



**Robert Neill**

*Counsel*

(202) 624-2313 t (866) 953-4083 f

robertneill@acll.com

July 22, 2009

David A. Vacca, CPA  
Assistant Director  
Insurance Analysis and Information Services Department  
NAIC Regulatory Services Division  
2301 McGee Street, Suite 800  
Kansas City, MO 64108-2604

E-mail: [dvacca@naic.org](mailto:dvacca@naic.org)

Dear David,

In our June 10 letter responding to the Group Solvency Issues Working Group's holding company questionnaire, the ACLI urged the Working Group to explore efficiency and uniformity of current holding company financial filings and to examine existing regulatory powers under the Insurance Holding Company System Model Regulatory Act (Holding Company Act), to foster more effective use of the Act in its current form. To aid in this review, this letter outlines existing authority under the Act, offers comments on revisions to the Act recommended by regulators during the June NAIC meeting, and provides suggestions for improving efficiency and uniformity in any contemplated revisions to the Act. At this time ACLI has not developed a comprehensive response to each comment on the holding company questionnaire distributed on July 21 or the overall effort; however, the attached spreadsheet provides the general direction of ACLI concerns as we continue to review the recommendations.

ACLI observed that a number of the recommendations do not lend themselves to an immediate modification to the Act. Recommendations relating to systemic risk, holding company RBC requirements, supervisory college authority, and perhaps others will require ongoing coordination with other NAIC, federal and international initiatives. Pertinent group-wide issues that must also be considered include the following:

- There should be a set of harmonized solvency and accounting standards globally.
- Solvency treatment of policyholders must be equitable and fair across jurisdictions. This requires a 'level' playing field for insurance entities in regards to solvency requirements.
- A common structure for the calculation of the main supervisory intervention points should be adopted for group supervision.
- There should be a mechanism that permits equivalence among regulatory bodies, especially in light of the current Solvency II debate.
- There must be a functional structure for group supervision that is effective from the insurance supervisors view and efficient from the insurance entities view. A structure such as the College of Supervisors could be considered.
- The fungibility of capital must be clearly defined and appropriate parameters established. Diversification should be recognized to the full extent that can be adequately demonstrated.
- Risk management standards are necessary in order to ensure adequate

**American Council of Life Insurers**

101 Constitution Avenue, NW, Washington, DC 20001-2133

[www.acli.com](http://www.acli.com)

policyholder protection.

As you know, the U.S. Department of the Treasury has also embarked on a comprehensive financial regulatory reform plan including significant changes to financial holding company supervision at the federal level, and the final impacts of these reforms are unclear at this time. As Congress continues to debate financial services regulatory reform, ACLI believes it is critically important to carefully consider details of federal legislative initiatives impacting holding company oversight as well as ongoing efforts to streamline group supervision and international solvency requirements as modifications to the Holding Company Act are discussed to avoid conflicting or duplicative federal and state regulatory requirements.

### **Existing Insurance Holding Company System Model Regulatory Act Authority**

The current NAIC Holding Company Act grants extensive powers to the state insurance regulator. Such powers include the authority to order production of books, records or other information in possession of the insurer or its affiliates; review change of control; require specific financial reporting; regulate dividends, and enforcement authority. The Holding Company Act also authorizes the sharing of information with other regulators, including federal regulators.

#### **Inspection of Books and Records:**

The state insurance regulator has the power to order the insurer to produce records, books, or other information papers in its possession or in its affiliates (including the insurance holding company) possession as are reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with the holding company law. If the insurer fails to comply with the order, the state insurance regulator has the power to examine the affiliates to obtain the information.

#### **Enforcement Power:**

The domestic state insurance regulator has the authority to take a number of enforcement actions against a person seeking to acquire control of a domestic insurer or the domestic insurer itself for violations of the insurance holding company law including the following:

- Injunction,
- Injunction from voting securities acquired in violation of law,
- Sequestration of voting securities acquired in violation of law,
- Monetary penalties,
- Cease and desist order,
- Criminal proceedings for willful violations,
- Placing the domestic insurer into receivership,
- Recovery of certain dividends in a domestic insurer receivership, and
- Revocation, suspension or nonrenewal of the domestic insurer's license.

#### **Regulatory Review of Change of Control:**

The Holding Company Act requires that any person that seeks to acquire control of a domestic insurer or any person controlling a domestic insurer file a statement (Form A) with the state insurance regulator and obtain the prior consent of the state insurance regulator. Control is presumed at ownership of 10% or more of voting securities, and specific grounds for disapproval are included.

#### **Financial Reporting:**

*Financial Statement Filings* – The insurer must file an annual holding company registration statement (Form B) including annual audited financial statement of the ultimate controlling person (e.g. the insurance holding company).

*Inter-company Transaction Reports* – A 30-day prior notice (Form D) to the state insurance regulator is required for certain material affiliate transactions including sales, purchases, exchanges, loans, extensions of credit, investments, reinsurance agreements, management agreements, service contracts, guarantees and cost-sharing arrangements. The regulator can also disapprove of the transaction within the 30-day period.

Other affiliate transactions are to be reported annually in Form B with material changes or additions to be reported within 15 days after the end of the month in which the insurer learns of each change or addition. Standards for affiliate transactions are also included in the Act.

*Other Reports*- Annual Form B filings relating to the holding company must include the following:

- Organizational chart,
- Information regarding the holding company, its principal business, its 10% owners, certain court proceedings, its directors and executive officers, information about certain litigation or administrative proceedings, and
- Holding company latest annual report to shareholders and proxy material.

Material changes or additions to be reported within 15 days after the end of the month in which the insurer learns of each change or addition.

**Dividend Regulation:**

Requires 30-day prior notice to the state insurance regulator of an “extraordinary dividend”<sup>1</sup> by the insurer to its parent, and the regulator can disapprove of the dividend within the 30-day

**Protocols for Dealing with Other Regulators:**

The domestic state insurance regulator is authorized to share information with, receive information from, and enter into information sharing agreements with other regulators, including federal regulators.

**ACLI Comments on Specific Revisions to the Holding Company Act Recommended by Regulators:**

The attached spreadsheet offers ACLI comments on specific changes to the Holding Company Act suggested by regulators at the June Group Solvency Issues Work Group meeting. The spreadsheet references corresponding statutory citations to existing authority where appropriate. As we review additional comments ACLI will offer a more comprehensive response.

**Recommendations to Enhance the Insurance Holding Company System Model Regulatory Act**

ACLI recommends that the Working Group carefully consider the following changes to improve efficiency and effectiveness of the Holding Company Act:

- Examine confidentiality and other protections in current state laws and current state holding company laws for purposes of sharing information among state, federal and international regulators (i.e. international supervisory colleges).
- Regardless of administrative form, regulation should not result in any unfair, discriminatory treatment of foreign owned US insurance or insurance holding companies relative to similarly situated US owned insurers or insurance holding companies or disruption of home country regulation of non US companies affiliated with US insurers. The system should recognize those

---

<sup>1</sup> “Extraordinary dividend” is defined to mean a dividend that, together with other dividends made within the preceding 12 months, exceeds the lesser of: (i) 10% of the insurer’s surplus as of the prior December 31, or (ii) 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, or the 12 month period ending the prior December 31.

requirements applicable to the insurer's foreign or non-US parent which are broadly equivalent to U.S. regulations.

- Review the scope and substance of the existing filing requirements to ensure that required information is necessary, appropriate and useful. Insurance holding companies currently expend significant time and resources filing significant amounts of required information with their regulators.
- Enhance uniformity among the states in required form filings under the Act.
- Enhance uniformity in accounting standards.
- Include a mechanism permitting equivalence among regulatory bodies in light of Solvency II.

ACLI continues to carefully review new recommended revisions to the Holding Company Act. We look forward to working with the Working Group to respond to specific recommendations and devise a comprehensive approach to addressing concerns with the Act taking into account all state, NAIC, federal and international initiatives that will impact this review. Do not hesitate to contact me with any questions.

Sincerely,



Robert H. Neill, Jr.

cc: Ms. Ann M. Frohman  
Director  
Nebraska Department of Insurance

Mr. Danny Saenz  
Sr. Associate Commissioner  
Texas Department of Insurance