative level. The work presently being undertaken by the Task Force is preparatory in nature. It is being done as recommendations to those states that actually join NIMA. It will be those states that will have to review and, if acceptable, try to implement any recommendations as a foundation from which to launch NIMA.

Draft: 3/22/11

*2011 Spring National Meeting
Austin, TX*

EXECUTIVE (EX) COMMITTEE
Sunday, March 27, 2011
1:30 – 2:30 p.m.
Austin Convention Center—Ballroom D—Level 4

Report of Model Law Development

New Model: Model Law to Regulate Insurance Scoring Vendors—This request for model law development was adopted by the Executive (EX) Committee at the 2010 Summer National Meeting. The request was developed to address the regulation of firms that sell credit information to insurers for use in pricing and underwriting.

New Model: Risk-Based Capital for Fraternal Benefit Societies Model Act—This request for model law development was adopted by the Executive (EX) Committee at the 2009 Winter National Meeting. The request was developed based upon the need for regulatory authority to take corrective actions as a result of a fraternal society having less than the minimum amount of capital as calculated by the fraternal RBC formula, as most states currently lack such authority. Additional discussion by the Capital Adequacy (E) Task Force, who drafted the initial request, is expected at the Spring National Meeting. At this point, the Task Force is considering methods that provide more latitude for the manner in which states obtain such authority.

Amendments to Annuity Disclosure Model Regulation (#245)—The Annuity Disclosure (A) Working Group is continuing to discuss annuity illustration guidelines to be included in the model. The Working Group also is continuing its work on revising the annuity buyer's guides. The Executive (EX) Committee approved a model law development request to work on revisions to the *Annuity Disclosure Model Regulation* (#245) at the 2008 Fall National Meeting. The Working Group did not meet the deadline to complete the revisions by the 2009 Winter National Meeting. As such, at the 2009 Winter National Meeting, the Working Group sought and received approval for an extension to complete its work from the Life Insurance and Annuities (A) Committee. The Annuity Disclosure (A) Working Group adopted the revisions to the model at the 2010 Fall National Meeting. The Life Insurance and Annuities (A) Committee deferred voting on the revisions and provided for an additional comment period on the proposed revisions. It is anticipated that the Committee will review additional proposed revisions to the model during its meeting at the Spring National Meeting.

Amendments to Model Risk Retention Act (#705)—This request for model law development was adopted by the Executive (EX) Committee at the 2010 Fall National Meeting. The request was developed based upon the Risk Retention (C) Working Group's consideration of developing corporate governance standards to respond to accreditation and corporate governance issues. The corporate governance standards were adopted by the Property and Casualty Insurance (C) Committee in June 2007 and referred to the Financial Condition (E) Committee for consideration to include the standards in the property/casualty *Annual Statement Instructions*. The Risk Retention (E) Task Force found that the *Annual Statement Instructions* were not the proper place for this guidance but, instead, should be incorporated into a model law or regulation so that a state insurance department could compel the RRG to comply with these requirements.

The Risk Retention Handbook and Model Law Amendment (C) Subgroup held five conference calls since the 2010 Fall National Meeting to discuss amendments to the *Model Risk Retention Act* (#705). The Subgroup has accepted written comments to the proposed changes to the corporate governance standards. The Subgroup approved edits to the model act and will pass their recommendation to the Risk Retention (C) Working Group at the Spring National Meeting.

Amendments to *Credit for Reinsurance Model Law (#785)* and *Credit for Reinsurance Model Regulation (#786)*—These requests for model law development were adopted by the Executive (EX) Committee at the 2010 Fall National Meeting. The requests were developed in order for the Reinsurance (E) Task Force to consider amendments to models #785 and #786 to incorporate key elements of the Reinsurance Regulatory Modernization Framework, which was adopted by the NAIC membership at the 2008 Winter National Meeting. The amendments also incorporate the Tawa proposal, with respect to a reduction in the trustee surplus requirement for a multiple-beneficiary trust account maintained by an assuming insurer in run-off. The Task Force exposed initial proposed amendments to models #785 and #786 for a 30-day public comment period Feb. 22, 2011. The Task Force will receive comments from interested parties and discuss the initial draft revisions during the Spring National Meeting. It is anticipated that an interim meeting will be held to facilitate further discussion, and the Task Force intends to consider final revisions to models #785 and #786 for adoption no later than the Summer National Meeting.

Amendments to *Standard Nonforfeiture Law for Life Insurance (#808)*—The Executive (EX) Committee approved the request to work on this model law at the 2007 Summer National Meeting. The amendments to the law are necessary because of the principle-based reserving methodology. At the 2009 Spring National Meeting, the Life and Health Actuarial Task Force decided to defer consideration of this model law until more work was done on the *Standard Valuation Law (#820)* and the Valuation Manual. On a Jan. 12, 2011, conference call, the Task Force discussed a proposal to delink the maximum interest rate used in the minimum nonforfeiture calculation from the valuation interest rate and to introduce new mortality tables for determining the minimum nonforfeiture values in the Valuation Manual. The Life Actuarial (A) Task Force will discuss an updated proposal at the Spring National Meeting and will release a new proposal for comment.

W:\Spring 11\Cmte\Ex\Rpt-ModelLaws\ModelLawDevelopment.doc