

Comments from GSIWG - Insurance Holding Company System Regulatory Act Questionnaire

	Grouping for Discussion	Topic	Study Items and/or Recommendations	Working Group Action (Pass, Draft, Research Further, Refer)	Assignment of Task	Deliverables Tentative *T Final *F
1	A	Access to Information	Clearer access upstream and downstream on any information desired regarding the holding company, regardless of entity. This point could be addressed through a group supervision requirement to provide consolidated financial statements of the entire group when requested.	Draft	NE	*T Sept. 09
2	A	Access to Information - Books and Records	Suggest Adding: • Authority for the insurance department to review the books and records of the immediate and ultimate holding company of the insurer.	Draft	NE	*T Sept. 09
3	A	Access to Information - Books and Records	Section 6 – Examination The Examination section should be expanded to clarify that the power of the Commissioner extends to acquiring the books and records of any affiliate for the purpose of determining its possible effect on the holding company system and the insurer.	Draft	NE	*T Sept. 09
4	B	Access to Information about financial conglomerate	A review of a recent Form A filing by an Australian conglomerate that acquired a regional, multi-state insurance group disclosed some significant difficulty in obtaining information about the conglomerate from its domiciliary regulatory agency and from other official sources monitoring or regulating its affiliates. This situation should be addressed in revisions to the Model Act.	Further Research/Possible Draft	IA, CT <i>(Possible assistance from NAIC Legal & Supervisory College and Methods of Cross-Border Communications Subgroup)</i>	*T Nov 09
5	C	Affiliated Agreements	Stronger language is needed relative to cost sharing/management agreements among affiliates. Many affiliated "management" companies are merely organized to siphon funds. Although regulators can and do ask questions in an attempt to determine whether fees are reasonable, it is difficult without updated language/guidelines.	Draft	TX, IL	*T Sept. 09
6	C	Affiliated agreements	Act should require an insurer to provide prior notice to the Department for the termination or amendment to affiliated agreements that originally required the Department's approval. The notice should include information regarding the reasons for the change and the financial impact on the domestic insurer.	Draft	TX, IL	*T Sept. 09
7	C	Affiliated Transactions	In addition to the points made above, recommend that the fair and reasonable standard for transactions between affiliates be strengthened by requiring that all services provided to the insurer be at actual cost.	Draft	TX, IL	*T Sept. 09
8	C	Affiliated Transactions	Recommend the "fair and reasonable" standard for transactions between affiliates be strengthened by requiring that all services provided to the insurer be at actual cost.	Draft	TX, IL	*T Sept. 09
9	A	Audit work papers of holding company	Suggest Adding: • Authority to review the auditors work papers of the immediate and ultimate holding company, as deemed appropriate.	Draft	NE	*T Sept. 09
10		Collateral examination authority	Expansion of the collateral examination authority to specifically include broader risk categories such as liquidity, reputation, and rating risks in the definition of "impact on the financial condition"	Pass		
11	B	Communication and information sharing with non US regulators	A codified requirement, at least in federal law, for regular communication, information-sharing and collaboration between the functional regulators within a holding company system should be advocated	Further Research/Possible Draft	IA, CT <i>(Possible assistance from NAIC Legal & Supervisory College and Methods of Cross-Border Communications Subgroup)</i>	*T Nov 09

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12	B	Communication of Functional Regulators	As GLBA didn't require functional regulators to communicate with each other, should that requirement be placed into the model? Discussion point – Is this an issue? Do you find that functional regulators are not communicating with each other provided the appropriate confidentiality agreements are in place?	Further Research/Possible Draft	IA, CT (<i>Possible assistance from NAIC Legal & Supervisory College and Methods of Cross-Border Communications Subgroup</i>)	*T Nov 09
13	B	Confidentiality with non US regulators	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).	Further Research/Possible Draft	IA, CT (<i>Possible assistance from NAIC Legal & Supervisory College and Methods of Cross-Border Communications Subgroup</i>)	*F Nov. 09
14	D	Definition of Control	Section 1 – Definitions There should be consideration given to adding the types of control to the definition of control that are currently found in SSAP No. 25 paragraph 4. The two currently not found in the Act are “(c) by contract for goods or non management services where the volume of activity results in a reliance relationship (d) by common management.”	Draft	IL	*T Sept. 09
15	D	Disclaimers of Affiliation	The model should be changed so that disclaimers of affiliation may be disallowed without a pre-disallowance hearing. Any hearing should come after the disapproval. Also, they may consider changing the model to clarify that when the 10% presumption applies, the party rebutting that presumption carries the risk of non-persuasion as well as the risk of non-production. Which means that if you've got at least 10% of the voting securities, you're going to have produce affirmative and persuasive evidence that you don't in fact control the company rather than just pointing out that you have less than 50% of the voting securities.	Draft	IL	*T Sept. 09
16	E	Enterprise-wide risk management	Consideration should be given to requiring (based on materiality) documentation and reporting enterprise-wide risk management processes	Discussion Item	GSIWG (WI to clarify)	
17	F	Entities or Transactions with Detrimental impact to insurer	Over the years regulators have used aspects of the holding co act to investigate non-insurance activities of companies. If regulators believe other entities in a holding co system potentially impact the solvency of an insurer, regulators have authority to examine & require(?) the insurer to deal with it. What regulators don't have is the ability to directly require the other entities to do something.	Discussion Item	GSIWG (<i>NAIC Legal Assistance</i>)	
18		Entities or Transactions with Detrimental impact to insurer	Suggest Adding: • Authority to stay or require written approval any material financial transaction of the holding company and another non-affiliated, which appears to have a detrimental financial impact upon the insurer.	Pass		
19	D	Exemption vs. Disclaimer	There is a wide interpretation of exemption versus disclaimer requests and many use them interchangeably. Ins holding co systems - clarify disclaimer vs. exemption - control vs. affiliation, insurance policy issuance require filing, clarify whether amendments to non-reinsurance agreements require filing, determination as to whether "minor" agreements require filing.	Draft	IL	*T Sept. 09

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20	D	Federal Preemption of the Holding Company Act	Health entities have indicated there is Federal Preemption of the Holding Company Act for reviewing affiliated service agreements under which CMS required services are provided. In these situations, since states are responsible for the solvency of these Medicare entities holding a license in our state, then the question arises whether a review of an affiliated service agreement should be considered part of our regulation of the entities' solvency (and therefore not preempted.)	Draft	TX, IL	*T Sept. 09
21	D	Federal Preemption of the Holding Company Act	Have encountered Federal Preemption of the Holding Company Act in regards to federal government's acquisition of Control of AIG and GMAC. Act should somehow address how this situation needs to be handled so that states can address it in a uniform manner.	Draft	TX, IL	*T Sept. 09
22	C	Filing of affiliated reinsurance agreements	Currently all affiliated reinsurance agreements need to be filed and there is a question as to whether that is necessary. Consider a change so that affiliated reinsurance agreements would have to involve more than 5% of GWP to require filing	Draft	TX, IL	*T Sept. 09
23	G	Equivalence	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 requirements applicable to the insurer's foreign or non-US parent which are broadly equivalent to US regulations.	Further Research	GSIWG (Request additional guidance from SMITF)	
24	D	Form A filing and Form A Exemption filings	Act should be amended to more clearly state that a Form A filing or Form A Exemption filing must be submitted by the person acquiring ownership. Although regulators consider the Act to be clear on this issue, there are other states with the same law, which interpret and handle this situation differently. In the situation where the federal government acquired ownership of domestic insurance companies, an intermediate holding company filed a Form A Exemption requesting the Department to approve the acquisition by the federal government. However, such an intermediate holding company cannot have complete knowledge regarding the true intentions of the acquiring party and its plans for the insurers.	Draft	IL (Possible assistance from NAIC Legal)	*T Sept. 09
25	D	Form A filing requirements or review process	Uniform Form A filing requirements or, in the alternative, a uniform review process when insurers within a group are impacted. With the issues arising with AIG, it is apparent that a uniform Form A review process would be helpful in order to coordinate Form A reviews. Discussion points – Consider a lead state approach, a team of lead states, whether a hearing process is required, etc.	Draft	IL (Possible assistance from NAIC Staff)	*T Sept. 09
26	A	Form B filing instructions	Add additional instructions to Form B filing information when the ultimate controlling person is an individual, as it is not possible to have biographical information of Officers and Directors for an individual and not many individuals have certified audited financial statements.	Draft	NE	*T Sept. 09
27	A	Form B filings submitted to NAIC	Consider having all Form B filings for Insurance Group Holding Companies (i.e. have a group code) submitted confidentially to NAIC for easier regulator-to-regulator review.	Draft	NE & NAIC Staff	*T Sept. 09
28	H	Groupwide Supervision/Group Supervision Authority	The NE Legislature adopted a statute in 2008 regarding statutory authority to conduct group supervision, which granted the Department authority to adopt a regulation setting specific standards. Although the act references "financial conglomerate", it is more accurately an insurance group. Source: Laws 2008, LB855, § 50. Consider adding similar provisions to the Model Holding Company Act or separate statutory section using the Nebraska statute as a starting point for drafting/refinement.	Discussion Item	GSIWG	
29	A	Holding Company filings	Require registered Holding Companies to file financial data in a standard format to provide the capability to analyze their financial profiles in a prescribed format.	Draft	NE	*T Sept. 09
30	A	Holding Company filings	Require Holding Companies to also file their federal or national filings with state insurance departments.	Draft	NE	*T Sept. 09

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31	E	Limited Liab Company Reference	Add limited liability company references wherever appropriate to clean up the model.	Draft	NAIC Staff	*F Sept. 09
32	C	Materiality Requirement of Revisions to agreement	If a reinsurance agreement meets the materiality requirement requiring a filing for prior notice, do all revisions need to be reported under the prior notification requirement or only modifications that meet the materiality requirements?	Draft	TX, IL	*T Sept. 09
33	K	Combine with 56	Suggest Adding: • Authority to the insurance department to require the immediate and/or ultimate holding company of the insurer to maintain an RBC of 300% of the insurer.	Pass (Possibly Consider Later if appropriate related issues are discussed)		
34	A, E	Regulatory Authority over Holding companies	Require all Holding Companies to register or license with the States and the NAIC to enhance the regulatory powers of the Commissioners over those entities.	Defer until after discussions of access to information and ERM		
35		Holding Company Structure	Require all financial service related legal entities (non-insurance) to be downstream of the insurance legal entity or comprised neatly within one financial services holding company.	Pass		
36	B	Supervisory Colleges	Consider adding a new section to the Model Holding Company Act to mandate or allow supervisory colleges, add parameters/criteria for supervisory colleges in terms of what size of holding company group would warrant a supervisory college, add confidentiality provisions, if necessary, and add rule/regulation authority to further refine the process.	Further Research/Possible Draft	IA, CT (<i>Possible assistance from NAIC Legal & Supervisory College and Methods of Cross-Border Communications Subgroup</i>)	*T Nov 09
37	I	Systemic risk analysis or Form D	Strengthen current materiality thresholds with respect to analysis of systemic risk and provide an update to the list of activities for prior approval of holding company transactions and disclosure of specified events occurring within the holding company structure in addition to reporting requirements just measured against a percentage of assets.	Further Research - Clarify wth NAIC staff - Discussion item if relates to Form D - Defer until we get direction from SMITF if relates to systemic risk	GSIWG	
38	I	Systemic risk factors	Develop systemic risk factors for holding companies and affiliates on a group basis.	Refer to SMITF	SMITF	
39	D	Control	Investment managers/advisors who hold proxies in a company/group for mutual funds may have more than 10% control. This may trigger Form A. This may require more monitoring.	Draft	IL/CT	

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Comments from GSIWG International -Questionnaire

40	J	Group Support - Asset Protections Laws	Consider adopting an asset protection law forbidding insurance companies from encumbering any assets supporting the reserves of the company or have the holding company enter into a letter of credit or trust account for any shortfall when the market value of assets are less than the carrying value of assets of the insurer.	Discussion Item	GSIWG	
41	B	Coordination/Communication with Non-US Regulators	It would be beneficial if alien regulators and U.S. regulators had more interaction regarding financial oversight of insurers, which has begun.	Further Research	IA/CT (Supervisory College)	
42	B	Coordination/Communication with Non-US Regulators	A) Consider the role of the Lead State concept to include functioning as an international contact for Holding Company parent companies that are domiciled in other countries. Non-Lead States should be able to rely on the Lead State for obtaining the necessary information regarding international holding companies. Lead states should take the initiative in promoting better communication with international entities and foreign regulators.	Further Research	IA/CT (Supervisory College)	
43	B	Coordination/Communication with Non-US Regulators	C)Consider a project to compare and contrast the PART A Accreditation standards for laws and regulations (17) with applicable, comparable international standards for holding companies. This would help create a basis for a common dialogue when coordinating with foreign counterparts.	Refer to SMITF	SMITF	
44	K	Data Repositories at the NAIC	B) Consider new data repositories at the NAIC for the maintenance of financial information for IFRS or GAAP financials (or other accepted comprehensive bases of accounting) including audited financial statements for international holding companies. This would encourage uniformity of review.	Further Research	NAIC Staff	
45		DTAs	Consider disallowing deferred tax assets for insurers because it has no marketable value. (Not holding company matter)	Pass		
46	A	Examinations of Holding Companies	E) Consider developing best practices for risk assessments of all holding companies and develop models to determine trigger points for conducting financial examinations of holding companies.	Defer until drafting of Access to Info and Legal review of Federal Pre-emption is completed		
47	H	Legal Entity	Changes that are inconsistent with or detract from legal entity level solvency and receivership laws will weaken, not strengthen, our solvency protections. Group-wide considerations should be subordinate and/or supplemental to entity level requirements	Discussion Item	GSIWG	
48		Group Wide Considerations	Two pressing reasons to get group supervision right. First, the crisis has exposed a big gap (e.g., unregulated entities at AIG) which needs to be addressed. Second, the approach in Bermuda (which is similar to the US) is not going to get a 'pass mark' from the EU under Solvency 2, which could mean Bermuda firms will be denied market access, unless we change.	Pass		
49	H	Level Playing Field	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.	Discussion Item	GSIWG	

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50	H	Awareness of Issues	Global Plan for Recovery which included the topics (summary of comment letter topics): - Restoring Growth and Jobs - Strengthening Financial Supervision and Regulation - Strengthening our Global Financial Institutions - Resisting protectionism and prompting global trade and investment - Ensuring a fair and sustainable recovery for all - Delivering our Committments	Discussion Item	GSIWG	

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51		Accounting Standards	There should be a set of harmonized solvency and accounting standards globally.	Pass		
52	G	Equivalence	There should be a mechanism that permits equivalence among regulatory bodies, especially in light of the current Solvency II debate.	Get Direction from SMITF	GSIWG	
53	J	Intervention Points	A common structure for the calculation of the main supervisory intervention points should be adopted for group supervision.	Discussion Item	GSIWG	
54	E	Risk Management	A minimum level of risk management standards is necessary in order to ensure adequate policyholder protection.	Discussion Item	GSIWG	
55		Holding Company Audit Reports	Consider having the holding company file their audit report based on statutory accounting principles.	Defer until after discussions on Accounting and Legal		
56	J	Minimum Capital Requirements	Consider developing high level analysis tools or minimum capital requirements (corporate RBC) for holding companies	Discussion Item	GSIWG	
57	J	Maintenance Agreements	To the extent that group-wide capital is relied upon to maintain minimum entity level capital, we recommend establishment of a statutory structure that prescribes the form of capital maintenance agreements and provides for improved enforceability.	Discussion Item	GSIWG	
58	J	Fungibility / Diversification Credits	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.	Discussion Items	GSIWG	
59	B	NAIC assistance with Budget and Communication with non US regulators	NAIC budget should provide resources necessary to support communication and coordination between international and lead state regulators. While international travel is expected to be limited, some face-to-face meetings between the relevant regulators seems advisable and approvals for such expenses within state budget processes are likely to be difficult. The NAIC could assist communications between state and international regulators by maintaining contact information on relevant foreign regulators and by providing assistance with technology improvements such as video conferencing.	Further Research	IA/CT (Supervisory College)	
60	K	Reporting Formats	D) Consider standardized electronic reporting formats, such as XBRL which is on track for adoption as a standard by the SEC so regulators would have improved query capabilities and analysis for financial reviews.	Further Research	NAIC Staff	
61	B	Supervisory Colleges	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.	Further Research	IA/CT (Supervisory College)	

KEY

- A - Access to information within holding co
- B - Information sharing, communication, regulatory interaction with non US regulators, including supervisory college
- C - Agreements and transactions within holding company system
- D- Influence and Control, or lack thereof, regarding insurers
- E- Enterprise Risk Management
- F- Entities or Transactions within holding company that may risk detrimental impact
- G- Recognition of non US regulatory regimes and vice versa
- H- Groupwide Supervision Issues
- I - Systemic Risk Analysis and Factors
- J- Group Capital
- K- Reporting Methodologies