Comments Received on Draft *ORSA Guidance Manual* and Draft Form B Regulation Language for NAIC ORSA, October 28, 2011
October 28, 2011

Director John Huff
Mr. Danny Saenz
Group Solvency Issues (EX) Working Group
National Association of Insurance Commissioners
Via email: DVacca@naic.org

Re: Comments on NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual

Dear Director Huff and Mr. Saenz,

Given the significance of model risk for many insurers, the American Academy of Actuaries\(^1\) ERM Committee would like to suggest the explicit recognition of this risk in the NAIC’s Own Risk and Solvency Assessment Guidance Manual.

On page 6, third paragraph, we suggest inserting the following (new language is in brackets):
"These materials may include risk management policies or programs, such as the insurer’s underwriting, investment, claims, asset-liability management (ALM), reinsurance counterparty, operational, [and model risk management] polices."

On page 7, first paragraph, we suggest inserting the following (new language is in brackets):
"Examples of relevant material risk categories might include, but not be limited to, credit, market, liquidity, underwriting, operational, [and model] risks.

Thank you for this opportunity to comment. If you have any questions, please contact Tina Getachew, senior policy analyst, Risk Management and Financial Reporting Council, via email (getachew@actuary.org) or phone (202/223-8196).

Sincerely,

Maryellen Coggins
Chairperson, ERM Committee
Risk Management & Financial Reporting Council
American Academy of Actuaries

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\(^1\) The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.
October 28, 2011

Director John M. Huff
Missouri Department of Insurance
Co-Chairman, NAIC Group Solvency Issues (EX) Working Group

Senior Associate Commissioner Danny Saenz, CFE
Texas Department of Insurance, Financial Program
Co-Chairman, NAIC Group Solvency Issues (EX) Working Group

Re: Exposure Draft of Model Insurance Holding Company Form B ORSA Amendments

Dear Director Huff and Senior Associate Commissioner Saenz:

The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry. We appreciate the opportunity to offer these comments on their behalf.

We recognize that the Group Solvency Issues (EX) Working Group members and NAIC staff have put a great deal of effort into revising the draft NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual to detail what is expected of companies in an annual ORSA, and we very much appreciate the extensive efforts of regulators who have worked on this significant project. However, similar discussion and collaboration must take place with respect to the legal framework for the ORSA, including the draft amendments to Form B of the NAIC Insurance Holding Company System Model Regulation (Form B Amendments) that were exposed for comment on October 24, 2011. We strongly urge that certain threshold issues must be addressed in order for an informed decision to be made on how an ORSA requirement might be incorporated into the US framework. In particular, it must be clear how the information will be kept confidential, and clarity regarding how the information will be used by the regulator and regarding when the requirement will go into effect are critical.

The proposed ORSA imports new regulatory concepts, raises complex issues, and will require significant work by many US companies and regulators to report and review highly proprietary and confidential information. The importance of the legal framework warrants a thoughtful, deliberate, and collaborative discussion and drafting process to ensure a workable mechanism, to address operational questions, and to avoid unintended consequences. Proposed Form B Amendments were discussed at a very high level on a call of the GSIWG on October 21 and were exposed for review and comment on October 24, with only four days to provide comments. This is not sufficient time, as both regulators and
industry need a meaningful period of time to review and provide input on this proposal and to discuss other alternative approaches. In fact, the NAIC Procedures for Model Law Development call for an Executive Committee review and approval process when specific amendments to a model law or regulation are contemplated. To allow the appropriate discussion to take place and procedural steps to be taken, we suggest that a decision regarding the legal framework be deferred until the next NAIC national meeting to allow for this work to take place and for certain critical issues regarding the ORSA legal framework to be addressed, including the following:

- A mechanism to ensure coordination of any annual ORSA summary report through a lead state is critical to ensure consistency and uniformity.
- A filing timeline in line with company practices and regulators’ stated desire to leverage internal reports to management and rating agencies and other regulators.
- A clear and meaningful mechanism to protect highly proprietary and confidential information in any ORSA submission.
- A link to risk focused surveillance program.
- A realistic timeline for implementation.

Comments on the Draft Form B Amendments

The Form B is an annual registration requirement that each legal entity within a group is required to file, whereas the ORSA Summary Report may be filed on a group or a legal entity level. Thus we believe that any ORSA Summary Report filing should be separate from Form B, ideally through a lead state to ensure and efficient, coordinated and consistent process.

In addition to the need for this critical broader discussion of the appropriate vehicle for the ORSA Summary Report, ACLI has identified the following technical concerns with the draft Form B Amendments. Both alternatives require the insurer to complete (or acknowledge completion of) the ORSA "consistent with" (first alternative) or "in accordance with and/or in consideration of" (second alternative) the ORSA Guidance Manual. Because the manual is intended to be non-prescriptive and expressly states in its Introduction that the insurer "should consider" the guidance in the Manual when preparing its ORSA, we suggest that the "in accordance with" language is inappropriate. Instead, “in consideration of” should be used.

Both alternatives refer to submitting the “ORSA” to the Commissioner. This is inappropriate because the Manual refers to submission of the high level ORSA “summary report” to the Commissioner.

The first alternative does not address the timeframe for the request for the ORSA summary report which should be in line with the company’s timeline for completing their ORSA.

We offer the following markup of the draft Form B amendments identifying initial areas of concern:

**ITEM 9. OWN RISK AND SOLVENCY ASSESSMENT (ORSA) ACKNOWLEDGEMENT**

*If the insurer and/or the insurance group to which the insurer is a member is required to complete an ORSA the NAIC Own Risk and Solvency Assessment (ORSA), the insurer acknowledges that the insurer’s ORSA and/or insurance group’s ORSA has been*
completed consistent with the NAIC ORSA Guidance Manual and that the insurer’s ORSA and/or insurance group’s ORSA summary report will be submitted upon the Commissioner’s request.

OR

(a) The insurer and/or insurance group shall furnish a current Own Risk and Solvency Assessment (ORSA) summary report with the annual registration and/or during the period of time after the annual registration due date up to the next annual registration due date, if explicitly requested by the Commissioner;

(b) The ORSA shall be completed in accordance consistent with and/or with consideration of guidance published in the NAIC Own Risk and Solvency Assessment Guidance Manual.

ORSA Timing

ORSA report timing issues must be carefully considered. Form B is the annual registration statement required to be filed with the domestic regulator under the Holding Company Model Act. We believe that most state laws require the Form B filing in the April-June timeframe. Since most companies apparently complete their business plans in the third or fourth quarter, and such business plans are necessary to fully complete the ORSA Summary Report, there is a potential timing problem with making the ORSA Summary Report part of a filing that is submitted in the April/June timeframe. We suggest a comprehensive discussion of potential options for ORSA timing.

Conclusion

We reiterate that we believe much progress has been made on the guidance manual; however, we suggest that the complete ORSA “package,” consisting of (1) the Guidance Manual for insurers, (2) guidance for examiners, and (3) enabling legal language should be exposed for comment and reviewed as a whole to help achieve consistency and clarity and to prevent inadvertent conflicts over applicability and intent. We look forward to continued work with regulators and NAIC staff to ensure that a meaningful legal framework is in place for the ORSA.

Sincerely,

Carolyn Cobb  Robert Neill  John Bruins
V.P. & Associate General Counsel  Senior Counsel  V.P. & Senior Actuary
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CarolynCobb@acli.com  RobertNeill@acli.com  JohnBruins@acli.com

cc: dvacca@naic.org; JKoenigsman@naic.org
October 28, 2011

Director John M. Huff
Missouri Department of Insurance
Co-Chairman, NAIC Group Solvency Issues (EX) Working Group

Senior Associate Commissioner Danny Saenz, CFE
Texas Department of Insurance, Financial Program
Co-Chairman, NAIC Group Solvency Issues (EX) Working Group

Re: Exposure Draft of NAIC ORSA Guidance Manual

Dear Director Huff and Senior Associate Commissioner Saenz:

The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry. We appreciate the opportunity to offer these comments on their behalf.

The Group Solvency Issues (EX) Working Group members and NAIC staff have put a great deal of effort into revising the draft Manual to accommodate the wide variety of ERM practices used today in the U.S. and to leverage off of information developed for rating agencies or for company management. We appreciate those efforts. We believe that the draft Manual has the potential to benefit regulators and industry alike. However, we also believe that its potential can be effectively realized only if regulators and industry continue to work together to avoid unintended consequences.

**Group capital:** Our member companies are very concerned that phrases within the Manual suggest that the ORSA quantitative elements—the group risk capital assessment and the prospective solvency assessment—may function as additional regulatory solvency requirements. To address our concern and to foster a clear and consistent understanding among state regulators on how they will use ORSA-related information, we recommend adding the following language at the end of the introductory paragraph for Section 3 – Group Risk Capital and Prospective Solvency Assessment:

“The information provided in Section 3 is intended to assist regulators in forming subjective assessments of the quality of insurers’ risk and capital management. It is not intended to serve as a *de facto* regulatory minimum capital standard on either a legal entity or group basis. ”

Appendix 1 details the phrases that concern us and proposes amendments that we urge be included in revisions of the Manual. In the interim, we recommend including the above language. We also
recommend that substantially similar language be included in any ORSA-related additions to the Financial Analysis Handbook and/or the Financial Condition Examiners Handbook, as appropriate.

**Pilot project:** We support the development of a pilot project among a limited number of insurers representing a cross-section of the industry. The purpose of the pilot project is to allow the NAIC and interested parties to ensure that the ORSA process provides meaningful and cost-effective benefits. We stand ready to assist you with this.

**Holistic review:** The complete ORSA “package,” consisting of (1) the ORSA Guidance Manual for Insurers, (2) any related amendments to the Financial Analysis Handbook and Financial Condition Examiners Handbook, and (3) the legal framework, should be exposed for comment and reviewed as a whole. This will help prevent inadvertent conflicts over applicability and intent.

**Friendly amendments:** During our review of the Manual, we identified five areas where the language in the Manual is confusing or has become internally inconsistent, and we are recommending specific changes. We hope that these recommendations, articulated in Appendix 2, can be viewed as friendly amendments and included prior to adoption.

We thank you for consideration of our comments, and we look forward to continuing to work with you and your colleagues.

Very truly yours,

Carolyn Cobb
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Robert Neil
Senior Counsel
RobertNeill@acli.com

John Bruins
V. P. & Senior Actuary
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Appendix 1
Complete Set of Changes Needed to Draft ORSA Guidance Manual to Avoid Unintended Imposition of Group and Legal Entity Minimum Capital Requirements

The recommended changes may be summarized as follows:

1. The Manual should articulate clear regulatory objectives for review of insurer-produced quantitative ERM output and omit language that may suggest conflicting objectives. It should also reinforce the sole use of legal entity-based RBC as the basis for requiring corrective action.
2. The Manual should omit language that encourages imposition of regulatory judgment in an insurer’s internal ERM quantitative risk measurements and capital determinations.
3. In the context of the Group Risk Capital Assessment and Prospective Solvency Assessment, the Manual should avoid using certain terms that could be misinterpreted as permitting the imposition of a regulatory minimum standard:
   a. capital adequacy [or adequacy of...capital],
   b. defined security standard,
   c. risk capital requirements [or needs],
   d. target level of capital [or target capital level]

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<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>3</td>
<td>Para. 2, sub-point 2</td>
<td>Replace the second sub-point with: “To assist in the allocation of regulatory resources by providing a basis for subjective assessments of the quality of insurers’ risk and capital management.”</td>
<td>The current description appears to regard the group capital assessment in a manner analogous to legal entity RBC.</td>
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<tr>
<td>2</td>
<td>Section 2</td>
<td>7</td>
<td>3</td>
<td>Delete “The regulator may request additional information to map the results to an individual legal entity.”</td>
<td>If the purpose of receiving the ORSA Summary Report is to assist in qualitative assessments, we see no basis for encouraging what could be a complex and expensive disaggregation of internal risk measurements.</td>
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<td>3</td>
<td>Section 2</td>
<td>7</td>
<td>5</td>
<td>Delete “The regulator may provide input to an insurer’s management on a stress factor that should be applied for a particular assumption that is not stochastically modeled. For assumptions that are stochastically modeled, the regulator may provide input on the level of the measurement metric to use in the stressed condition or specify particular parameters used in the economic scenario generator. The aforementioned input will likely occur during either the financial analysis process and/or the financial examination process.”</td>
<td>This language seems to invite improper regulatory intervention into insurer decision-making and quantitative risk analysis.</td>
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<td>4</td>
<td>Section 2</td>
<td>8</td>
<td>1</td>
<td>Delete “By identifying each material risk category independently and reporting notional amounts, expected amounts in both normal and stressed conditions, insurer management and the regulator are in a much better position to evaluate certain risk combinations that could cause an insurer to fail.”</td>
<td>In the U.S. regulatory system, failure is defined by RBC action levels, not by internal measurements.</td>
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<td>5</td>
<td>Section 3</td>
<td>8</td>
<td>2 (intro to Section 3)</td>
<td>Add a new paragraph: “The information provided in Section 3 is intended to assist regulators in forming subjective assessments of the quality of insurers’ risk and capital management. It is not intended to serve as a <em>de facto</em> regulatory minimum capital standard on either a legal entity or group basis.”</td>
<td>This is needed to clarify the benefits to regulators.</td>
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<td>6</td>
<td>Section 3</td>
<td>8</td>
<td>3</td>
<td>In the first sentence, replace “Capital adequacy assessment” with “An internal risk capital assessment.”</td>
<td>This will help clarify that a “capital assessment” is an internal company measurement, not a regulatory minimum standard.</td>
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<td>7</td>
<td>Section 3</td>
<td>8</td>
<td>3</td>
<td>In the second sentence, replace “...up to some defined security standard or risk appetite” with “...up to some security level set by the insurer based on its risk appetite.”</td>
<td>This removes the inference that the capital level may be defined by regulators and/or it is a standard that must be met.</td>
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<td>8</td>
<td>Section 3</td>
<td>8</td>
<td>3</td>
<td>In the last (third) sentence, replace “security standard” with “security level.”</td>
<td>This will help clarify that the purpose of the group risk capital assessment is not to impose a minimum regulatory standard.</td>
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<td>9</td>
<td>Section 3</td>
<td>8</td>
<td>3</td>
<td>In the last sentence, replace “ascertain the degree of capital adequacy” with “ascertain the insurer’s internal risk capital position.”</td>
<td>This will clarify that this is an internal company measurement, not a regulatory minimum standard.</td>
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<td>10</td>
<td>Section 3</td>
<td>8</td>
<td>4</td>
<td>In the first sentence, replace “capital adequacy” with “internal risk capital assessment.”</td>
<td>This will clarify that this is an internal measure, not a regulatory measure.</td>
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<td>11</td>
<td>Section 3</td>
<td>8</td>
<td>4</td>
<td>Delete: “This section is intended to help regulators understand the insurer’s capital adequacy in relation to its aggregate risk profiles.”</td>
<td>The proper regulatory objective behind inclusion of quantitative content in the ORSA Summary Report is articulated by the suggested language in comments #1 and #5, above.</td>
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<tr>
<td>12</td>
<td>Section 3</td>
<td>8</td>
<td>5</td>
<td>Delete: “This information may also be requested by a Commissioner throughout the year, if needed, for example if material changes in the macroeconomic environment and/or microeconomic facts and circumstances</td>
<td>If the purpose of collecting ORSA information is to assess the overall quality of the insurer’s risk management and capital reporting, this is unneeded.</td>
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<td>13</td>
<td>Section 3</td>
<td>9</td>
<td>6</td>
<td>Replace “The analysis of an insurer’s group risk capital requirements and associated capital adequacy…” with “The group risk capital assessment…”</td>
<td>This removed any implication about the existence of group regulatory capital requirements.</td>
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<tr>
<td>14</td>
<td>Section 3</td>
<td>9</td>
<td>Table, 1st row below heading, column 2</td>
<td>Change “for the purpose of determining risk capital requirements” to “for the purpose of determining internal risk capital.”</td>
<td>This will clarify that the measurement is an internal basis.</td>
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<tr>
<td>15</td>
<td>Section 3</td>
<td>9</td>
<td>Table, 7th row below heading, column 1</td>
<td>Change “Target level of capital” to “Measurement level.”</td>
<td>The word “target” may imply a standard warranting correction if not achieved (or, conversely, the return of excess capital to policyholders or shareholders if exceeded).</td>
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<tr>
<td>16</td>
<td>Section 3</td>
<td>9</td>
<td>Table, 7th row below heading, column 2</td>
<td>Change “Describe the target capital level utilized in determination of group risk capital requirements” to “Describe the measurement level utilized in determination of internal risk capital.”</td>
<td>This clarifies that this section describes internal company measurements, not regulatory measurements.</td>
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<tr>
<td>17</td>
<td>Section 3</td>
<td>9</td>
<td>1 (below table)</td>
<td>Change “The approach and assessment of group-wide capital adequacy should also consider…” to “The insurer’s internal group risk capital assessment may also consider…”</td>
<td>This clarifies that the group capital assessment is an internal company measurement and that the listed considerations are not elements of a regulatory minimum standard. In addition, these elements may not be applicable for all insurers.</td>
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<tr>
<td>18</td>
<td>Section 3</td>
<td>10</td>
<td>1 (below bullet)</td>
<td>Delete “The goal of the assessment is to provide an overall determination of group risk capital needs for the insurer, based upon the nature, scale and complexity of risk within the group and its risk appetite, and to compare that risk capital to the available capital to assess capital adequacy.”</td>
<td>We suggest that the appropriate goal of the assessment is described in our proposed language supplied in comments #1 and #5. Therefore this sentence is both unnecessary and inconsistent with the proper regulatory purpose.</td>
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<tr>
<td>19</td>
<td>Section 3</td>
<td>10</td>
<td>2</td>
<td>In the second sentence, revise the phrase, “given the current risk capital requirements both internal and regulatory,” to “given the current internal risk capital measurements and regulatory capital requirements.”</td>
<td>Referring to internal risk capital as a requirement is misleading since it is an internal level.</td>
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<td>20</td>
<td>Section 3</td>
<td>10</td>
<td>2</td>
<td>Change “If the insurer does not have the necessary financial capital or quality of capital to execute the 2-5 year business plan, the insurer should describe the management actions it will take or</td>
<td>The current language may imply that the prospective solvency assessment is a minimum floor.</td>
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<td>describe any modifications it has made to resolve the adequacy of its financial capital, including other potential other resources of capital” to “The insurer may describe any management actions it plans in order to materially adjust its business plan, capital position, including additional capital resources, extra dividends, stock repurchases, etc.”</td>
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<tr>
<td>21</td>
<td>Section 3</td>
<td>10</td>
<td>3</td>
<td>Delete “...including its projected economic and regulatory capital to assess its ability to meet the regulatory capital requirements...“</td>
<td>This language suggests that regulatory capital requirements include insurer-specific internal economic capital.</td>
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## Friendly Amendments

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<tbody>
<tr>
<td>1</td>
<td>Section 1 – Description of the Insurer’s Risk Management Framework</td>
<td>6</td>
<td>1</td>
<td>“… “The Summary Report should identify relevant and material categories of risk, describe how the insurer identifies and categorizes relevant and material risks, and discuss how the insurer manages these categories of risks as it executes its business strategy. These categories of risk may include, and are not limited to, credit, market, liquidity, asset-liability management, underwriting, claim, expense, operational and risks associated with group membership.”]</td>
<td>Current draft language in each of the first two paragraphs describing guidance for Section 2 implies that material risks have been identified in Section 1. However, such language was recently deleted. We believe that the intent was for this content to be included within Section 1.</td>
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<td>2</td>
<td>Section 2 – Insurer Assessment of Risk Exposures</td>
<td>7</td>
<td>1</td>
<td>“This quantitative measurement process should require a quantification of risks under a range of outcomes using risk measurement techniques that are appropriate to the nature, scale, and complexity of the risks.”</td>
<td>The current language may convey an unintended regulatory expectation that regulators desire to see every risk measured at multiple levels (e.g. 10%, 20%, 30% stress, etc.). In general risks are measured by comparing the result under a “normal” environment with the result under a single “stressed” environment.</td>
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<td>3</td>
<td>Section 2 – Insurer Assessment of Risk Exposures</td>
<td>7</td>
<td>4</td>
<td>Move the entire paragraph starting “Any risk tolerance statements…” to Section 1, possibly between the second paragraph “Section 1…” and the third paragraph “Additionally, as part…”</td>
<td>Risk tolerance statements are part of the Section 1 content; therefore this paragraph within the guidance for Section 2 may create confusion.</td>
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<tr>
<td>4</td>
<td>Section 2 – Insurer Assessment of Risk Exposures</td>
<td>7</td>
<td>5</td>
<td>Delete: ‘‘Unless a particular assumption is stochastically modeled, the group’s management will be setting their assumptions regarding the expected values based on their current anticipated experience studies and what they expect to unfold over the next year.”</td>
<td>This sentence may confuse technical users. First it suggests that stochastic models do not incorporate assumptions about expectations (which they do, implicitly). In addition, experience studies reflect historical experience, not anticipated experience. Finally, assumptions are set for the life of the business, not just a single year.</td>
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<tr>
<td>5</td>
<td>Section 2 – Insurer Assessment of Risk Exposures</td>
<td>8</td>
<td>1</td>
<td>“By identifying each material risk category independently and assessing reporting notional amounts, expected amounts in both normal and stressed conditions, insurer management and the regulator are in a much better position to evaluate certain risk combinations that could cause an insurer to fail.”</td>
<td>This current language refers to the templates that were included as appendices to earlier drafts of the manual but have since been removed. Therefore the continued inclusion of this language may create uncertainty as to the expectations of regulators.</td>
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</table>
28 October, 2011

VIA E-MAIL

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Co-Chair, Group Solvency Issues Working Group
And Director of Insurance
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Financial Institutions & Professional Registration
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Re: NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual – Form B

Dear Director Huff and Mr. Saenz:

We write today on behalf of America’s Health Insurance Plans (AHIP). AHIP is the nation’s trade association representing nearly 1300 member companies providing health, long-term care, dental, disability and supplemental coverage to more than 200 million Americans. Our comments focus on the amendments to the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions that were released for comment on October 24. We have many concerns about these amendments.

At the outset, we must note that releasing a significant amendment to a regulation with less than a full week to comment effectively prevents a full and open discussion of any issues surrounding that amendment. The Form B language was exposed on Monday October 24 and comments are due on October 28. That is entirely insufficient, and unnecessary. There is no reason this document must be rushed in this manner, and given the critical importance of the subject matter we urge the NAIC to take a measured, thoughtful approach rather than a rush to judgment that will prove unworkable and unsupportable for the long term. We provide the
following as our initial and preliminary thoughts on, and objections to, the proposal. We object to the truncated comment period and request additional time within which we can provide well-developed alternatives to meet both industry and regulatory needs.

As we have noted in earlier conversations, if the NAIC wishes to mandate that carriers file a report outlining on a high-level the details and findings from their own internal risk and solvency assessments, (ORSA) then four principles first must be addressed; to date they have not been. Those principles are:

1. **Confidentiality.** Information in an ORSA is qualitatively different than any information ever collected heretofore by regulators. It is not only internal, but it is forward-looking; the anticompetitive impact of permitting a company’s future plans for market changes, pricing changes, market expansions or contractions, acquisitions, mergers or other sensitive internal decisions of this nature to be made public cannot be overstated. To date the NAIC has recognized that the Form B cannot be kept confidential in a number of states, but has failed to address how this information will be handled in those states. The Form B is a flawed vehicle by which to collect this information and should not be used.

2. **Group versus legal entity.** The Form B is, in virtually all states, a mandatory filing for each legal entity within a group. This undermines the ability for carriers to know with certainty that they will only be required to perform one ORSA that will cover its entire group, or grouping of companies within the group. Inserting language in the Guidance Manual is ineffective to create a legal standard or even a legal recommendation. As it now stands, the NAIC has created a legal entity filing requirement that contradicts the group-level language in the Manual. This again highlights the inappropriateness of using the Form B as a vehicle for collecting ORSA reports.

In addition, the Form B is filed at a specific point in time; while that point in time may differ from state to state, nevertheless it is a filing on a fixed date. This contradicts the language in the Manual recognizing that different carriers perform internal reviews and analyses at different times of the year. Forcing a specific filing date therefore forces carriers to perform their enterprise risk analyses at what may be inappropriate times within their business cycles, and undermines the ability of companies to perform their own internal assessment.

3. **Uniformity.** By failing to provide regulatory guidance in the form of amendments to the actual Holding Company Regulation the NAIC has failed to ensure uniformity from state to state. States will be free to require different, and possibly conflicting information in an ORSA summary report; to mandate it at a legal entity as opposed to a group level; that it be filed at varying times of the year; that it be made public or kept confidential; that it cover specific entities within the group or not; that companies perform specific stress tests or not; and in general to demand anything they wish within the context of the report. The NAIC must create a legal, binding outline of the parameters of the ORSA summary report, else uniformity is hopelessly out of reach. We recognize that while there has been some discussion about drafting guidance into the Examiner’s Handbook, we note that this is not sufficient to ensure
uniformity in anything other than review procedure. It will not prevent, or even discourage, states from adopting wildly varied filing requirements.

4. **Effective Dates.** By failing to include any filing provisions in the regulation itself, the NAIC has virtually ensured that the states will adopt the provisions – wherever they may reside – at different times. If the NAIC is committed to the recognition that the ORSA is a group-wide exercise and not simply an enhanced risk-based capital, legal entity analysis, then it must develop a uniform roll-out to ensure that the industry, particularly national groups, are impacted uniformly and simultaneously. This is impossible using the current exposure draft.

We therefore urge the NAIC to take the time necessary to develop a legal framework for ORSA summary reports that will include these principles within its scope and to reject the amendments to the existing Form B.

Thank you for the opportunity to provide our preliminary comments. We look forward to discussing this with you in greater detail. Please do not hesitate to contact me if you have any questions or comments.

Sincerely,

Randi Reichel
28 October, 2011

VIA E-MAIL

Honorable John Huff
Co-Chair, Group Solvency Issues Working Group
And Director of Insurance
Missouri Department of Insurance
Financial Institutions & Professional Registration
P.O. Box 690
Jefferson City, Missouri  65102-0690

Mr. Danny Saenz
Co-Chair, Group Solvency Issues Working Group
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Re:  NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual

Dear Director Huff and Mr. Saenz:

We write today on behalf of America’s Health Insurance Plans (AHIP).  AHIP is the nation’s trade association representing nearly 1300 member companies providing health, long-term care, dental, disability and supplemental coverage to more than 200 million Americans.  We thank you for the opportunity to provide comments on the revised Own Risk and Solvency Assessment (ORSA) Guidance Manual.  We also thank the Working Group for the time and attention that has been paid to this issue, and for the recognition that an internal solvency assessment process, to be successful, must be tailored to the needs of the individual company, rather than performed in accordance with strict regulatory requirements.  The Manual has, in very large part, recognized the need for this individual flexibility.

While we are, for the most part, quite pleased with the direction this project has taken, we have a few remaining concerns and comments, which are outlined below.  Many of our suggestions are non-substantive, but are intended to clarify concepts and ideas already agreed upon; others are intended to assist readability.  Our comments, both substantive and non-substantive are as follows:
I. **Introduction.** We suggest the following changes to the Introduction:

A. **Filing within the Form B.** As explained more fully in our comments regarding the Form B exposure, we object to the filing requirement being incorporated here. Form B is not the appropriate mechanism for collecting an ORSA summary report. As has been previously noted, the Form B requirement is a legal entity, not a group requirement, it is not flexible in its timing, and for many states, it is not a confidential document. This last point is crucial. While we recognize that the NAIC intends this *Guidance Manual* to provide direction to industry rather than to include specific legislative or regulatory filing requirements, nevertheless it is imperative that the NAIC address the confidentiality issue before continuing further to develop that filing requirement. If the Form B can not uniformly be kept confidential by all states then it is the inappropriate vehicle for requiring the ORSA reports. Until this, and other outstanding issues, are resolved, the *Guidance Manual* should not presuppose the legislative or regulatory filing requirements. We continue to urge that a new form filing, unique to ORSA be developed that will incorporate both the group concept and appropriate confidentiality concerns. We suggest, then, that the first paragraph be rewritten thus:

The purpose of this Manual is intended to provide guidance to an insurer and/or the insurance group (herein referred to as an “insurer” or “insurers”) with regard to reporting on its own risk and solvency assessment (ORSA) as outlined within the *Form B — Insurance Holding Company System Annual Registration Statement — appropriate state filing requirement within of the NAIC’s Insurance Holding Company System Regulatory Regulation (#450)*. As described more fully below, an insurer who is subject to ORSA requirement will be expected to regularly conduct an ORSA to assess the adequacy of its enterprise risk management and current, and likely future, solvency position, internally document the process and results, and provide a confidential high-level summary report (hereinafter “ORSA report”) annually to the lead domiciliary regulator, if requested. Whether an applicable state insurance regulator chooses to request the confidential filing each year may depend on a myriad of factors, such as the nature and complexity, financial position, and/or prioritization of the insurer/group, as well as the economic environment considerations.

Overall, the ORSA is essentially an internal assessment of the reasonably foreseeable and relevant material risks associated with an insurer’s current business plan, and the sufficiency of capital resources to support those risks. The ORSA has two primary goals:

1. To foster an effective level of enterprise risk management at all insurers, through which each insurer identifies and quantifies its reasonably foreseeable material and relevant risks, using techniques that are appropriate to the nature, scale and complexity of the insurer’s risk, in a manner that is adequate to support risk and capital decisions; and

2. To provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view.

B. **Materiality.** We also strongly urge the working group to incorporate the concept of reasonableness, foreseeability and materiality throughout the document, as indicated in the above paragraph.
II. **Exemption Language**

We make the following suggestion to the exemption language, for clarity. We suggest this reorganization because as written, it is somewhat unclear, until the reader reaches the bottom of the section, whether “triggered” means the carrier has passed or failed the exemption test:

If neither a. nor b. exemption elements are triggered, then the insurer or insurers may supply the ORSA Summary Report in any given combinations, as long as all insurance entities within the group are covered. For example, the property & casualty insurers within a group could be combined within one ORSA Summary Report, and the life insurers within the same group could be combined within another ORSA Summary Report if such entities operate under different ERM Frameworks.

If exemption element a. is triggered and not b., then an insurer or insurers (within a group) may supply the ORSA Summary Report in any given combination as long as every insurance legal entity within the group is covered by the summations of the ORSA Summary Report.

If exception element b., is triggered and not a., then only the legal entity ORSA Summary Report of the entity over the threshold is required, however, the insurer may include other smaller insurers with the holding company system, if desired.

III. **Lead State Regulator**

As has been discussed extensively in earlier conference calls, it is critical that regulators recognize the lead state, or group, concept. The guidance manual contains myriad reference to “the commissioner” or “the regulator” throughout, but does not contain any discussion of who that commissioner or regulator should be. Carriers who are not subject to the exemption language above should only be required to prepare one ORSA Summary Report, and should only be required to file it with their lead regulator – that is, the regulator for the group or group segment on whose behalf the report is being submitted. Tying the ORSA Summary Report to the Form B and simultaneously failing to carefully craft lead state language creates a strong inference that the drafter intends this report to be required by multiple commissioners or regulators at varying levels within the holding company group. We understand the working group does not intend this and ask that language be inserted either in the introduction or the General Guidance section to make clear the regulatory expectation that companies will only file this report with their lead state regulator.

IV. **SECTION 2 – INSURER’S ASSESSMENT OF RISK EXPOSURES**

A. We reincorporate the suggestion above that the concepts of reasonableness, foreseeability and materiality be incorporated throughout the document.

B. We note at the bottom of page 7 the following statement: “Because the risk profile of each insurer is unique, U.S. insurance regulators do not believe there is a standard set of stress conditions that each insurer should run, however the regulator may have input regarding the level of stress that company management should consider for each risk category.” We note
that ICP 16 does not incorporate any input from the regulator with regard to assumptions a company uses to determine its own risk assessment. (See, ICP 16.14.17, “An internal model used by the insurer in the context of its ORSA for determining its own economic capital needs should not need supervisory approval for that purpose.” See also ICP 16.16.3, which indicates that inputs and output provide “insight” to the regulator. ICP 16.16.6, however, does provide for a regulator’s input into the capital modeling when the regulator deems calculations should be “supplemented” or that the response to risk modeling is “insufficient.”) We therefore suggest this sentence be removed.

In that same paragraph the following language needs clarification: “The regulator may provide input to an insurer’s management on a stress factor that should be applied for a particular assumption that is not stochastically modeled.” We seek guidance as to what kind of input to an insurer’s management regarding stress factors is contemplated and caution that “input” may quickly become requirements, which undermines the concept that the ORSA is the company’s own assessment of its own risks.

V. CHART – PAGE 9

In the “Description of Consideration” column, we suggest inserting the word “group” before “risk capital” in each instance. This will make clear the regulators’ expectation that the ORSA is intended to be a group, rather than a legal entity requirement.

VI. PROSPECTIVE SOLVENCY ASSESSMENT

In the first paragraph under Prospective Solvency Assessment we suggest the following amendment:

Most insurers, as part of their strategic planning process, compile a 2-5 year (i.e. multi-year) business plan. Section 3 of the ORSA Summary Report should contain a demonstration and documentation that; given the current risk and regulatory capital requirements both internal and regulatory, the quality of that capital, the current risk management policy consisting of its current risk tolerance limits, current risk exposure amounts in both a normal and stressed environments and the projected 2-5 year business plan; the company has considered the financial resources necessary to execute its 2-5 year business plan. If the insurer does not have the necessary financial capital or quality of capital to execute the 2-5 year business plan, that the insurer should describe any modifications to the business plan it has made to resolve the adequacy of its financial capital, including potential other resources of capital.

These revisions make clear that a company does not necessarily have to have the future required capital to carry out its business plan today. It should, however, have a plan as to how it will fund its future capital needs, which can include reasonable assumptions about future earnings, issuance of stock, etc. It is rational to expect that carriers will have these assumptions about future actions and necessary resources; it is, however, irrational to expect that a carrier can demonstrate and document that it “has” all those future resources on hand today. What a
carrier should be able to describe is that it has considered its future resource requirements and has a rational business plan to meet those requirements.

We thank you for the opportunity to provide comments on the draft Guidance Manual, and look forward to discussing them with you in the near future. As always if you have any questions or comments, please do not hesitate to contact me. I may be reached at (202) 220-3061 or by e-mail at rreichel@mwlaw.com

Sincerely

Randi Reichel
October 28, 2011

Director John M. Huff (MO)
And
Sr. Associate Commissioner Danny Saenz (TX)
Co-chairs, Group Solvency Issues Working Group
Attn: David Vacca
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

Via E-mail: Dvacca@naic.org

Re: AIA Comments on NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual

Dear Director Huff and Associate Commissioner Saenz:

Thank you for this opportunity to comment on the exposed ORSA Guidance Manual. AIA represents approximately 300 major insurance companies that provide all lines of property-casualty insurance and write more than $117 billion annually in premiums. Our membership includes insurers with significant operations within the United States and around the world, and they are very much interested in the work product of the Group Solvency Issues Working Group (GSIWG).

**ORSA Filing**

We appreciate the Working Group’s desire to issue a guidance manual to provide industry with the regulators’ expectation for an ORSA report. But as we have said before and repeat now, we disagree with the notion that the process of evaluating risk and capital needs should be reduced to a periodic regulatory filing. The assessment of risks affecting an insurance enterprise and its capital needs is an integral aspect of managing the business of insurance. Enterprise risk management is a dynamic process that necessarily adjusts as the prevailing legal and economic environment changes. A point-in-time compliance filing is not likely to provide much incremental value over the current system, which already contemplates a full regulatory review of material risks affecting an insurer. That system,
summarized in the Risk-Focused Surveillance Framework, provides for a more comprehensive regulatory approach to reviewing and reacting to the enterprise risk of an insurer.

Though we continue to dispute the need for a regulatory filing, it has become obvious that NAIC staff and a number of regulators want a periodic filing, regardless of any need for it. From this perspective, it is important that the GSIWG identify a suitable mechanism for requiring an ORSA report, while maintaining confidentiality. In our opinion, the appropriate and most efficient forum for communicating the sensitive information that would be contained in an evaluation of risk and capital is the examination process. If a periodic report is needed, then amendments should be made to the Model Law on Examinations, thereby creating authority for a Commissioner to periodically ask for ORSA information outside of a scheduled examination. In addition to being more transparent, this approach would also provide the statutory basis for requiring an ORSA report that some regulators have already said is needed.

**Legal Authority**
We agree with those regulators that statutory authority is needed in order to mandate an ORSA report. Accordingly, we disagree with the Form B approach that the GSIWG is proposing. Form B is an attachment to the newly revised Insurance Holding Company System Model Regulation, the authority for which is based on the newly revised Insurance Holding Company System Regulatory Act, which the NAIC approved in 2010. Other than possibly the language in Section 4L of the newly revised model act, there is no language in the model act to empower the commissioner to require an ORSA report.

Section 4L provides, in part, that: “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 . . . “

The model regulation that was promulgated from the model act provides that the enterprise report is to be filed on new Form F – not Form B – further suggesting that this language is not appropriate for Form B purposes. At the very minimum, the GSIWG should have a full and robust discussion with industry about the model holding company act, the model holding company regulation and forms, and other mechanisms for possibly implementing an ORSA.

The Form B proposal raises a number of concerns, most critical of which is that it purports to create an ORSA filing requirement without statutory authority. In addition, the Form B is an entity-based filing that is filed on specific dates throughout the states, and thus seems inconsistent with the regulatory expectation that an ORSA report should be based on the insurance group and that the commissioner should have flexibility as to when to request an ORSA report. Also, no consideration has been given to how a Form B/ORSA filing would dovetail with the new Form F enterprise risk report requirement of the new holding company law and regulation. Finally, there are no provisions to provide for confidentiality, especially given the disparate confidentiality treatment of Forms B among the states.
Because the Form B revised language was released shortly before the Fall 2011 national meeting, there is not adequate time to fully consider the implications of this proposal and to weight its pros and cons vis-à-vis alternative approaches before the GSIWG meets on November 2nd. In the interest of transparency and good governance, the GSIWG should allow more time for a meaningful discussion about the legal basis for requiring an ORSA before the GSIWG moves forward with the ORSA guidance manual.

We are also concerned with suggestions that the individual state insurance departments that have not yet acted upon the model holding company act should separately make adjustments to the model act language in order to provide the respective commissioners with statutory authority to require an ORSA report. This approach could create chaos among the states if the NAIC does not at least provide uniform guidance for drafting language to be included in the state legislation for adopting the model holding company law.

As a reminder, the GSIWG pushed through the new model holding company law last year before resolving certain key issues, such as a uniform effective date, confidentiality, and ambiguities about the filing of Form F. Adding this Form B proposal into the mix of holding company issues will create a legislative quagmire that will be difficult to fix at the state level. Rather than racing to get the ORSA guidance manual done, we urge the Working Group to focus on getting it right, including resolving the question of legal authority. It would be far more efficient and effective to address the ORSA/holding company issues at the NAIC level before sending anything else to the states. To do otherwise risks crippling any chance of uniformity.

Recommendations
There are several steps that the NAIC could take to resolve outstanding ORSA and holding company issues:

1) Implement an ORSA reporting requirement within the Risk Focused Surveillance Framework, which would probably require an amendment of the model examination law, and separately resolve the outstanding holding company issues.

2) Amend the model audit rule (MAR) to also include an ORSA reporting requirement. The development of the MAR involved extensive discussions about scope, as well as entity vs. enterprise reporting. An ORSA report requirement could be leveraged off of the existing MAR language.

3) Amend the model holding company act and regulation before the state legislatures convene next year, in order to adequately provide for an ORSA report, confidentiality, and to streamline reporting with respect to the ORSA and Forms B and F.

AIA is willing to work with the GSIWG and any interested regulator in developing a suitable and legally defensible approach for implementing an ORSA reporting requirement.
Appended to this letter are miscellaneous comments about the Form B proposal and the proposed ORSA guidance manual. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

[Signature]

Assistant General Counsel
Appendix

Comments on Form B Language

“If the insurer and/or the insurance group to which the insurer is a member is required to complete an ORSA,“

It is not clear how the insurer or insurance group could be required to complete an “ORSA” without identifying a source of authority. If the model regulation is supposed to be the source of authority, then this language is circular and, in effect, does not create any authority.

ORSA is a process, but what we believe the regulators want to require is a report. Therefore, wherever the word “ORSA” appears, the word “Summary Report” should follow.

The insurer shall furnish a current Own Risk and Solvency Assessment (ORSA) with the annual registration and/or during the period of time after the annual registration due date up to the next annual registration due date, if explicitly requested by the Commissioner

This alternative clause seems unnecessarily cumbersome. In keeping with the language of the guidance, one could state: “The insurer shall furnish an ORSA report when requested by the Commissioner, to cover any time period explicitly requested by the Commissioner.

The use of “and/or” is awkward and leads to ambiguities in legislative and regulatory language, and should be avoided.

The ORSA shall be completed in accordance with and/or consideration of guidance published in the NAIC Own Risk and Solvency Assessment Guidance Manual.

It is unclear what is intended with the language “in accordance with and/or consideration of”. We would be happy to offer suitable language once we understand the objective behind this language.
Comments on Guidance Manual

Part III of the Manual, under **Insurer Assessment of Risk Exposures**.

In the sixth paragraph is the following statement:

*Because the risk profile of each insurer is unique, U.S. insurance regulators do not believe there is a standard set of stress conditions that each insurer should run, however the regulator may have input regarding the level of stress that company management should consider for each risk category.*

An ORSA is intended to be the insurer’s OWN assessment of risk and solvency, so we do not believe it is appropriate for regulators to provide input into that assessment. It certainly is appropriate for regulators to discuss the assessment process with the insurer, but they should not be telling the insurer how to conduct that assessment. We suggest deleting the highlighted language and ending the first sentence with a period after “run”.

Part IV of the Manual, under **Group Risk Capital Assessment**.

The final sentence of the second paragraph states “*This section is intended to help regulators understand the insurer’s capital adequacy in relation to its aggregate risk profiles.*” Because this manual is intended to be guidance to the insurance industry, we do not think the reference to the regulator is appropriate. It is our expectation that the NAIC and regulators will develop appropriate tools to assist with the regulatory review of an insurer’s assessment process.
INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION
WITH REPORTING FORMS AND INSTRUCTIONS

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Form A  Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer
Form B  Insurance Holding Company System Annual Registration Statement
Form C  Summary of Changes to Registration Statement
Form D  Prior Notice of a Transaction
Form E  Pre-Acquisition Notification Form
Form F  Enterprise Risk Report

Section 1. Authority

These regulations are promulgated pursuant to the authority granted by Sections [insert applicable sections] and [insert applicable section] of the Insurance Law.

Note: Optional for those states in which similar provisions are normally used.

Section 2. Purpose

The purpose of these regulations is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the NAIC Insurance Holding Company System Regulatory Act [insert applicable sections] of the Insurance Code hereinafter referred to as “the Act.” The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this State.
Editor's Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

Drafting Note: Optional for those states in which similar provisions are normally used.

Section 3. Severability Clause

If any provision of these regulations, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

Drafting Note: Optional for those states in which similar provisions are normally used.

Section 4. Forms - General Requirements

A. Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by Sections 3, 3.1, 4, and 5 of the Act. They are not intended to be blank forms which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. [Insert number] complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of [insert state and address], Attention: [insert name - title]. At least one of the copies shall be signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of the power of attorney or other authority shall also be filed with the statement.

C. If an applicant requests a hearing on a consolidated basis under Section 3D(3) of the Act, in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

D. Statements should be prepared electronically. Statements shall be easily readable and suitable for review and reproduction. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

Drafting Note: Section 4 may be omitted if it is included as instructions on Forms A, B, C, D, E and F.
Section 5.  Forms - Incorporation by Reference, Summaries and Omissions

A. Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form D, Form E or Form F provided the document is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three (3) years and may be qualified in its entirety by such reference. In any case where two (2) or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

Drafting Note: Section 5 may be omitted if it is included as instructions on Forms A, B, D, E and F.

Section 6.  Forms-Information Unknown or Unavailable and Extension of Time to Furnish

If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the Commissioner a separate document:

A. Identifying the information, document or report in question;

B. Stating why the filing thereof at the time required is impractical; and

C. Requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within [XX] days after receipt thereof enters an order denying the request.

Drafting Note: Section 6 may be omitted if it is included as instruction on Forms A, B, C, D, E and F.
Section 7.  Forms - Additional Information and Exhibits

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E or F shall include on the top of the cover page the phrase: “Change No. [insert number] to” and shall indicate the date of the change and not the date of the original filing.

Drafting Note: Section 7 may be omitted if it included as instructions on Forms A, B, C, D, E and F.

Section 8.  Definitions

A.  “Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

B.  “Ultimate controlling person” means that person which is not controlled by any other person.

C.  Unless the context otherwise requires, other terms found in these regulations and in Section 1 of the Act are used as defined in the Act. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code.

Drafting Note: If regulation Section 2 is not adopted by the state, the following definition should be added to this section:


Section 9.  Subsidiaries of Domestic Insurers

The authority to invest in subsidiaries under Section 2B of the Act is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

Section 10.  Acquisition of Control - Statement Filing

A person required to file a statement pursuant to Section 3 of the Act shall furnish the required information on Form A, hereby made a part of this regulation. Such person shall also furnish the required information on Form E, hereby made a part of this regulation and described in Section 13 of this regulation.

Section 11.  Amendments to Form A

The applicant shall promptly advise the Commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the Commissioner's disposition of the application.
Section 12.  Acquisition of Section 3A(4) Insurers

A. If the person being acquired is deemed to be a “domestic insurer” solely because of the provisions of Section 3A(4) of the Act, the name of the domestic insurer on the cover page should be indicated as follows:

“ABC Insurance Company, a subsidiary of XYZ Holding Company.”

B. Where a Section 3A(4) insurer is being acquired, references to “the insurer” contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

Section 13.  Pre-Acquisition Notification

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Section 3A(1) of the Act, that person shall file a pre-acquisition notification form, Form E, which was developed pursuant to Section 3.1C(1) of the Act.

Additionally, if a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 3.1 of the Act, that person shall file a pre-acquisition notification form, Form E.  No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 3.1 as set forth in Section 3.1B(2).

In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

Section 14.  Annual Registration of Insurers - Statement Filing

An insurer required to file an annual registration statement pursuant to Section 4 of the Act shall furnish the required information on Form B, hereby made a part of these regulations.

Section 15.  Summary of Registration - Statement Filing

An insurer required to file an annual registration statement pursuant to Section 4 of the Act is also required to furnish information required on Form C, hereby made a part of these regulations.

Section 16.  Amendments to Form B

A. An amendment to Form B shall be filed within fifteen (15) days after the end of any month in which there is a material change to the information provided in the annual registration statement.

B. Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page “Amendment No. [insert number] to Form B for [insert year]” and shall indicate the date of the change and not the date of the original filings.

Drafting Note: Section 16 may be omitted if Section 5A(2) of the Model Act has been adopted and amendments to the registration statement are therefore not required by the Act.
Section 17. Alternative and Consolidated Registrations

A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 4 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

1. The statement or report contains substantially similar information required to be furnished on Form B; and
2. The filing insurer is the principal insurance company in the insurance holding company system.

B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

C. With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under Subsection A above.

D. Any insurer may take advantage of the provisions of Section 4H or 4I of the Act without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration or the public good.

Section 18. Disclaimers and Termination of Registration

A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the “subject”) shall contain the following information:

1. The number of authorized, issued and outstanding voting securities of the subject;
2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly;
3. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;
Allstate – Draft Reg ORSA Amendments

Model Regulation Service—January 2011

(4) A statement explaining why the person should not be considered to control the subject.

B. A request for termination of registration shall be deemed to have been granted unless the Commissioner, within thirty (30) days after receipt of the request, notifies the registrant otherwise.

Section 19. Transactions Subject to Prior Notice - Notice Filing

A. An insurer required to give notice of a proposed transaction pursuant to Section 5 of the Act shall furnish the required information on Form D, hereby made a part of these regulations.

B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

(1) Identify the person providing services and the nature of such services;

(2) Set forth the methods to allocate costs;

(3) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;

(4) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(5) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(6) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(7) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(8) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(9) Include standards for termination of the agreement with and without cause;

(10) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;
(11) Specify that, if the insurer is placed in receivership or seized by the commissioner under the State Receivership Act:

(a) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and,

(b) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(12) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to the State Receivership Act; and

(13) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under the State Receivership Act, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

Section 20. Enterprise Risk Report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 4L of the Act shall furnish the required information on Form F, hereby made a part of these regulations.

Section 21. Extraordinary Dividends and Other Distributions

A. Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(1) The amount of the proposed dividend;

(2) The date established for payment of the dividend;

(3) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(a) The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer’s own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
Allstate – Draft Reg ORSA Amendments

Model Regulation Service—January 2011

(b) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(c) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(d) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(e) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer’s own securities in the preceding two (2) calendar years;

(5) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month in which the request for dividend approval is submitted; and

(6) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

B. Subject to Section 5B of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Subsection A(4).

Section 22. Adequacy of Surplus

The factors set forth in Section 5D of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.
FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of____________________

By

_________________________

Name of Registrant

On Behalf of Following Insurance Companies

Name  Address

____________________________________________________________________________________________

____________________________________________________________________________________________

____________________________________________________________________________________________

____________________________________________________________________________________________

Date:____________________, 20____

Name, Title, Address and telephone number of Individual to Whom Notices and Correspondence
Concerning This Statement Should Be Addressed:

____________________________________________________________________________________________

____________________________________________________________________________________________

ITEM 1.  IDENTIFY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called
“the Registrant”), the home office address and principal executive offices of each; the date on
which each registrant became part of the insurance holding company system; and the
method(s) by which control of each registrant was acquired and is maintained.

ITEM 2.  ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of and interrelationships among
all affiliated persons within the insurance holding company system. The chart or listing
should show the percentage of each class of voting securities of each affiliate which is owned,
directly or indirectly, by another affiliate. If control of any person within the system is
maintained other than by the ownership or control of voting securities, indicate the basis of
control. As to each person specified in the chart or listing indicate the type of organization
(e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.
ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

(a) Name;

(b) Home office address;

(c) Principal executive office address;

(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.;

(e) The principal business of the person;

(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned; and

(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past 5 years, and any conviction of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the Registrant or of the Registrant by its affiliates;

(b) Purchases, sales or exchanges 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 Registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
Insurance Holding Company System Model Regulation
with Reporting Forms and Instructions

(e) All management agreements, service contracts and all cost-sharing arrangements;
(f) Reinsurance agreements;
(g) Dividends and other distributions to shareholders;
(h) Consolidated tax allocation agreements; and
(i) Any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 4 of the Act.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the registrant's admitted assets as of the 31st day of December next preceding shall not be deemed material.

Drafting Note: Commissioner may by rule, regulation or order provide otherwise.

The description shall be in a manner as to permit the proper evaluation thereof by the Commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which the litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year’s annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.
ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person’s latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information shall be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis; or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, such financial statement shall be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the Commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements shall be deemed to be an appropriate form and format.

Unless the Commissioner otherwise permits, the annual financial statements shall be accompanied by the certificate of an independent public accountant to the effect that the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of the insurer’s domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The review shall be conducted in accordance with standards for review of personal financial statements published in the Personal Financial Statements Guide by the American Institute of Certified Public Accountants. Personal financial statements shall be accompanied by the independent public accountant’s Standard Review Report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the statements to be in conformity with generally accepted accounting principles.

(c) Exhibits shall include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling
ITEM 9. OWN RISK AND SOLVENCY ASSESSMENT (ORSA) ACKNOWLEDGEMENT

If the insurer and/or the insurance group to which the insurer is a member is required to complete an ORSA, the insurer acknowledges that the insurer’s ORSA and/or insurance group’s ORSA has been completed with consideration of consistent with the guidance published in the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual and that the insurer's ORSA and/or insurance group's ORSA will be submitted upon the Commissioner’s written request.

OR

(a) The insurer shall furnish a current Own Risk and Solvency Assessment (ORSA) with the annual registration and/or during the period of time after the annual registration due date up to the next annual registration due date, if explicitly requested in writing by the Commissioner.

(b) The ORSA shall be completed in accordance with and/or consideration of guidance published in the NAIC Own Risk and Solvency Assessment Guidance Manual.

ITEM 10. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 110. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of Section 4 of the Act, Registrant has caused this annual registration statement to be duly signed on its behalf of the City of ________________ and State of ________________ on the ____________ day of _____________, 20___.

(SEAL)______________________________

Name of Applicant

BY__________________________________

(Name) (Title)

Attest:

__________________________________

(Signature of Officer)

__________________________________

(Title)
CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _______________, 20_____, for and on behalf of ___________________ (Name of Applicant); that (s)he is the ___________________ (Title of Officer) of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature)__________________________________

(Type or print name beneath)______________________________

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

December 16, 2010 Jt. Executive/Plenary conference call (amended)
October 31, 2011

John M. Huff
Director
Missouri
Department of Insurance,
Financial Institutions & Professional Registration
P.O. Box 690
Jefferson City, MO 65102-0690

Danny Saenz
Deputy Commissioner
Texas Department of Insurance
333 Guadalupe
Austin, TX 78701

Re: NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual and Draft ORSA Amendments to Model Holding Company Regulation

Dear Director Huff and Deputy Commissioner Saenz:

The Group of North American Insurance Enterprises (GNAIE) appreciates the work of the Group Solvency Issues Working Group in considering the numerous changes that have been made to the ORSA Guidance Manual throughout the last few weeks. The revised draft is much improved and we appreciate the consideration given to the industry’s comments. We do not have significant revisions to propose at this time.

During the most recent Working Group call NAIC staff mentioned the possibility of a pilot project with several insurers next year that would provide a field test of the Manual. We agree with this concept, and urge that this process be open to all companies that wish to volunteer for the field test.

We also urge the NAIC to continue its work with EIOPA and the IAIS to ensure that one ORSA Report will be acceptable in multiple jurisdictions. If we can provide assistance in the area, we would be pleased to do so.
Legal Authority

We are concerned, though, that the legal authority for the ORSA requirement needs to be considered carefully and should not be rushed.

GNAIE would prefer an approach based upon the NAIC’s Model Law on Examinations, since we believe the ORSA should be integrated with the risk-focused examination and analysis process so the ORSA can help regulators focus on companies and the areas within companies that pose the highest risk. We realize some concerns were raised in the recent survey about this approach, but believe that the option is so desirable as a long term solution that it is worthy of further discussion and exploration to resolve these concerns.

In addition, GNAIE believes that the Working Group’s draft current implementation proposal through amendments to Form B is seriously flawed and must be reconsidered. We have several concerns about Form B.

One, it is critical that, if a group elects to perform its ORSA and file its ORSA Summary Report (if requested) at the group level, that the group be required only to file the report with its lead regulator. We believe that the Working Group generally agreed with this concept, yet the draft amendments do not provide this assurance. The Form B itself must be filed by all insurers in a holding company with their domiciliary states, so is inconsistent with that objective.

Secondly, we are concerned about the confidentiality of the use of Form B. As both industry and regulators recognize, confidentiality is of paramount importance, since the ORSA Report and supporting materials will contain highly proprietary information. Yet at least two states have acknowledged that their Form B filings are public documents.

Finally, we are concerned that the process must be consistent throughout the states. It is not clear that the intent is for all states to use a Form B approach.

We urge that the Working Group allow more time for the discussion of the best vehicle for the ORSA requirement, taking the time for a careful review of the options. Several proposals have been discussed over the course of the last few months, but the Form B language was only proposed with a four-day consultation. We would urge a more deliberative process even if it means missing a legislative deadline in some states for introduction of the change in the amendments to the Model Holding Company Act.

We look forward to discussing these comments at the Working Group’s November 2 meeting. If you have any questions, please contact me at your convenience.

Sincerely,
William R. Sergeant, CPA, CPCU, CLU, ChFC, FLMI
Chair, GNAIE Solvency Committee

Submitted by email to David Vacca
October 28, 2011

Dear Messrs Huff, Saenz and Vacca:

The North American CRO Council ("CRO Council," "Council," or "we") is a professional association of Chief Risk Officers of leading insurers based in the United States, Bermuda, and Canada. Member CROs represent 11 of the 15 largest Life insurers and 12 of the 15 largest Property & Casualty insurers in North America. The Council seeks to develop and promote leading practices in risk management throughout the insurance industry and provide thought leadership and direction on the advancement of risk-based solvency and liquidity assessments.

The Council appreciates the opportunity to comment on the U.S. Own Risk and Solvency Assessment ("ORSA") Guidance Manual, which was exposed for public comment by the National Association of Insurance Commissioners ("NAIC") on October 14, 2011. Our comments are organized into two parts: (i) this letter, which provides high-level comments; and (ii) specific suggested text edits to the Manual. The high-level comments address the legal and regulatory framework that is being used to support the ORSA requirement. The text edits provide specific suggestions to modify the language in the Manual and align it with our high-level comments. The goal of our comments is to be constructive and we look forward to continued dialogue on the ORSA requirement.

The following themes supplement and reinforce points made in Council comment letters to the NAIC dated March 18, 2011 and August 25, 2011, as well as the ERM Education Session presented to state regulators in Jacksonville on July 21, 2011 and the CRO Council Executive Committee meeting in Philadelphia on October 20, 2011.

Confidentiality is essential to the ORSA review process

As noted in our August 25 letter, ORSA data and analyses are proprietary, strategic and highly confidential and represent trade secrets that form the basis for decision making and competitive advantage in the marketplace. Releasing this information to outside parties presents two significant risks: (i) leakage and (ii) misinterpretation. While we appreciate the NAIC’s acknowledgement of the importance of confidentiality in its ORSA review process, and acknowledge that some Form B disclosures include confidentiality protections, we note that transmission, storage and review of these documents still present significant risks. Further, we strongly believe that documentation alone is not sufficient to fully assess the insurer’s risk management processes, nor understand its ORSA results. Dialogue between
the company and the regulator will be necessary to supplement and elaborate on the points presented in the ORSA summary report.

The regulatory and legal framework for the ORSA needs careful consideration

While members of the Group Solvency Issues (EX) Working Group and NAIC staff have spent a significant amount of time and effort developing the draft NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual, the legal framework for the ORSA (including the very recent October 24, 2011 exposure of draft Form B ORSA amendments) has not received the same level of attention and deliberation. The Council believes that certain important considerations should be addressed before the Working Group settles on the mechanism for incorporating the ORSA requirement.

The choice of legal framework is particularly critical to ensuring that the highly proprietary information contained in the ORSA summary report is kept confidential. Moreover, it has always been our understanding that the ORSA functions as a component of risk-focused surveillance, and our belief is that the choice of legal framework should reflect this linkage. We also believe that it would be very helpful for the ORSA summary report to be submitted through a lead state insurance regulator in order to provide for a consistent and coordinated approach. Finally, it is important that the filing timeline reflect company practices and the ability to leverage reports to management, rating agencies and other regulators. We are concerned that the current exposure does not fully account for these important considerations, and that if adopted in its present form there could be serious unintended consequences.

The proposed ORSA summary report is a new concept for the U.S. insurance regulatory regime. The importance of the legal framework warrants the same kind of careful attention to detail and collaborative discussion that the Working Group applied in arriving at its current Guidance Manual exposure draft. We request that the Working Group follow the same process in its development of a recommendation on the legal framework, and further suggest that the Working Group defer a recommendation on legal framework until the important issues have been addressed.

The Council appreciates the opportunity to work with the NAIC on developing a sound and sensible approach to the ORSA requirement. We look forward to continuing the dialogue with the NAIC on its ORSA Guidance Manual and encourage you to continue to use the Council as a resource.

Sincerely,

Michael W. Mahaffey, Chair  
Lizabeth Zlatkus, Chair  
North American CRO Council  
U.S. Regulatory Developments Committee
NAIC OWN RISK AND SOLVENCY ASSESSMENT (ORSA) GUIDANCE MANUAL

Exposure Draft 10/14/11

Created by the
NAIC Group Solvency Issues Working Group
of the Solvency Modernization Initiatives (EX) Task Force
# Table of Contents

I. Introduction
   A. Exemption
   B. Application for Waiver
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   D. Extensions

II. Section 1 - Description of the Insurer's Risk Management Framework

III. Section 2 - Insurer's Assessment of Risk Exposures

IV. Section 3 - Group Risk Capital and Prospective Solvency Assessment

V. Appendix
I. **INTRODUCTION**

The purpose of this Manual is intended to provide guidance to an insurer and/or the insurance group (herein referred to as “insurer” or “insurers”) with regard to reporting on its own risk and solvency assessment (ORSA) as outlined within the Form B – Insurance Holding Company System Annual Registration Statement of the NAIC’s Insurance Holding Company System Regulatory Regulation (#450). As described more fully below, an insurer who is subject to the ORSA requirement will be expected to regularly conduct an ORSA to assess the adequacy of its risk management framework and current, and likely future, prospective solvency position, internally document the process and results, and provide an annual high-level Summary report annually to the domiciliary lead state regulator, if requested. Whether an applicable state insurance regulator chooses to request the confidential filing each year may depend on a myriad of factors, such as the nature and complexity, financial position, and/or prioritization of the insurer/group, as well as the economic environment considerations.

Overall, the ORSA is essentially an internal assessment of the risks associated with an insurer’s current business plan, and the sufficiency of capital resources to support those risks. The ORSA has two primary goals:

1. To foster an effective level of enterprise risk management at all insurers, through which each insurer identifies and quantifies its material and relevant risks, using techniques that are appropriate to the nature, scale and complexity of these insurer’s risks, in a manner that is adequate to support risk and capital decisions; and
2. To provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view.

An insurer that is subject to the ORSA requirement should consider the guidance provided in this Manual when conducting its ORSA and compiling the Summary report. As the process and results are likely to include proprietary information, any report received by the regulators shall be held confidential as provided by state statutes. The NAIC recognizes that each insurer has a different schedule for strategic planning and capital evaluation. As such, the insurer may submit its Summary Report to the lead state regulator at any time during the year.

An insurer should keep the commissioner or his or her designee abreast of the timing of the insurer’s ERM-related strategic planning and ORSA reporting requirements for all U.S. and international regulators so that the completion of the ORSA process and finalization of an ORSA Summary Report may be coordinated with the insurer’s internal processes and completed no more than once annually.

A. **Exemption**

An insurer shall be exempt from the requirements of the ORSA, if

a. The individual insurer’s annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured
Exposure Draft 10/14/11

With the Federal Crop Insurance Corporation and Federal Flood Program, is less than $500,000,000; and,

\[ a_b \]

The insurance group’s (all insurance legal entities within the group) annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program is less than $1,000,000,000.

If exemption element a. is triggered and not b., then an insurer or insurers (within a group) may supply the ORSA Summary Report in any given combinations, as long as every insurance legal entity within the group is covered by the summations of the ORSA Summary Report. For example, the property & casualty insurers within a group could be combined within one ORSA Summary Report, and the life insurers within the same group could be combined within another ORSA summary report, if such entities operate under different Enterprise Risk Management (ERM) Frameworks. If both b. and a. exemption elements are not triggered, then the insurer or insurers may supply the ORSA Summary Report in any given combinations, as long as all insurance entities within the group are covered.

If exemption element b. is triggered and not a., then only the legal entity ORSA Summary Report of the entity over the threshold is required, however, the insurer may include other smaller insurers within the holding company system, if desired.

An insurer that is otherwise exempt may be required to meet the ORSA requirement based on unique circumstances at the discretion of the commissioner including, but not limited to, the type of business written, federal agency requests, and international supervisor requests, etc.

A commissioner also has authority to require an ORSA if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

B. Application for Waiver

An insurer may make application to the commissioner for a waiver from the requirements of the ORSA based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, and volume of business written.

C. General Guidance

The ORSA process is one element of an demonstrates the insurer’s broader Enterprise Risk Management (ERM) framework. It links the insurer’s risk identification, measurement and prioritization processes with capital management and strategic planning.

Each insurer’s ORSA process will be unique, reflecting its business, strategy and approach to ERM. The regulator recognizes this, and will use the ORSA Summary Report to gain a high-level understanding of the process. The report will be supported by the insurer’s internal risk management materials. However, at a minimum the ORSA Summary Report should discuss three major areas, which should be updated annually. These include:

- Section 1 - Description of the Insurer’s Risk Management Framework

- Section 2 - Identification of Material Risks

- Section 3 - Capital Adequacy and Risk Management

- Section 4 - Strategic Planning and Risk Management

- Section 5 - Summary of Findings and Recommendations
Section 2 - Insurer’s Assessment of Risk Exposures

Section 3 – Group Risk Capital and Prospective Solvency Assessment

Guidance for completing each section is noted below. However, the depth and detail is likely to be influenced by the nature and complexity of the insurer. Additionally, each section is expected to be updated annually for the insurer. However, if some insurers, Section 1 could represent a voluminous amount of information. The discretion for determining the extent to which the Section 1 information is summarized is left to the insurer, who must determine how best to communicate its processes for assessing and managing its material risks. Additionally, in order to avoid excessive volumes of detail or supporting documents for complex insurers, an insurer may simply reference other explanatory documents within the ORSA Summary Report, as long as those documents are available to the regulator for on-site review in a financial examination, upon request.

In analyzing an ORSA Summary Report, the supervisor will expect that the Report represents a work product of the enterprise risk management processes that include all of the material risks to which an insurer or insurers (if applicable) is exposed. The supervisor’s review of an ORSA Summary Report may help determine the scope, depth and minimum timing of risk-focused analysis and examination procedures. For example, insurers may have varying levels of ERM frameworks, ranging from a business plan, to a combination of investment plans and underwriting policies, to more complex risk management processes and sophisticated modeling. Insurers with ERM frameworks deemed to be robust for their relative risk may not require the same scope or depth of review, or minimum timing for a risk-focused surveillance as those with less robust ERM functions. Therefore insurers should consider developing an ORSA Summary Report that helps to demonstrate the strengths of their framework, including how it meets the expectations of this Manual document for the relative risk of the insurer.

In addition to the ORSA Summary Report, the insurer should internally document the ORSA results to facilitate a more in-depth review by the regulator through analysis and examination processes. Such a review may depend on a myriad of factors, such as the nature and complexity, financial position, and/or prioritization of the insurer, as well as external considerations such as the economic environment. For example, major changes to an insurer’s risk management policies, or specific concerns from a regulator regarding the insurer may result in the state requesting additional information about the policies through the state’s analysis or examination processes.

An internationally active insurer that is required to provide a group ORSA for a group-wide supervisor in a non-U.S. jurisdiction, may be able to satisfy the NAIC’s filing requirement by providing that ORSA report. This ORSA report will be reviewed in relation to the principles expected of regimes as outlined in the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICP) 16 Enterprise Risk Management (ERM), as well as the U.S. NAIC ORSA Guidance Manual to determine if additional information is needed. The U.S. state regulator might also review and consider the applicable jurisdiction’s FSAP and IAIS Self-Assessment in relation to ICP 16. One of the NAIC’s goals is to avoid creating duplicative regulatory requirements for internationally active insurers.

Comment [s2]: The Council suggests deleting this text as it is redundant to text that is provided in Section 1.
D. Extensions

An extension for the due date of submission of the ORSA Summary Report may be granted at the discretion of the Commissioner.

Comment [s3]: As noted above, the Council suggests "rolling" submission that allows the insurer to submit its ORSA Summary Report at any time during the year (to coincide with the strategic planning cycle or presentations to other stakeholders e.g., the board of directors or rating agencies).
II. SECTION 1 – DESCRIPTION OF THE INSURER’S RISK MANAGEMENT FRAMEWORK

An effective Enterprise Risk Management (ERM) Framework should at a minimum include the following key principles:

- **Risk Culture and Governance** – Governance structure that clearly defines and articulates roles, responsibilities and accountabilities; and a risk culture that supports accountability in risk-based decision making.

- **Risk Identification and Prioritization** – Risk identification and prioritization process that is key to the organization; ownership of this activity is clear; the risk management function is responsible for ensuring that the process is appropriate and functioning properly at all organizational levels.

- **Risk Appetite, Tolerances and Limits** – A formal risk appetite statement, and associated risk tolerances and limits are foundational elements of risk management for an insurer; Board understanding of the risk appetite statement ensures alignment with risk strategy.

- **Risk Management and Controls** – Managing risk is an ongoing enterprise risk management activity, operating at many levels within the organization.

- **Risk Reporting and Communication** – Reporting and communication provides key constituents with transparency into the risk management processes and facilitates active, informal decisions on risk taking and management.

Section 1 of the ORSA Summary Report should provide a high-level summary of the aforementioned ERM Framework principles, if present. The Summary Report should describe how the insurer identifies and categorizes relevant and material risks and manages these as it executes its business strategy. It should also describe risk monitoring processes and methods, provide risk appetite statements, and explain the relationship, where applicable, between risk tolerances and the amount and quality of group risk capital. The ORSA Summary Report should identify assessment tools (feedback loops) used to monitor and respond to any changes in its risk profile due to economic changes, operational changes, or changes in its business strategy. Finally, it should describe how the insurer incorporates new risk information to monitor and respond to changes in its risk profile due to economic and/or operational shifts and changes in strategy.

Additionally, as part of the risk-focused analysis and/or examination process, the regulator may review supporting materials to supplement his or her understanding of information contained in the ORSA Summary Report. These materials may include risk management policies or programs, such as the insurer’s underwriting, investment, claims, asset-liability management (ALM), reinsurance counterparty and operational risk polices.

The manner and depth in which the insurer addresses these principles is dependent upon its own risk management processes, and any strengths or weaknesses noted by the regulator in evaluating this will have a bearing on the regulators’ ongoing supervisory plan of the insurer, as the regulator will consider the entirety of the risk management program and its appropriateness for the unique risks of the insurer.

III. SECTION 2 - INSURER ASSESSMENT OF RISK EXPOSURES
Section 2 of the ORSA Summary Report should document the quantitative and/or qualitative assessments of risk exposure in both normal and stressed environments for each material risk category identified in Section 1. This quantitative measurement assessment process should require a quantification of risks under a range of outcomes using risk measurement techniques that are appropriate to the nature, scale and complexity of the risks. Examples of relevant material risk categories might include, but not be limited to, credit, market, liquidity, underwriting, and operational risks.

The ORSA Summary Report’s Section 2 may include detailed descriptions and explanations of the risks identified, the measurement approaches used, key assumptions made and outcomes of any plausible adverse scenarios that are run. The assessment of each risk will depend on its specific characteristics.

For some risks, quantitative methods are not well established, and in these cases, a qualitative assessment is appropriate. Examples of these risks may include certain operational and reputation risks. Additionally, it is recognized that each insurer’s quantitative methods for assessing risk will vary, however, generally insurers generally consider the likelihood and impact that each material and relevant risk will have on the firm’s balance sheet, income statement and future cash flows. Methods for determining the impact on future financial position may include simple stress tests or more complex stochastic analyses. When quantifying a risk, the insurer should provide the results under both normal and stressed environments. Lastly, the insurer’s risk assessment may consider the impact of stresses on capital. This may include consideration of risk capital requirements, as well as available capital, and may include regulatory, economic, rating agency or other views of capital.

The analysis should be conducted in a manner that is consistent with the way in which the business is managed, be it on a group, legal entity, or some other orientation. It is recognized that some stress tests for certain risks may be performed at the insurance group level. Where useful and relevant to the management of the business, some of the group-level stresses may be mapped into legal entities. The regulator may request additional information to map the results to an individual insurance legal entity.

Any risk tolerance statements should include material quantitative and qualitative risk tolerance limits, how the tolerance statements and limits are determined, taking into account relevant and material categories of risk and risk relationships that are identified.

Because the risk profile of each insurer is unique, U.S. insurance regulators do not believe there is a standard set of stress conditions that each insurer should run, however the regulator may have input regarding the level of stress that company management should consider for each risk category. However the Summary Report should demonstrate the insurer’s process for model validation, including factors considered and model calibration. Unless a particular assumption is stochastically modeled, the group’s management will be setting their assumptions regarding the expected values based on their current anticipated experience studies and what they expect to unfold over the next year. The regulator may provide input to an insurer’s management on a stress factor that should be applied for a particular assumption that is not stochastically modeled. For assumptions that are stochastically modeled, the regulator may provide input on the level of the measurement metric to use in the stressed condition or specify particular parameters used in the economic scenario generator.

Comment [s4]: In Section 1, the Manual asks for “risk appetite statements” and an explanation of “the relationship between risk tolerances and the amount and quality of group risk capital.”

This reference seems redundant in Section 2, and the Council suggests either deleting it from Section 1 and leaving it in Section 2, or vice versa.

Comment [s5]: ICP 16.14.21 states that “An internal model used by an insurer in the context of its ORSA for determining its own economic capital needs should not need supervisory approval for that purpose. However, an insurer would be expected to review its own internal model and validate it so as to satisfy itself of the appropriateness of the model for use as part of its risk and capital management processes. It would be expected to calibrate the model according to its own modeling criteria.” (Emphasis provided by the Council)

This last sentence is very important in considering the appropriateness of regulatory input into an insurer’s capital modeling. The Council strongly believes (and ICP 16.14.21 confirms) that the ORSA should represent management’s “own” assessment of capital to support the business plan, using factors that are derived from management’s experience and assessment of its own risks.

Regulatory input on capital modeling should be limited to the factors used to measure regulatory capital i.e., U.S. Risk-based capital, and should not factor into the insurer’s “own” risk capital assessment.
The aforementioned input provided by regulators will likely occur during either the financial analysis process and/or the financial examination process.

By identifying each material risk category independently and reporting notional amounts, expected amounts in both normal and stressed conditions, insurer management and the regulator are in a much better position to evaluate certain risk combinations that could cause an insurer to fail. One of the most difficult exercises in modeling insurer results is determining the relationships, if any, between risk categories. History may provide some empirical evidence of relationships, but the future is not always best estimated by historical data.

IV. **SECTION 3 – GROUP RISK CAPITAL AND PROSPECTIVE SOLVENCY ASSESSMENT**

Section 3 of the ORSA Summary Report should document how the company combines the qualitative elements of its risk management policy and the quantitative measures of risk exposure in determining the level of financial resources it needs to manage its current business and over its internal business planning horizon a longer term business cycle, such as the next 2-5 years.

**Group Risk Capital Assessment**

Capital adequacy assessment can be broadly defined as the testing of aggregate available capital against the various risks which may adversely affect the enterprise. The goal of such an exercise is to determine that a given level of capital is sufficient to withstand the various risks, individually and collectively, up to some defined security standard or risk appetite. The level of capital that just satisfies the security standard can be defined as “risk capital,” and can be compared to “available capital” to ascertain the degree of capital adequacy, including “excess” or “deficit” capital.

**Comment [s6]**: The Council suggests removing this paragraph because it refers to an Appendix that is no longer attached to this Guidance Manual. Additionally, we note that the concepts of “notional” and “expected” amounts do not apply consistently across insurer types.

**Comment [s7]**: The Council notes that there are a wide range of practices and methodologies used in North America to internally model insurer capital. This differs from Europe, where economic capital models generally follow a one-year market consistent approach. Therefore, the Council would like to raise potential challenges associated with regulatory review of the quantitative assessments described in Section 3. The calculations will not be consistent between firms, creating great challenges and a potential source of confusion for the regulators in interpreting the numbers. For example, one firm’s measure of “free surplus” will not necessarily be comparable with another.

**Comment [s8]**: This section focuses on forward-looking measures and the reference to “previous period” may result in an outdated “retrospective” view of an insurer’s group capital.

The analysis of an insurer’s group risk capital requirements and associated capital adequacy should be accompanied by a description of the approach used in conducting the analysis. This
should include key methodologies and assumptions used in quantifying both available and risk capital. Examples might include:

<table>
<thead>
<tr>
<th>Considerations</th>
<th>Description of Consideration</th>
<th>Examples (not exhaustive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Solvency</td>
<td>Describe how the insurer defines solvency for the purpose of determining risk capital and liquidity requirements</td>
<td>Cash flow basis, balance sheet basis, etc.</td>
</tr>
<tr>
<td>Accounting or Valuation Regime</td>
<td>Describe the accounting or valuation basis for the measurement of risk capital requirements and/or available capital</td>
<td>GAAP, Statutory, Economic or Market Consistent, IFRS, Rating Agency model</td>
</tr>
<tr>
<td>Business Included</td>
<td>Describe the subset of business included in the analysis of capital</td>
<td>Positions as of a given valuation date, New business assumptions, etc.</td>
</tr>
<tr>
<td>Time Horizon of Risk Exposure</td>
<td>Describe the time horizon over which risks were modeled and measured</td>
<td>One-year, multi-year, lifetime, run-off, etc.</td>
</tr>
<tr>
<td>Risks Modeled</td>
<td>Describe the risks included in the measurement of risk capital including a comment about whether all relevant and material risks have been considered</td>
<td>Credit, market, liquidity, insurance, operational, etc.</td>
</tr>
<tr>
<td>Quantification Method</td>
<td>Describe the method used to quantify the risk exposure</td>
<td>Deterministic stress tests, stochastic modeling, factor-based analysis, etc.</td>
</tr>
<tr>
<td>Measurement Metric Risk Capital Metric</td>
<td>Describe the measurement metric utilized in the determination of aggregate risk capital</td>
<td>Value-at-risk or VAR (quantifies the capital needed to withstand a loss at a certain probability), Tail-value-at-risk or TVAR (quantifies the capital needed to withstand average losses above a certain probability), Probability of Ruin (quantifies the probability of ruin given the capital held), etc.</td>
</tr>
<tr>
<td>Target level of Capital Defined Security Standard</td>
<td>Describe the target capital level utilized in the determination of group risk capital requirements and/or available capital utilized in the determination of risk capital requirements, including linkage to business strategy and objectives.</td>
<td>AA solvency, 99.9% 1-year VAR, Y% TVAR or CTE, X% of RBC, etc.</td>
</tr>
<tr>
<td>Aggregation and Diversification</td>
<td>Describe the method of aggregation of risks and any diversification benefits considered or calculated in the group risk capital determination</td>
<td>Correlation matrix, dependency structure, sum, full/partial/no diversification</td>
</tr>
</tbody>
</table>

The approach and assessment of group-wide capital adequacy should also consider the following:
Exposure Draft 10/14/11

- Elimination of intra-group transactions and double-gearing where the same capital is used simultaneously as a buffer against risk in two or more entities.
- The level of leverage, if any, resulting from holding company debt.
- Diversification credits and restrictions on the fungibility of capital within the holding company system, including the availability and transferability of surplus resources created by holding company system level diversification benefits.
- The effects of contagion risk, concentration risk and complexity risk in the group risk capital assessment.
- The effect of liquidity risk, or calls on the insurer’s cash position, due to micro- (i.e. internal operational) and/or macro (i.e. economic shifts) factors.

The goal of the assessment is to provide an overall determination of the insurer’s group risk capital needs for the insurer, given its based upon the nature, scale and complexity of risk within the group and its risk appetite, and to compare that risk capital to available capital to assess capital adequacy. Group risk capital should not be perceived as the minimum amount of capital before regulatory action will result (e.g. the triggers in US Risk-Based Capital (RBC) for insurance legal entities); rather, it should be recognized that this is the capital needed to satisfy the insurer’s defined security standard within a group, holding company system to achieve the given the group’s business objectives.

Prospective Solvency Assessment

The insurer’s capital assessment process should be closely tied to business planning. To this end, the insurer should have a robust capital forecasting capability that supports its management of risk over the planning time horizon in line with its stated risk appetite. The forecasting process should consider relevant and foreseeable changes to the insurer’s internal operations and the external business environment. It should also consider the prospect of operating in both normal and stressed environments.

Most insurers, as part of their strategic planning process, compile a 2-5 year (i.e. multi-year) business plan. Section 3 of the ORSA Summary Report should contain a demonstration and documentation that, given the current risk capital requirements both internal and regulatory, the quality of that capital, the current risk management policy consisting of its current risk tolerance limits, current risk exposure amounts in both a normal and stressed environments and the projected 2-5 year business plan;

...
management policy, its current quality and level of capital and reflecting any changes to its current risk profile caused by executing the 2-5 year business plan. The prospective solvency assessment should also consider both normal and stressed environments.

If the prospective solvency assessment is performed for each individual insurance company legal entity, the assessment should take into account any risks associated with group membership. Such an assessment may involve a review of any group solvency assessment, and the methodology used to allocate group capital across insurance legal entities, as well as-and consideration of capital fungibility, i.e., any constraints on group risk capital or the movement of group risk capital to legal entities.
October 28, 2011

The Honorable John M. Huff and Danny Saenz
Co-Chairs, Group Solvency Issues (EX) Working Group
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108
By E-Mail
Attn.: David Vacca

Dear Chairmen Huff and Saenz:

NAMIC is a trade association comprising approximately 1,300 mutual property/casualty member insurers domiciled in the United States and another 100 in Canada. The 1,300 members domiciled in the United States write approximately 37 percent of the annual property/casualty premium in this country. On behalf of those members, NAMIC provides the following comments on the exposed changes to the NAICs form B as it relates to the regulatory authority for requiring the Own Risk and Solvency Assessment (ORSA).

We appreciate the Working Group’s attempt to develop a mechanism for requiring the ORSA Summary Report, while also ensuring its confidentiality. We would suggest that any regulatory authority on the ORSA should specifically identify 1) the exemption criteria; 2) that the timing of the ORSA is allowed to revolve around the insurance group’s internal planning process; 3) that the filing could be made available to any domiciliary regulator, but as a practice should generally be delivered to the lead state. However, we continue to be surprised that the approach being taken does not revolve around the NAICs Model Law on Examinations.

The United States Insurance Financial Solvency Framework (“the framework”), created by the NAICs Financial Condition (E) Committee, describes the U.S. solvency system, and included within that description is discussion of 1) off-site monitoring and analysis; and 2) on-site risk-focused examinations. The framework describes both of these processes, including that both consider current and prospective risk. NAMIC believes the U.S. analysis and examination processes have the potential to be world leading, similar to the NAICs financial database, and the NAIC could further enable this by providing the necessary regulatory authority for the ORSA within the NAICs Model Law on Examinations.

Concerns have been expressed regarding the logistical issues associated with modifying the Model Law on Examinations. The issues highlighted include the need to call an examination, to issue a report on an examination, and closing the examination. Although these are valid concerns, could this not be overcome by creating a new sub-section of Section 3, Authority, Scope and Scheduling of Examinations, for the ORSA which among other things could describe any exceptions to the normal processes?

NAMIC urges the Working Group to consider this approach more carefully. NAMIC considers it an opportunity for U.S. regulators to highlight its existing strengths, the analysis and examination processes.

Respectfully,

Dan Daveline
Financial Regulation Manager
December 28, 2011

John M. Huff
Director
Missouri Department of Insurance, Financial Institutions & Professional Registration
P.O. Box 690
Jefferson City, MO 65102-0690

Danny Saenz
Deputy Commissioner
Texas Department of Insurance
333 Guadalupe
Austin, TX 78701

Re: NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual and Draft ORSA Amendments to Model Holding Company Regulation

Dear Director Huff and Deputy Commissioner Saenz:

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on the Group Solvency Issues (EX) Working Group’s exposure draft of its ORSA Guidance Manual and draft ORSA amendments to the NAIC's Insurance Holding Company System Model Regulation. PCI’s 1,000 member property/casualty insurers write $180 billion annual direct written premium, 38.3 percent of the U.S. property/casualty insurance market. As our comments on the ORSA Manual will be brief, we are combining our comments on the Manual and the Model Regulation amendments in one comment letter.

ORSA Guidance Manual comments

PCI appreciates the fact that many of the comments we have made throughout the Working Group’s development process have been included in the draft Manual. The draft Manual has become a substantially better product throughout this process, and we do not have significant revisions to propose at this time. We have believed all along, however, that the accelerated development process for the Manual and the two-week exposure for the final draft creates the risk that undetected errors and the potential for unintended consequences remain in the document, and we would prefer that the Working Group not adopt the Manual until a longer review period (45-60 days from initial exposure) has passed. If the Working Group decides to adopt the Manual and pass it up to its parent task force, we urge that the document remain open for review and revision as needed at either the Solvency Modernization Initiative (EX) Task Force (SMI Task Force) or the Financial Condition (E) Committee during the next year. During the most recent Working Group call NAIC staff mentioned the possibility of a pilot project with several insurers next year that would provide a field test of the Manual. We agree with this concept, and urge that this process be open to insurers and groups of all sizes that will be subject to the new ORSA requirement.

Proposed Model Holding Company Regulation (Form B) amendments

PCI believes that the Working Group’s draft implementation proposal through amendments to Form B, however, is seriously flawed and must be reconsidered, for several reasons:

- Implementation is a critical part of the ORSA project, as the Manual itself provides no legal authority for the ORSA requirement.
- We have serious questions about the attempted use of Form B:
  - It is critical to PCI that, if a group elects to perform its ORSA and file its ORSA Summary Report (if requested) at the group level, that the group be required only to file the report with
its lead regulator. We believe that the Working Group generally agreed with this concept. Yet the draft amendments do not provide this assurance. The Form B itself must be filed by all insurers in a holding company with their domiciliary states.

- As both industry and regulators recognize, confidentiality is of paramount importance, since the ORSA Report and supporting materials will contain highly proprietary information. Yet at least two states have acknowledged that their Form B filings are public documents.
- The ORSA Manual would apply the ORSA requirement to stand-alone insurers with premium exceeding the Manual’s exemption threshold. The Model Holding Company Act and Regulation, however, only apply to insurers that are part of an insurance holding company group, and provide no authority to require an ORSA from a stand-alone insurer.
- Interested parties received that draft Form B language this Monday, and have had only four days to review it. This is clearly inadequate exposure for such an important provision.

PCI would prefer an approach based upon the NAIC’s Model Law on Examinations, since we believe the ORSA should be integrated with the risk-focused examination and analysis process so the ORSA can help regulators focus on companies and the areas within companies that pose the highest risk. In any case, however, the draft approach is unworkable and far more extensive consideration of proper implementation of the ORSA requirement is necessary. We strongly prefer that this be done at the Working Group level, but if not that discussion must occur at either the SMI Task Force or (E) Committee.

We look forward to discussing these comments at the Working Group's November 2 meeting. If you have any questions, please contact me at your convenience.

Sincerely,

[Signature]

Stephen W. Broadie
October 28, 2011

The Honorable John M. Huff and Danny Saenz  
Co-Chairs, Group Solvency Issues (EX) Working Group  
National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, MO  64108  
By E-Mail  
Attn.:  David Vacca

Dear Chairmen Huff and Saenz:

NAMIC is a trade association comprising approximately 1,300 mutual property/casualty member insurers domiciled in the United States and another 100 in Canada. The 1,300 members domiciled in the United States write approximately 37 percent of the annual property/casualty premium in this country. On behalf of those members, NAMIC provides the following comments on the latest version of the NAIC’s Own-Risk and Solvency Assessment (ORSA).

NAMIC appreciates the Working Group’s efforts in attempting to address the concerns from the industry, including reducing its specificity for consistency with the “Own” in ORSA, and including language proposed by NAMIC in various places that was intended to provide the industry with a greater understanding of how the ORSA would affect the regulatory processes. NAMIC believes this increased understanding for the industry will increase the quality of the ORSA.

Maximizing the Regulatory Use of the ORSA

Despite our appreciation for your work thus far, we believe the difficult work is just beginning, as there is always room for misinterpretation when implementing change. In our Aug. 25 comment letter, we urged the Working Group to step back and consider how the information from the ORSA was going to be used within the existing regulatory processes before finalizing the ORSA. The primary reason we made this request was that in our opinion, it is important that the regulatory procedures match the designed purpose and be communicated to preparers of the ORSA. The ORSA guidance you have developed appropriately documents that purpose – to increase the regulators understanding of the company and its risk. However, as we have stated in our previous comments, a good portion of this understanding will likely only occur through face-to-face discussions, such as an on-site examination. We recognize that sections 2 and 3 would likely require more frequent discussions, and we previously suggested that an annual discussion at the department or insurer’s office might be more appropriate for this information.

Although it does not appear that the Working Group will consider the implementation issues before finalizing the ORSA guidance, we propose the following language as a means to communicate this important point to insurance groups. We believe this language is important because we know that regulators will be measuring the appropriateness of insurance groups’ enterprise risk management functions, and it is therefore important that insurance groups understand the importance of making sure that their applicable regulator understands the strengths of its program. We also believe that our proposed language provides a means for the analyst to be as efficient as possible when considering sections 2 and 3 of the ORSA, thus reducing the potential concern regarding regulatory resources for the analysis process.
Proposed Language-Paragraph 3 of Page 5

In addition to the ORSA Summary Report, the insurer should internally document the ORSA results to facilitate a more in-depth review by the regulator through analysis and examination processes. Insurers should be prepared to describe the ORSA results during a regularly scheduled examination, targeted on-site examination or a specific meeting with the insurance department, since face-to-face meetings are considered more effective in allowing both parties the opportunity to understand each other. In some situations, the state regulator may prefer this to the ORSA Summary Report, and insurers are encouraged to determine what is most effective and efficient for the state regulator. However, the frequency for such a review may depend on a myriad of factors, such as the nature and complexity, financial position, and/or prioritization of the insurer, as well as external considerations such as the economic environment. For example, major changes to an insurer’s risk management policies, or specific concerns from a regulator regarding the insurer may result in the state requesting additional information about the policies through the state’s analysis or examination processes.

Group Capital-Cla rifying Language

NAMIC proposes the following language be added to the end of the Group Capital Assessment subsection within Section 3. We believe this language clarifies the intent of the Working Group, that it be available to increase the regulators understanding of the company, and further that it not be perceived as a group capital requirement.

Proposed Language-Paragraph 1 of Page 10

The goal of the assessment is to provide an overall determination of group risk capital needs for the insurer, based upon the nature, scale and complexity of risk within the group and its risk appetite, and to compare that risk capital to available capital to assess capital adequacy. While recognizing that U. S. insurance regulation is based on a legal entity framework, a group capital and solvency assessment will be informative to regulators in understanding the risks (i.e. contagion risk) and benefits (i.e. source of strength) that group membership brings to individually regulated legal entities. This Group Risk Capital and Prospective Solvency Assessment is not and should not be perceived as a group capital requirement. Group risk capital should not be perceived as the minimum amount of capital before regulatory action will result (e.g. the triggers in US Risk-Based Capital (RBC) for insurance legal entities); rather, it should be recognized that this is the capital needed within a holding company system to achieve the group’s business objectives.

Implementation Concerns

As we have also commented in the past, we are concerned about the resources necessary for regulators to review and analyze the ORSA. Although the above may limit some of the pressure on the analysis process, we have concerns regarding the ability of the states to coordinate and complete the detailed examination of the 200 or so groups that will be completing an ORSA. As previously suggested in our Aug. 25 comment letter, we suggest the new Examination Coordination (E) Working Group develop a schedule for when the examinations of section 1 will be rolled out to groups subject to the ORSA. Once the schedule is determined, the lead states can notify the insurers/insurance groups, and regulators and insurance groups can begin to prepare for the ORSA. The development of a schedule will also facilitate an ongoing staggering of such reviews, with the understanding that limited scope examinations may be necessary on some insurers/insurance groups that were not originally expected.
Closing Comments
Finally, we remind the Working Group that insurers have survived the current financial crisis rather well. Consequently, as you develop regulatory guidance for reviewing the ORSA, we urge you to develop broad based procedures that allow the regulator to better understand the company, not to force the company to change the way it conducts its business.

Respectfully,

Dan Daveline
Financial Regulation Manager
October 28, 2011

Director John Huff, Co-Chair
NAIC Group Solvency Issues (EX) Working Group
Missouri Department of Insurance
301 W. High Street, Suite 530
Jefferson City, Missouri 65101

Senior Associate Commissioner Danny Saenz, Co-Chair
NAIC Group Solvency Issues (EX) Working Group
Texas Department of Insurance
333 Guadalupe Street
Austin, Texas 78701

Re: RAA Comments on NAIC ORSA Guidance Manual and Form B Proposal

Dear Director Huff and Senior Associate Commissioner Saenz:

The RAA is the leading trade association of property and casualty reinsurers and life reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis. RAA members maintain sophisticated enterprise risk management (ERM) systems and many are, or will be subject to ORSA requirements in other jurisdictions.

The RAA appreciates the opportunity to comment on the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual (the guidance manual) exposure draft dated October 14, 2011. We have also included our comments on the draft Form B proposal that was exposed for comment on October 24, 2011. We appreciate the considerable effort involved in drafting the proposals and support the development of an appropriately designed U.S. ORSA requirement.

General Comments on the Guidance Manual

The RAA believes that an appropriately designed ORSA requirement will encourage the improvement of ERM processes among U.S. insurance enterprises, will enhance regulators’ understanding of how insurers evaluate and manage their risks and will help to ensure that the existing high quality standard of U.S. regulation is recognized by other jurisdictions. We believe that the most important and basic element of a properly designed ORSA requirement is that it be principles-based and flexible so that compliance is a logical extension of an entity’s or group’s existing ERM processes.
The RAA is pleased that in large measure, the latest draft of the guidance manual includes the design features that we believe are necessary for an effective U.S. ORSA requirement. We applaud the diligent efforts of the working group and of the NAIC staff in developing this latest draft, which is substantially improved over the two earlier versions. In summary, we believe that the guidance manual predominantly meets the RAA’s objectives for the ORSA in the following areas:

1. The ORSA should be principles-based and flexible so that compliance is a logical extension of the reporting entity’s existing ERM processes.
2. The ORSA filing should be a very high level summary document. The details of the entity’s ERM processes, risk management policies and quantitative capital measurements should be reviewed in the context of on-site financial examinations.
3. The ORSA should not be mandated at the legal entity level. It should be filed on the same basis used in management’s internal ERM processes.
4. Regulators should accept group level ORSA’s filed by offshore domiciled groups as sufficient to comply with the US requirement. Similarly, other jurisdictions should accept U.S. domiciled groups’ ORSA.
5. The ORSA requirements should not be overly prescriptive.

We believe that the guidance manual could be improved or that other NAIC implementation guidance needs to be developed to address the RAA’s final two objectives for the ORSA:

6. The ORSA should not create new entity or group level capital requirements or RBC action levels (i.e. either economic or statutory).
7. Evidence of sophisticated and effective ERM processes should result in a regulatory benefit to the reporting entity/group.

The RAA believes that the guidance manual should be improved to address objective No. 6 and clarify that Section 3 does not create a new minimum group or entity regulatory capital requirement. We also believe that further regulatory guidance should be developed in the NAIC’s financial examination and analysis handbooks or Model Examination Law to address objective No. 7. We understand that it is the intention of the working group to refer issues surrounding the integration of the ORSA into the U.S. solvency framework to other NAIC committees. However as described below, these issues are critical to the success of the ORSA implementation and should be given due consideration before the guidance manual is finalized.

**General Comments on the Form B Exposure**

The RAA appreciates that the question of the nature and placement of the statutory authority for the ORSA requirement has been difficult. We are concerned that the issue has not been given enough consideration due to some states’ apparent desire to incorporate the ORSA authority in amendments to the holding company laws and regulations planned for the 2012 legislative sessions. Because the working group has considered and reconsidered several different alternatives to address this issue and due to the short (five day) exposure period, we have not had sufficient time to develop thorough comments or suggest alternatives.

We have several significant concerns about the Form B proposal and make the following general comments:
- Placement in the Form B implies that each insurance legal entity will file the ORSA summary document.
- Placement in the Form B does not provide a mechanism for coordinating the review of the ORSA by the various states, thus potentially subjecting the entity or group to multiple uncoordinated state reviews of ERM processes.
- Nothing in the Form B guidance establishes the necessary explicit confidentiality protections or addresses the sharing of the ORSA document and related supporting information, which is proprietary and highly sensitive.

The RAA believes that the statutory authorization for the ORSA should provide a clear link to the risk-focused examination process. The examination guidance should provide for a regulatory benefit for entities or groups that demonstrate highly developed and effective ERM practices. We do not believe it is necessary or desirable that the ORSA be filed in every jurisdiction in which one insurer of the group is domiciled. Instead, the statutory authority should make clear that, like the Form F filing, the ORSA should be filed only with lead state and that the report will be shared only to the extent confidentiality protections can be assured. As a result, it is our preliminary conclusion that the best source for statutory authority for the ORSA should be in the state examination statutes.

The attachment to this letter provides several suggested amendments to the guidance manual.

Thank you for the opportunity to comment on the draft NAIC ORSA Guidance Manual. We look forward to working with the NAIC to finalize the U.S. ORSA requirement. Should you have comments or questions about this letter, please contact me.

Sincerely,

Joseph B. Sieverling
Senior Vice President

cc: David Vacca, NAIC
Attachment - Suggested Amendments to the Guidance Manual

Introduction, Page 5, paragraph 4 – Amend this paragraph as provided below:

An internationally active insurer that is required to provide a group ORSA for a group-wide supervisor in a non-U.S. jurisdiction, may be able to satisfy the NAIC’s filing requirement by providing that ORSA report. This ORSA report will be reviewed in relation to the principles expected of regimes as outlined in the International Association of Insurance Supervisors (IAIS) Insurance Core Principles (ICP) 16 Enterprise Risk Management (ERM), as well as requirements of the U.S. NAIC ORSA Guidance Manual to determine if additional information is needed. The U.S. state regulator might also review and consider the applicable jurisdiction’s FSAP and IAIS Self Assessment in relation to ICP 16. One of the NAIC’s goals is to avoid creating duplicative regulatory requirements for internationally active insurers.

Rationale – It is unnecessary for the state regulator to the review the ORSA in relation to ICP 16 or to review the other jurisdictions’ FSAP assessment. The former is unnecessary to determine whether the ORSA summary filing complies with the state’s ORSA requirement or the NAIC guidance manual. The latter is both unnecessary and proposes an inappropriate role for a U.S. regulator to review another jurisdiction’s compliance with ICP 16. All that should be necessary is for the state to determine whether the ORSA filing meets the state’s requirements, and if it does not or if further details are necessary, they should be requested in conjunction with the risk-focused examination process. While we are very supportive of this section, it contains unnecessarily detailed guidance for the regulator that is not consistent with the purpose of the guidance manual, which is to provide guidance for industry for compliance with the U.S./lead state’s ORSA requirement.

Section 2, Page 7, Paragraph 1 - Delete “identified in Section 1” in first sentence.

Rationale - The detailed list of risk categories has been deleted from section 1. Examples of more general risk categories are provided at the end of this paragraph.

Section 2, Page 7, paragraph 5 – Delete “, however the regulator may have input regarding the level of stress that company management should consider for each risk category” at the end of the first sentence.

Rationale – This language implies that the regulator may dictate the level and type of stress scenarios that the reporting entity should consider. This is improper and is inconsistent with the “own risk” in ORSA. The ORSA should reflect management’s not the regulator’s perspective on risk. If the regulator believes the insurers risk assessment and ERM is inadequate, then such a determination should result in extended examination procedures and perhaps management comments in the examination report.

Section 2, Page 7, paragraph 5 – Delete “The regulator may provide input to an insurer’s management on a stress factor that should be applied for a particular assumption that is not stochastically modeled. For assumptions that are stochastically modeled, the regulator may provide input on the level of the measurement metric to use in the stressed condition or specify particular parameters used in the economic scenario generator. The aforementioned input provided by regulators will likely occur during either the financial analysis process and/or the financial examination process” at the end of this paragraph.
Section 3, Page 8, Paragraph 2 - Amend the introductory paragraph of Section 3 to clarify its purpose as follows:

Section 3 of the ORSA Summary Report should document how the company combines the qualitative elements of its risk management policy and the quantitative measures of risk exposure in determining the level of financial resources it needs to manage its current business and over a longer term business cycle, such as the next 2-5 years. **This group risk capital and prospective solvency assessment is not intended as an additional minimum regulatory capital standard.** Rather, the purpose of this section is to provide regulators with insight into the reporting entity’s own perspective on group-level risks and capital available to support those risks in the future.

Rationale – Clarify the purpose of this section consistent with the ORSA’s second primary goal stated in the introduction of the guidance manual. Make it absolutely clear that Section 3 of the ORSA does not create a new minimum regulatory capital standard.

Section 3, Page 8, Paragraph 5 – Delete this paragraph.

Rationale – The grant of authority to request this assessment more than annually if circumstances change and for the ongoing supervisory plan implies that this is a regulatory minimum capital requirement and provides a similar effect as triggering an RBC action level.

Section 3, Page 10, Paragraph 2 – Delete the last sentence that reads “If the insurer does not have the necessary financial capital or quality of capital to execute the 2-5 year business plan, the insurer should describe the management actions it will take or describe any modifications to the business plan it has made to resolve the adequacy of its financial capital, including potential other resources of capital.”

Rationale - This language implies that this is a regulatory minimum capital requirement and provides a similar effect as triggering an RBC action level.
Director John M. Huff  
Missouri Department of Insurance  
301 West High Street, Room 530  
Jefferson City, MO 65101  

Sr. Associate Commissioner Danny Saenz  
Texas Department of Insurance  
P.O. Box 149104  
Austin, TX 78714-9104  

Dear Director Huff and Associate Commissioner Saenz:  

I am writing to you on behalf of Transamerica Life Insurance Company and its affiliate insurers. Transamerica appreciates the opportunity to provide comments on the draft NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual that was exposed for comment by the Group Solvency Issues Working Group (GSIWLG) on October 14, 2011.

Transamerica supports state regulators’ assessment of enterprise risk management (ERM) in regulated companies. We welcome recent improvements over the draft ORSA Guidance Manual, including the elimination of what could have been interpreted to be requirements to compile and submit voluminous data in Section 1. We also support elimination of the appendices that were attached to the proposed Section 2. These changes and others should help shape the ORSA Summary Report into a succinct, meaningful, and useful document for regulators.

However, as described in the following sections, we continue to have concerns about the proposal. As a consequence, we urge the following steps:

1. The Guidance Manual should not be adopted until regulators have come to a consensus and have clearly articulated how the ORSA Summary Report will and will not be viewed and used. This language should be inserted into both the Guidance Manual and the Financial Condition Examiners Handbook.

2. Significantly greater time needs to be spent reviewing and fine-tuning the language within the Guidance Manual. The current exposure reflects major, last-minute changes, and many inconsistencies come to light only upon thorough review. An additional public exposure period is warranted, followed by a careful review of submitted comments.

3. Modifications to the Examiners’ Handbook, the enabling language from a legal standpoint, and the Guidance Manual should be considered as a package in order to ensure that the entire framework is coherent, consistent, and legally sound.
Playing field concerns

We do not believe that the GSIWG has adequately described how regulators intend to use the information contained in the ORSA within the scope of their responsibilities. Absent such an explicit description, unintended playing field imbalances within the industry may result.

In reviewing the Guidance Manual, we are troubled by the repeated use of language that suggests the possibility that some regulators may view the quantitative elements of the ORSA Summary Report (Sections 2 and 3 of the Summary Report) as a basis for informal regulatory action. We highlight examples of such below:

- Introduction, page 3: “The ORSA has two primary goals: …2. To provide a group-level perspective on risk and capital, as a supplement to the existing legal entity view” (emphasis added)

- The guidance for Section 2 effectively endorses the regulator mapping group level results to legal entities (third paragraph) and “providing input” on assumptions that are to be used (last paragraph).

- Section 2, page 8: “By identifying each material risk category independently…insurer management and the regulator are in a…position to evaluate certain risk combinations that could cause a [sic] insurer to fail.”

- Most significantly, Section 3 includes at least eight references to either “capital adequacy” or “adequacy of [the insurer’s] financial capital,” as well as other language such as “requirements” that equates internal risk capital objectives with regulatory minimum floors. For example, the second paragraph in the Group Risk Capital Assessment section includes the phrase: “This section is intended to help regulators understand insurers’ capital adequacy in relation to their risk profiles.”

In addition, in a recent internet blog post, a member of the NAIC staff described the ORSA in the context of regulatory intervention: “The use of the ORSA expands upon the current process of risk-focused surveillance, though, and introduces a company’s own stress testing and group capital assessment to aid financial assessments of hazardous financial condition.”

These disconcerting statements demonstrate the need for regulators to carefully consider what they expect from an assessment of insurers’ ERM frameworks. Although an insurer’s ERM will almost always include quantitative elements, the benefits to regulators are qualitative. Do insurers understand the risks they have undertaken? Do companies have the processes in place to successfully execute their business strategy? Do they have reporting tools in place to ensure that an excessive buildup of risk does not occur? Do they have strategies to mitigate excessive risk positions? A review of ERM should help regulators get a “feel” for such matters, helping them identify the insurers that warrant a greater or lesser level of regulatory scrutiny.

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At the same time, the quantitative elements of internal ERM/ORSA processes must NOT be the basis for requiring additional capital or even an “action plan” to rectify economic/risk capital deficiencies. In the U.S. framework, this is the purpose of the RBC system, and U.S. regulators already possess the authority needed to address inadequately capitalized insurers.

Our concerns about the regulatory use of the ORSA are based on potential playing field issues:

- Companies employ widely varying methodologies for quantifying risks and determining available and required risk (economic) capital. For larger insurance groups, differences in methodology could have an impact in the billions of dollars.

- Companies with more prudent and rigorous methods could be motivated to change these approaches in order to avoid the hassle of additional capital requirements or regulatory scrutiny. In a sense, this would create a perverse incentive that would be contrary to the long-term interests of regulators.

- Any attempt by regulators to increase surveillance solely on the basis of quantitative ERM outcomes will perversely create playing field advantages for insurers that have less rigorous methods and commensurate disadvantages for insurers that have more prudent and rigorous methods.

**Language drafting problems**

In addition to the above overriding concern, we note that in a number of instances, the phrasing in the Guidance Manual is confusing, inconsistent, or unrealistic. Below are some examples:

1. The Manual contains conflicting statements over which insurers are subject to the requirements. In the Introduction, the first stated goal of the ORSA is to “foster an effective level of enterprise risk management at all insurers, through which each insurer identifies and quantifies…” (emphasis added). A few paragraphs later, part A of the Introduction identifies criteria for some insurers to be exempt from the requirements.

2. Part A and the description of Section 3 of the ORSA both suggest that the Commissioner can request ORSAs based on specific circumstances. This implies that insurers can and should readily have such information available at a moment’s notice. Yet the development of an ERM framework and ORSA Summary Report from scratch may take years and require substantial internal resources to execute.

   We also suspect that regulators may be vastly underestimating the resources that insurers will be required to expend on the ORSA. European groups, including ours, have had to dedicate many personnel full time to the development of ORSAs for Solvency II purposes.

3. Part C of the introduction suggests that Section 1 of the ORSA Summary Report could “represent a voluminous amount of information” and that it may be appropriate to reference “other explanatory documents.” These phrases were drafted before the elimination of much of the
prescriptive content in Section 1 and may no longer apply. If it is still possible for the Section 1 content to be "voluminous," then we would suggest that further modifications need to be made to Section 1. Otherwise, the phrases, along with related language, should be deleted.

4. In the guidance for Section 2, language in both the first and second paragraphs ("each material risk category identified in Section 1," "detailed descriptions and explanations of the risks identified") assumes that major risks have been previously identified in Section 1. The guidance for Section 1, however, no longer includes language requiring insurers to identify the major risks to which they are exposed. This language should be re-inserted, it would seem.

5. The guidance for Section 2 of the Summary Report includes a paragraph about risk tolerance statements. Because risk tolerance statements are part of the requirements for Section 1 of the Summary Report, this paragraph seems out of place.

6. The final paragraph on page 7 is conceptually confusing. The second sentence reads: "Unless a particular assumption is stochastically modeled, the group’s management will be setting their [sic] assumptions regarding the expected values based on their [sic] current anticipated experience studies and what they [sic] expect to unfold over the next year." At least three issues arise within this sentence. First, stochastic modeling is a way to reflect uncertainty within an estimate or estimates. Even if stochastic modeling is used, an assumption is made about future expectations within the stochastic scenarios. Second, "anticipated experience studies" is an oxymoron: anticipated experience is future; experience studies report and summarize what has occurred in the past. Third, assumptions are set for the entire projection period, not just the next year. More generally, the entire paragraph serves no real purpose and should be deleted, as should the subsequent paragraph at the top of page 8.

7. The guidance for Section 2 of the ORSA Summary Report indicates that it should include "results under both normal and stressed environments" (second paragraph, with similar language used in the final paragraph). This language was drafted to be consistent with the prescribed template in the appendices. Because the appendices have now been deleted, this language seems out of place. More importantly, we think this is unnecessary detail for a meaningful, succinct, and useful report. The actionable information relates to a company’s risk levels as compared to its tolerances.

As a result of these and possibly other drafting concerns, the Guidance Manual, as drafted, is likely to frustrate and confuse users, and the resulting ORSA Summary Reports may well fail to provide real regulatory value.

Conclusion

We understand that the NAIC's eagerness to complete the work on the Guidance Manual is based primarily on a perceived need to comply with ICP 16. Given that the ICP positions itself as an aspiration that supervisory regimes may achieve over time (paragraph 16.0.9), we think that the NAIC has ample leeway to take the additional time needed to ensure that the ORSA package comprises sound regulation. We suggest an additional public exposure of the Guidance Manual, followed by careful consideration of
interested party comments. At the same time, work on the enabling legal mechanisms should continue and language for the Examiners’ Handbook should be developed. As a final step, the entire package should be exposed and considered as a whole.

We appreciate the opportunity to comment on this important issue.

Best regards,

William J. (Bill) Schwegler
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October 28, 2011

Mr. John M. Huff, Co-Chairman
Mr. Danny Saenz, Co-Chairman
Group Solvency Issues Working Group
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

Re: Proposed Amendments to Insurance Holding Company System Model Regulation to Incorporate the NAIC Own Risk and Solvency Assessment (ORSA) Requirement

Dear Co-Chairs Huff and Saenz:

Travelers appreciates the opportunity to comment on the proposed amendments to the Insurance Holding Company System Model Regulation (Holding Company Regulation) to incorporate the requirement for insurers to perform an Own Risk and Solvency Assessment (ORSA). Travelers has an extensive Enterprise Risk Management (ERM) process that includes the assessment of risk and determination of target capital levels.

We believe that ERM is implicitly required in the Examiners Handbook and are very supportive of making the ERM requirement explicit. However, we are concerned with the proposed changes to the Holding Company Regulation due to the lack of confidentiality protections in a Form B Filing and any subsequent examination of the ORSA process under the Insurance Holding Company System Regulatory Act examination provisions. We believe that a more appropriate solution would be to add a requirement to the Annual Financial Report Model Regulation (Model Audit Rule) for insurers to file a summary ORSA report that describes the nature of the insurer’s ERM process without disclosing proprietary and confidential information about the insurer’s process. This would put the requirement for the ORSA report in an existing model that already addresses other controls that insurers have in place.

This approach could be accomplished by adding a section to the Model Audit Rule for an ORSA report similar to the existing Section 16 Management’s Report of Internal Control over Financial Reporting of the Model Audit Rule. This would:

- allow the insurer to affirm the existence of its ERM process in the ORSA report,
- keep the ORSA requirements consistent with the Internal Control over financial reporting requirements, another financial condition based requirement, and
require management to maintain the underlying documentation (Section 16E) supporting the
assertion that management is in compliance with the ORSA requirement. This documentation would also be required to be made available upon financial condition examination or analysis.

The underlying documentation of the ORSA process would then receive the strongest confidentiality protections afforded by the financial condition examination statutes.

Thank for you the opportunity to comment. We would be very pleased to discuss our views at the upcoming meeting in Washington D.C.

Sincerely,

D. Keith Bell

D. Keith Bell
dkb1143.doc