Interim Meeting  
Kansas City, MO

FINANCIAL REGULATION STANDARDS AND ACCREDITATION (F) COMMITTEE  
Tuesday, May 26, 2015  
4:00 – 5:00 p.m.  
Town Pavilion—Marquise Room—4th Floor

ROLL CALL

John M. Huff, Chair  
Missouri  
David Mattax, Vice Chair  
Texas  
Jim L. Ridling  
Alabama  
Allen W. Kerr  
Arkansas  
Gordon I. Ito  
Hawaii  
Eric A. Cioppa  
Maine  
Al Redmer Jr.  
Maryland  
Patrick M. McPharlin  
Michigan  
Adam Hamm  
North Dakota  
Joseph Torti III  
Rhode Island  
Raymond G. Farmer  
South Carolina  
Todd E. Kiser  
Utah  
Jacqueline K. Cunningham  
Virginia

AGENDA

1. Discuss Comments Received and Consider Adoption of the Revised Accreditation Preamble Related to Certain Captives and Special Purpose Vehicles—*Director John M. Huff (MO)*  
   Attachment One

2. Discuss Any Other Matters Brought Before the Committee—*Director John M. Huff (MO)*

3. Adjournment
Attachment One

Revised Accreditation Preamble and Comment Letters
To:   Director John M. Huff (MO)
       Chair, Financial Regulation Standards and Accreditation (F) Committee

From:   NAIC Staff

Date:  April 28, 2015

Re: Revisions to Part A Preamble

As directed at the 2014 Fall National Meeting, NAIC staff previously prepared a new Accreditation Preamble that would provide that certain captive insurers, special purpose vehicles and other entities assuming insurance business would be subject to the general accreditation standards, but the application would be limited to only the following lines of reinsurance business: (1) XXX/AXXX policies (which are now defined under Actuarial Guideline XLVIII (AG 48) to apply to those policies that are required to be valued under Sections 6 or 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model #830)); (2) variable annuities valued under Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43); and (3) long-term care insurance valued under the NAIC Health Insurance Reserves Model Regulation (Model #10).

The new Part A Accreditation Preamble was exposed for public comment in February 2015. During the exposure period, there was some confusion regarding the intended scope of the Preamble, and in order to provide clarification, a memo dated Mar. 17 from Director Huff and Superintendent Torti was distributed to all commissioners, directors and superintendents. At the 2015 Spring National Meeting, the Committee discussed comments received during the exposure period and instructed NAIC staff to revise the Preamble to clearly indicate that only those captives that reinsure the lines of business noted above would be included in the scope of the Accreditation Program.

Attached please find draft revisions to the Preamble for Part A prepared by NAIC staff. Please note the following items in the draft:

1) The revised Preamble indicates that the type of insurer as discussed in the Preamble (life/health, property/casualty, captive, etc.) is based on the statutes under which it is organized, rather than the type of insurance it writes or reinsurers.

2) The revised Preamble specifically notes that the section titled “Life/Health and Property/Casualty Insurers” does not apply to insurers organized under a state’s captive statutes.

Attachment
NAIC POLICY STATEMENT ON
FINANCIAL REGULATION STANDARDS

PART A: LAWS AND REGULATIONS

Preamble for Part A

Purpose of the Part A Standards
The purpose of the Part A: Laws and Regulations standards are to assure that an accredited state has sufficient authority to regulate the solvency of its multi-state domestic insurance industry in an effective manner. The Part A standards are the product of laws and regulations that are considered to be basic building blocks for effective financial solvency regulation. A state may demonstrate compliance with a Part A standard through a law, a regulation, or an administrative practice that implements the general authority granted to the commissioner, or any combination thereof, which achieves the objective of the standard. The term “state” as used herein is intended to include any NAIC member jurisdiction, including U.S. territories. The term “commissioner” means commissioners, directors, superintendents or other officials who by law are charged with the principal responsibility of supervising the business of insurance within each state.

Scope of the Part A Standards (Excluding Risk Retention Groups Organized as Captives)

Life/Health and Property/Casualty Insurers
The following Part A standards apply to a state’s domestic insurers licensed and/or organized under its as life/health and property/casualty insurers statutes (life/health or property/casualty insurer), but only if the insurer is a multi-state insurer. NOTE: This section does not apply to insurers organized under a state’s captive statutes. For purposes of Part A, a life/health or property/casualty insurer that meets any of the following conditions is considered to be a multi-state insurer and subject to the Part A standards:

1. A property/casualty or life/health domestic insurer that is licensed in at least one state other than its state of domicile.

2. A property/casualty or life/health domestic insurer that is operating in at least one state other than its state of domicile.

3. A property/casualty or life/health domestic insurer that is accredited or certified as a reinsurer in at least one state other than its state of domicile.

4. A property/casualty or life/health domestic insurer that is reinsuring business that was directly written by the ceding insurer in at least two states.

5. A property/casualty domestic insurer that is accepting business on an exported basis as an excess or surplus line insurer in at least one state other than its state of domicile.
Captive Life/Health Reinsurers

The following Part A standards apply to a state’s domestic insurers licensed and/or organized under its captive or special purpose vehicle statutes or any other similar statutory construct (captive insurer) those domestic captive life/health insurers, special purpose vehicles or any other entities that reinsure business that was directly written by a ceding insurer in at least two states, but only with respect to the following lines of business:

1. Policies that are required to be valued under Sections 6 or 7 of the Valuation of Life Insurance Policies Model Regulation (Model #830) (commonly referred to as XXX/AXXX policies). The application of this provision is intended to have a prospective-only effect, so that captive insurers, special purpose vehicles and any other entities that reinsure these types of policies will not be subject to the Part A standards if the policies assumed were both (1) issued prior to Jan. 1, 2015, and (2) ceded so that they were part of a reinsurance arrangement as of Dec. 31, 2014.

2. Variable annuities valued under Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43). [Drafting Note: Effective date for compliance to be determined.]

3. Long term care insurance valued under the Health Insurance Reserves Model Regulation (Model #10). [Drafting Note: Effective date for compliance to be determined.]

The NAIC Executive (EX) Committee adopted the XXX/AXXX Reinsurance Framework in concept on Aug. 7, 2014, and the NAIC is currently in the process of adopting actions necessary for its full implementation. With regard to a captive insurer, special purpose vehicle, or any other entity assuming XXX/AXXX business, the entity is deemed to satisfy the Part A accreditation requirements if it satisfies the XXX/AXXX Reinsurance Framework requirements adopted by the NAIC and in effect as of that time. The Part A standards with respect to entities assuming variable annuities and long term care reinsurance business are effective with respect to both currently in-force and future business. [Drafting Note: The effective dates for variable annuities and long term care insurance and their application to in-force business need further discussion].

Other Types of Insurers

For clarity purposes, the scope of the Part A standards excludes those insurers licensed as fraternal orders and title insurers. The scope of the Part A standards also excludes health organizations, except that compliance with the “Capital and Surplus Requirement” standard is required for entities licensed as health organizations (including health maintenance organizations, limited health service organizations, dental or vision plans, hospital, medical and indemnity or service corporations, or other managed care organizations) to the extent the insurance department regulates such entities. This definition does not include an organization that is licensed as either a life/health insurer or a property/casualty insurer, which are subject to the full Part A accreditation standards.

[List Part A standards here.]
Scope of the Part A Standards (Risk Retention Groups Organized as Captives)
The following Part A standards apply to RRGs incorporated as captive insurers. This scope includes RRGs that are chartered in the accredited state and registered or operating in at least one other state.

[List Part A standards for captive RRGs here.]
May 14, 2015

The Honorable John M. Huff  
Director, Missouri Department of Insurance, Financial Institutions and Professional Registration  
Chair, NAIC Financial Regulation Standards and Accreditation (F) Committee  
c/o Ms. Julie Garber, CPA, FLMI, Are  
Senior Accreditation Manager  
National Association of Insurance Commissioners  

Via email: Jgarber@naic.org  

RE: Exposure draft of Changes to Preambles to Part A and Part B Accreditation Standards  

Dear Director Huff:

Vermont appreciates the opportunity to provide our comments on the recent (4/28/15) exposure draft of proposed changes to the Preambles of the Part A and Part B Accreditation Standards.

Vermont has no objection to the proposed changes to the Preambles as written. We look forward to working with the committee to decide the open effective dates for variable annuity and long term care products.

Sincerely,

David F. Provost  
Deputy Commissioner, Captive Insurance
May 15, 2015

The Honorable John Huff
Director
Missouri Department of Insurance
Fin. Institutions & Prof. Registration (DIFP)
P.O. Box 690
Jefferson City, Missouri 65102-0690

RE: Revisions to Preambles 4-28-15 (Part A of the Accreditation Standards)

Dear Director Huff:

The ACLI¹ appreciates the opportunity to once again provide our comments on the recently exposed redraft of the Preamble (Part A) to the Accreditation Standards that would now scope in captive reinsurers and special purpose vehicles that reinsure the following types of life/health business: (1) XXX/AXXX reserves; (2) variable annuities; and (3) long term care insurance.

Introduction

ACLI continues to support life insurers’ use of captives and their appropriate regulation. ACLI is committed to ensuring that captive reinsurers can meet their reinsurance obligations.

Executive Summary

ACLI is mindful of the significant pressure concerning captive reinsurers that the NAIC and state regulators are facing from outside interests. As previously stated in our comment letter dated March 20, 2015, we feel that significant progress was made when the NAIC adopted the XXX/AXXX Reinsurance Framework (hereafter referred to as “Framework”), principally authored by Rector and Associates, and we note its recognition in these new revisions to the Preamble of Part A of the Accreditation Standards (although we reiterate technical issues later in this letter).

We also appreciate the actual formation of the Variable Annuities Issues (E) Working Group to oversee the NAIC’s efforts to study and address the regulatory issues resulting in variable annuity captive reinsurance transactions. We also believe that a review of long-term care (LTC) captive reinsurers is warranted before making changes to Part A Accreditation Standards.

¹ The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Learn more at www.acli.com.
For reasons stated below, ACLI does not support the proposed rewrite of the Preamble of Part A Accreditation Standards to include a new section on captive insurers or special purpose vehicles that reinsure life insurance policies valued under Model Regulation #830, variable annuities valued under AG 43, and long term care insurance valued under the Health Insurance Reserves Model Regulation #10.

**Continued Concerns with the Proposal as Written**

Our overarching concerns continue to be summarized as follows:

1. Concerns with application of Part A Accreditation Standards to captive insurers licensed in only one state;
2. Concerns with lack of grandfathering for VA and LTC captive reinsurers;
3. Concern with application of Part A Accreditation Standards to VA captive reinsurers;
4. Concern with application of Part A Accreditation Standards to LTC captive reinsurers;
5. Technical concerns in regards to application to Regulation XXX/AXXX captive reinsurers; and,
6. Concerns with absence of seasoning period.

**1. Concerns with Application of Part A Accreditation Standards to Captive Insurers Licensed in Only One State**

According to the NAIC’s Pamphlet on the Accreditation Program, the purpose of the Accreditation Standards is as follows:

1. It allows for inter-state cooperation and reduces regulatory redundancies;
2. If a company is domiciled in an accredited state, the other states in which that company is licensed and/or writes business may be assured that the domiciliary state insurance department is adequately monitoring the financial solvency of that company; and,
3. In lieu of performing its own examination, a state may accept the examination report prepared by an insurance department that was accredited at the time of examination.

Under this description of purpose, it is difficult to consider captive reinsurers as having a multi-state presence. They are licensed to operate in, at most, two states (ceding company domicile and captive reinsurer domicile), and, in many cases, only one. States in which captive reinsurers are not licensed to do business have no reason to examine the company, and are not authorized to do so. Those states protect the consumer by regulating the ceding companies directly doing business in their states. And, the domiciles of the ceding company and captive reinsurer are already examining the captive transactions, both at the time of the transaction and on an ongoing basis. Therefore, there is no practical regulatory reason for captive reinsurers to be subjected to accreditation requirements any more so than any unauthorized reinsurer. As a matter of fact, the proposed change would have no effect on the regulation of offshore captive reinsurers. It would seem to be a step backwards to only allow captive reinsurers that are licensed outside of the U.S. to enter into captive transactions with U.S. insurers.

**2. Concerns with Lack of Grandfathering for VA and LTC Captive Reinsurers**

For VA captive reinsurers and LTC captive reinsurers, there is the continued apparent retroactive application of Accreditation Requirements for decisions already made by states to permit the formation of these captive reinsurers based on the laws in effect at the time the captives were formed. A majority of state legislatures have given their insurance departments certain authorities relative to captive insurers and have adopted laws to govern those insurers. This proposal, without appropriate due process, would circumvent those authorities and require a
state to retroactively apply a different set of requirements to maintain accreditation. It is
questionable, at best, whether the states would have the constitutional authority to make those
changes. The net effect of retroactive application of these requirements would be to suggest
that these states have been out of compliance since the formation of these captive reinsurers.
Under that approach, the NAIC would have been ignoring this non-compliance, allowing many
more captive reinsurers to be formed in these states, but would now be determining that these
states never should have been allowed to keep their accreditation status. We believe that
retroactive application of this amendment would call into question the effectiveness of the entire
NAIC Accreditation Program.

3. Concerns with Application of Part A to VA Captive Reinsurers

ACLI greatly appreciates the “safe harbor” established by the proposal for Regulation XXX/AXXX
captive reinsurers. This safe harbor recognizes the industry’s need for such captive transactions,
but put a regulatory structure around those transactions that is uniform from state to state while
maintaining a conservative level of admitted assets backing the transaction (the Framework).

However, we note that no such “safe harbor” exists for VA captive reinsurers. These types of
captives serve important purposes in allowing industry to deliver variable annuities to the
marketplace without increasing solvency risk. It is inappropriate to place a de facto moratorium
on these captive reinsurers without taking the time to understand their purpose, the way they
operate, and their risk to the U.S. solvency regime. This de facto moratorium is a result of the
fact that, consistent with existing state captive laws, most VA captive reinsurers have different
capital requirements, different investment limitations, and are not subject to the Actuarial
Opinion and Memorandum Regulation (AOMR). In general, VA captive reinsurers also receive
permitted accounting practices from their domestic regulator. However, that does not mean that
VA captive reinsurance transactions increase solvency risks.

Unlike Regulation XXX/AXXX captive reinsurance transactions, VA captive reinsurance
transactions are not typically designed to finance reserves, but rather are intended to properly
align the accounting of the liabilities of VA guarantees with the accounting of the hedge assets
that help mitigate the guarantee risk to the insurer, providing a much more reliable
measurement of the net income and capital positions of these blocks of business. Current NAIC
reserve, asset valuation, and capital requirements have a mixture of book value and market
value accounting, which produces artificial volatility and unpredictability of statutory
requirements. By using VA captive reinsurers, companies can get more predictable outcomes,
thus facilitating risk management, which is to the benefit of regulators, consumers, and
companies alike.

We ask that this part of the proposal be held, pending the conclusions of the newly formed NAIC

4. Concerns with Application of Part A to LTC Captive Reinsurers

ACLI continues to be unaware of any widespread use of LTC captive reinsurers, and thus we do
not understand their inclusion in this proposal. Once again, we would urge the NAIC to endeavor
to determine the reasons that LTC captives have been formed, and to try to address the
underlying problems before placing a de facto moratorium on these reinsurance transactions.
5. Technical Concerns with Application to Regulation XXX/AXXX Captive Reinsurers

As we stated in our previous letter, the XXX/AXXX Reinsurance Framework prescribes requirements on the ceding company, not the captive reinsurer. As currently written the language as included in this exposure draft appears to require the captive reinsurer to meet Framework requirements to be deemed in compliance with Part A standards. This wording should be corrected to match the intent. As an aside, the safe harbor will require communication between the domestic regulator of the ceding company and the domestic regulator of the captive as to compliance with the Framework.

6. Concerns with Absence of Seasoning Period

We believe the proposed changes to Part A are sufficiently significant that the NAIC should hold this draft until the Variable Annuities Issues (E) Working Group completes its work. That group’s conclusions will inform the F Committee regarding what, if any changes in Part A are needed. In any event, ACLI continues to have concerns with the apparent immediate application of these standards to states without any kind of seasoning process that is normally included when new solvency requirements are considered for inclusion in Part A. It seems to us that upon adoption by the NAIC, those states that have permitted VA and LTC captive reinsurers would immediately be out of compliance and be at risk of losing their accreditation. We ask that a seasoning period be included in any future draft of the Preamble.

Conclusion

ACLI believes that captive reinsurance arrangements exist for legitimate business purposes and do not pose inappropriate solvency risk to the ceding insurer. As such, we urge the NAIC to complete its review of any potential concerns and solutions to the underlying problems that VA and LTC captive reinsurers are designed to remedy prior to adopting the currently exposed language. As noted by the exposure and specifically by members of the committee, there are still open questions with regards to retroactivity to existing captives as well as no true definition of any seasoning period.

Due to the lack of addressing grandfathering and seasoning period as well as the continued absence of a safe harbor for either VA captives or LTC captive arrangements, ACLI does not support the current exposure draft. Furthermore, we do not believe that the changes proposed will enhance policyholder protection, which is best done at the direct writing company level. Finally, this effort continues to appear to be a step backward in addressing the use and regulation of captive reinsurers. We thank you for your consideration of our views and look forward to working with you on this issue.

Sincerely,

[Signature]

Steven M. Clayburn, FSA, MAAA

cc: Members, NAIC Financial Regulation Standards and Accreditation (F) Committee
Julie Garber, NAIC
BY E-MAIL

May 18, 2015

The Honorable John M. Huff  
Chair, NAIC Financial Regulations Standards and Accreditation (F) Committee

Attention: Julie Garber (jgarber@naic.org)

Re: Revised Part A Preamble to the Accreditation Standards

Dear Director Huff,

New York Life appreciates the opportunity to comment on the recent exposure of additional revisions to the new preamble to Part A of the Accreditation Standards.

We fully support the additional revisions. When the NAIC first exposed the new preamble for comment in March, some regulators and interested parties expressed concern that the preamble might be interpreted to bring all types of captives within its scope, and not just life insurer captives. We believe that the proposed revisions to the new preamble address this concern.

Our views on the substance of the proposal have not changed since we first commented on March 20. We strongly support applying accreditation standards to state laws and regulations governing captives assuming XXX, AXXX, variable annuity and long-term care business. In fact, for the reasons we outlined on March 20, we believe the scope of the proposal should be expanded to cover all life insurer captives.

For reference, our March 20 comment letter is attached as Exhibit A.

* * *

We are grateful for your time and attention to our comments. If you would like to discuss this letter with us, please let us know.

Sincerely,

George Nichols, III  
Senior Vice President in Charge of the Office of Governmental Affairs

Joel M. Steinberg  
Senior Vice President  
Chief Actuary & Chief Risk Officer  
New York Life Insurance Company
BY E-MAIL

March 20, 2015

The Honorable John M. Huff
Chair, NAIC Financial Regulations Standards and Accreditation (F) Committee

Attention: Julie Garber (jgarber@naic.org)

Re: Revised Part A Preamble to the Accreditation Standards

Dear Director Huff,

New York Life offers the following comments in general support of the recent exposure draft of a new preamble to Part A of the Accreditation Standards that would apply the standards to captives assuming XXX/AXXX, variable annuity and long-term care business (the “Accreditation Proposal”).

Strengthening State-Based Regulation

New York Life supports the state-based system of insurance regulation. It is for this reason that we have advocated passionately during the past several years for fundamental reform of the regulation of life insurer captive transactions. It is also why we strongly support the Accreditation Proposal. Captive transactions in the life insurance industry threaten to undermine the effective, uniform oversight of solvency that has long been a hallmark of the state-based system. These transactions often result in circumvention of the uniform regulatory protections and robust public disclosure that help assure the basic promise of long-term safety and security that life insurers offer to their customers.

A Necessary Complement to the NAIC’s XXX and AXXX Framework

Last year, the NAIC took a critical first step forward by adopting a comprehensive, nationally uniform framework for the regulation of XXX and AXXX captive reinsurance. We believe the Accreditation Proposal serves as a necessary complement to the XXX and AXXX framework. If a life insurer captive assuming multi-state risk engages in transactions that fail to meet minimum standards under the new XXX and AXXX framework, it should be denied the privilege of an exemption from the regulatory standards that apply to any other life insurer.

The Importance of Including Variable Annuity and Long-Term Care Business

We strongly support the decision to bring variable annuity and long-term care captives within the scope of the Accreditation Proposal. Just as we believe that the best solution for the problem of excess conservatism that may exist within XXX or AXXX statutory reserves is a careful and measured effort to right-size those reserves, we also believe that design problems in the accounting and risk-based capital regimes for other product types should be addressed by fixing those problems directly through deliberate and transparent reform of the regulatory regime. As a matter of principle, state regulators should not sanction complex, opaque captive reinsurance
transactions in order to make *ad hoc* accommodations for insurers that find aspects of solvency regulation to be poorly designed or inconvenient in some respect.

We believe that the NAIC should build on the success of the XXX and AXXX regulatory framework and begin work on a similar set of frameworks to govern captives that assume variable annuity, long-term care and, in our view, all other types of life insurance business. Like the XXX and AXXX framework, regulatory structures to govern other types of life insurer captives should focus on oversight of ceding insurers in order to avoid creating an incentive for insurers to move captive structures offshore. Once fully developed, the regulatory framework for each type of life insurer captive could serve as a safe harbor that would exempt compliant structures from the applicable components of the Accreditation Proposal.

**A Proposal to Expand Scope**

While we appreciate and support the decision to bring variable annuity and long-term care captives within the scope of the Accreditation Proposal, we believe that the scope should be expanded to include all life insurer captives. The universe of captive structures that reinsure life insurance risk is continuously evolving, as is the pace of innovative product development, and we encourage the NAIC to take a forward-thinking position regarding how captive structures might evolve beyond XXX/AXXX, variable annuities and long-term care. For example, we note that variable universal life with secondary guarantees (VUL-SG) is a growing product category that shares many characteristics with AXXX business but is not currently included in the scope of the Accreditation Proposal. It is feasible that VUL-SG business may be ceded to a captive, if not today, then at some point in the future. While this is just one example, we encourage the NAIC to apply the Accreditation Proposal to all life insurer captives now, in anticipation of the future evolution of the use of captives.

Broadening the scope will also remove potential incentives for insurers to adapt product design in an effort to avoid enhanced regulatory oversight. If the Accreditation Proposal only addresses XXX/AXXX, variable annuity and long-term care captives, it leaves open the possibility to change product design in ways that could allow for the continued use of life insurer captives without appropriate disclosure or regulatory oversight. The result could be an extended tug of war in which companies repeatedly attempt to outmaneuver incremental efforts by the NAIC to react to problems as they arise. To avoid this dynamic, we believe the NAIC should take a more proactive approach by expanding the Accreditation Proposal to address all conceivable types of life insurer captives.

**A Proposal for Additional Disclosure**

In addition to the expansion of scope, there is one important addition that we believe should be made to the Accreditation Proposal. In some states, life insurer captives are required to prepare and make publicly available a full set of financial statements prepared on a statutory blank. We believe that in order to maintain their accreditation status, all states should be expected to require this type of public disclosure from their domestic life insurer captives, even when the captive is engaging in transactions that comply with the NAIC’s XXX and AXXX regulatory framework (or any similar framework developed to govern variable annuity, long-term care or other life insurer captives). While the new XXX and AXXX regulatory framework requires enhanced disclosure of the assets that ceding insurers use to support captive reinsurance transactions, it
does not impose new disclosure requirements directly on captives, making it difficult to understand and evaluate the use of permitted and prescribed practices by captives, as well as the assets and activities of a captive that may not be part of a reinsurance transaction that falls within the scope of the new framework.

The advantage that many insurers derive from a life insurer captive often depends on the captive’s ability to depart in various ways from NAIC-approved statutory accounting principles. By suggesting that life insurer captives should publish financial statements, we do not intend to seek the imposition of a ban on the use of permitted or prescribed practices by life insurer captives. Instead, we would like all captives to disclose the nature of these permitted or prescribed practices to the same extent that any ordinary life insurer would in its statutory financial statements. We believe strongly that this is a reasonable requirement that would impose only a modest burden on insurers and would substantially improve the understanding of these transactions by regulators and the marketplace.

* * *

We are grateful for the opportunity to comment on this important topic. If you would like to discuss this letter with us, please let us know.

Sincerely,

George Nichols, III
Senior Vice President in Charge of the Office of Government Affairs
New York Life Insurance Company

Joel M. Steinberg
Senior Vice President
Chief Actuary & Chief Risk Officer
New York Life Insurance Company
May 18, 2015

The Honorable John M. Huff
Director, Missouri Department of Insurance
Chair, NAIC Financial Regulations Standards and Accreditation (F) Committee

Via email: Julie Garber (jgarber@naic.org)

Re: Revised Part A Preamble to the Accreditation Standards (the “Accreditation Proposal”)

Dear Director Huff:

Northwestern Mutual appreciates this opportunity to reiterate our support for strengthening the state-based system of insurance regulation by including the regulation of life insurer captives within the NAIC’s financial regulation accreditation standards. Uniform solvency regulation is critical to the effectiveness and credibility of the state-based system. That means state solvency regulations should, as a general rule, apply uniformly to all reinsurers of life insurance products, captive or not.

In the case of term and ULSG captives, the NAIC has established its XXX/AXXX Reinsurance Framework to set forth a different, but uniform, treatment for captive transactions, and we support the Accreditation Proposal’s safe harbor for compliance with the Framework as a bridge towards the NAIC’s agreed future reserving standard: principles-based reserving. There is no similar basis for the NAIC to sanction varying and less stringent regulation of other life insurer captives.

For these and the other reasons set forth in our March 20 comment letter, attached for reference as Exhibit A, we support the Accreditation Proposal and urge the NAIC to go further and apply the accreditation system to the regulation of all life (re)insurance companies, captive or not. We also affirm the two technical recommendations made in our March 20 letter and add a third here. We are concerned that by linking the references to the XXX/AXXX Reinsurance Framework to the date it was approved “in concept”, August 7, 2014, and defining the safe harbor by satisfaction of the Framework requirements “as of that time”, there may be confusion that a regulatory regime could qualify for the safe harbor while ignoring key decisions made after that date (for example, the conclusion that letters of credit and their equivalents do not qualify as “Primary Security”). We doubt this is the drafters’ intent and suggest clarification. We attach as Exhibit B a marked version of the Accreditation Proposal showing specific edits (shaded in gray) to implement each of our technical recommendations.

As supporters of the state-based system of insurance regulation we appreciate this opportunity to offer these comments in support of the strengthening of that system. Please advise if you require any additional information.

Sincerely,

Steven M. Radke
Vice President – Government Relations
March 20, 2015

The Honorable John M. Huff  
Director, Missouri Department of Insurance  
Chair, NAIC Financial Regulations Standards and Accreditation (F) Committee

Via email: Julie Garber (jgarber@naic.org)

Re: Revised Part A Preamble to the Accreditation Standards

Dear Director Huff:

Northwestern Mutual welcomes the opportunity to comment on the NAIC’s proposal to bring the regulation of insurer captives within the NAIC’s accreditation standards. As supporters of the state-based system of insurance regulation, we see the accreditation program as the NAIC’s primary tool to ensure that solvency regulations meet uniform standards across the country. There is no compelling reason why insurer captives should not be subject to the same prudent reporting, reserving and capital requirements as commercial reinsurers. In order to maintain the credibility of the state system, the NAIC should move expeditiously to apply its accreditation tool to insurer uses of captives.

The proposal exposed by the F Committee addresses term, universal life with secondary guarantee, variable annuity and long-term care captives. Since life insurers use captives predominantly for these lines of business, these areas should be covered at a minimum. But, we urge the NAIC to anticipate other ways a commercial insurer or reinsurer may use a captive to obtain relief from the NAIC’s uniform solvency standards and broaden the scope of accreditation to include regulation of all such captives.

We agree with the proposal that accreditation for term and ULSG captives regulation should incorporate the Rector Framework, as this Framework reflects the standard the NAIC has settled upon, consistent with the principles-based reserving methodology to which the NAIC has committed.

However, with respect to other insurer uses of captives there is no such new end state the NAIC is working towards and therefore no basis for applying any set of solvency standards other than those to which commercial insurers and reinsurers must adhere. If refinements are needed to those state regulations, those issues should be addressed within the NAIC’s uniform standards and include uniform public disclosure of the impact of such transactions in accordance with NAIC accounting and reporting standards. This would ensure confidence in the strength of insurers' reserves and capital, and allow all interested parties to respond to financial market innovations. The NAIC should apply its standard for public disclosure of permitted practices, including disclosure of the monetary effect on net income and statutory surplus, to transactions that result in statutory reserves being supported by assets that would
not be admitted under uniform NAIC rules. Disclosure of the impact on surplus is the best way for all to see when such a transaction increases leverage.

Some will say that tightening the regulation of US captives will simply drive captive transactions offshore to even less regulated captives. That would be an undesirable result, but it is one that is within the powers of state regulators to prevent. Regulators can exercise their regulatory authority to prohibit the US-based insurers they regulate from using offshore vehicles that do not meet US standards; worries about less stringent regulation overseas are not a persuasive reason to allow less stringent regulation at home.

We also submit two technical suggestions:

- First, as we understand the accreditation program to apply to regulation and not to companies, we suggest that phrases suggesting that an entity may or may not satisfy accreditation requirements be clarified to refer instead to the regulation to which the entity is subject.

- Second, we suggest adding language to make clear that the multi-state component is satisfied even if it was not the immediate ceding company that wrote reinsured business in at least two states. In other words, the accreditation requirements should not be avoided through multiple layers of reinsurance.

As companies have operated outside of uniform standards for a number of years, we recognize that a transition period may be required for uniform standards to be enforced. It is important for the NAIC and states to expeditiously commit themselves to closing the gap between the solvency regulation for commercial insurers and insurer captives.

Please advise if you require any additional information or have any questions regarding these comments.

Sincerely,

Steven M. Radke
Vice President – Government Relations
Preamble for Part A

Purpose of the Part A Standards
The purpose of the Part A: Laws and Regulations standards are to assure that an accredited state has sufficient authority to regulate the solvency of its multi-state domestic insurance industry in an effective manner. The Part A standards are the product of laws and regulations that are considered to be basic building blocks for effective financial solvency regulation. A state may demonstrate compliance with a Part A standard through a law, a regulation, or an administrative practice that implements the general authority granted to the commissioner, or any combination thereof, which achieves the objective of the standard. The term “state” as used herein is intended to include any NAIC member jurisdiction, including U.S. territories. The term “commissioner” means commissioners, directors, superintendents or other officials who by law are charged with the principal responsibility of supervising the business of insurance within each state.

Scope of the Part A Standards (Excluding Risk Retention Groups Organized as Captives)

Life/Health and Property/Casualty Insurers
The following Part A standards apply to the regulation of a state’s domestic insurers licensed and/or organized under its laws as life/health and property/casualty insurers. A state’s insurer licensing statutes are necessarily designated as “life/health” and “property/casualty”, but only if the insurer is a multi-state insurer. NOTE: This section does not apply to insurers organized under a state’s captive statutes. For purposes of Part A, a life/health or property/casualty insurer that meets any of the following conditions is considered to be a multi-state insurer and subject to the Part A standards:

1. A property/casualty or life/health domestic insurer that is licensed in at least one state other than its state of domicile.

2. A property/casualty or life/health domestic insurer that is operating in at least one state other than its state of domicile.

3. A property/casualty or life/health domestic insurer that is accredited or certified as a reinsurer in at least one state other than its state of domicile.

4. A property/casualty or life/health domestic insurer that is reinsuring business that was directly written by the one or more direct or indirect ceding insurers, in at least two states.
5. A property/casualty domestic insurer that is accepting business on an exported basis as an
excess or surplus line insurer in at least one state other than its state of domicile.

_Captive Life/Health_ Reinsurers

The following Part A standards apply to the regulation of a state’s domestic insurers licensed
and/or organized under its captive or special purpose vehicle statutes or any other similar statutory
construct (captive insurer) those domestic captive life/health insurers, special purpose vehicles or
any other entities that reinsurance business that was directly written by a one or more direct or indirect
ceding insurers in at least two states, but only with respect to the following lines of business:

1. Policies that are required to be valued under Sections 6 or 7 of the _Valuation of Life
Insurance Policies Model Regulation_ (Model #830) (commonly referred to as
XXX/AXXX policies). The application of this provision is intended to have a prospective-
only effect, so that regulation of captive insurers, special purpose vehicles and any other
entities that reinsurance these types of policies will not be subject to the Part A standards if
the policies assumed were both (1) issued prior to Jan. 1, 2015, and (2) ceded so that they
were part of a reinsurance arrangement as of Dec. 31, 2014.

2. Variable annuities valued under Actuarial Guideline XLIII—CARVM for Variable
Annuities (AG 43). [Drafting Note: Effective date for compliance to be determined.]

3. Long term care insurance valued under the _Health Insurance Reserves Model Regulation_
(Model #10). [Drafting Note: Effective date for compliance to be determined.]

The NAIC Executive (EX) Committee adopted the XXX/AXXX Reinsurance Framework in
concept on Aug. 7, 2014, and the NAIC is currently in the process of adopting actions necessary
for its full implementation. With regard to a captive insurer, special purpose vehicle, or any other
entity assuming XXX/AXXX business, regulation of the entity is deemed to satisfy the Part A
accreditation requirements if it satisfies the XXX/AXXX Reinsurance Framework requirements
adopted by the NAIC and in effect from time to time. The Part A standards with respect
to entities assuming variable annuities and long term care reinsurance business are effective with
respect to both currently in-force and future business. [Drafting Note: The effective dates for
variable annuities and long term care insurance and their application to in-force business need
further discussion].

_Other Types of Insurers_

For clarity purposes, the scope of the Part A standards excludes regulation of those insurers
licensed as fraternal orders and title insurers. The scope of the Part A standards also excludes
regulation of health organizations, except that compliance with the “Capital and Surplus
Requirement” standard is required for entities licensed as health organizations (including health
maintenance organizations, limited health service organizations, dental or vision plans, hospital,
medical and indemnity or service corporations, or other managed care organizations) to the extent
the insurance department regulates such entities. This definition does not include an organization
that is licensed as either a life/health insurer or a property/casualty insurer, which are subject to
the full Part A accreditation standards.
Scope of the Part A Standards (Risk Retention Groups Organized as Captives)

The following Part A standards apply to regulation of RRGs incorporated as captive insurers. This scope includes RRGs that are chartered in the accredited state and registered or operating in at least one other state.

[List Part A standards for captive RRGs here.]
Hi Julie. The District of Columbia Department of Insurance, Securities and Banking agrees with and supports the revisions to the draft Preamble to the Part A Accreditation Standards.

Thank you.

Sean O'Donnell
Director of Financial Examination
Risk Finance Bureau
D. C. Department of Insurance, Securities and Banking
To:   Director John Huff, Chairman, Financial Regulation Standards and Accreditation (F) Committee

From:   Steve Kinion, Director, Bureau of Captive and Financial Insurance Products, Delaware Insurance Department

CC:   Commissioner Stewart and Deputy Commissioner Reed

Re:   Comments in Opposition to Imposition of Accreditation Standards on Captive Insurers

On behalf of Commissioner Stewart, I am submitting these comments for the purpose of objecting to the proposal that would change the accreditation manual’s preamble so that the Part A accreditation standards apply to captive insurers that reinsure XXX, AXXX, variable annuity, and long-term care business. There are four reasons for Delaware’s opposition. In addition to presenting the four reasons in opposition, Commissioner Stewart proposes an alternative solution for the F Committee’s consideration and adoption.

Reason 1. The F Committee’s proposal is premature in regard to imposing the Part A standards on captive insurers that reinsure variable annuity and long-term care business. In the past 60 days the E Committee formed the Variable Annuities Issues (E) Working Group. This new working group has the essential charge to “Oversee the NAIC’s efforts to study and address, as appropriate, regulatory issues resulting in variable annuity captive reinsurance transactions.” If the F Committee seeks to subject variable annuity captive reinsurers to the Part A standards, then what is the point of creating this new working group? A more beneficial step would be to first allow this working group to make its findings before making any decision whether to adopt the proposal. The same applies for captive insurers that reinsure long-term care business. For
these types of captives the NAIC has not even taken the step of forming any kind of fact finding working group. Commissioner Stewart’s view is that the F Committee should first gather and analyze the facts before acting.

**Reason 2.** The F Committee must understand the impact of this proposal on the consumer. An important question that must be answered is, “Does this proposal increase the cost of insurance for the consumer or make certain insurance coverage or products less available?” Commissioner Stewart is committed to ensuring that the interests of the consumer are considered. For example, if the F Committee adopts this proposal, will insurers offering variable annuity products remove the living benefit rider from these products? In essence, a living benefit rider provides principal and income protection in the event the annuity’s investment accounts perform poorly. The rider offers the consumer financial peace of mind even during times of declining financial markets such as those seen in 2008 and 2009. Commissioner Stewart questions whether it is good public policy for consumers to lose this benefit for the mere sake of the Part A standards. That is why she urges the committee to first allow the Variable Annuities Issues (E) Working Group to answer questions like those presented in this paragraph before acting on this or any other proposal that seeks to impose the Part A standards on captive insurers.

While there may be pressure from organizations such as the Financial Stability Oversight Council (FSOC) for the NAIC to do something about captives, Commissioner Stewart reminds the members of the F Committee that the members of the FSOC are not directly responsible for protecting the interests of insurance consumers. When insurance consumers complain about rising insurance premiums or the lack of availability of insurance coverage or products, it is not the FSOC to whom the consumers address their complaints – it is the state insurance regulators. It is an easy task for organizations like the FSOC, Federal Reserve, and Federal Insurance Office to raise questions about captive insurers, because none of them face the consequences of what to do when insurance premiums increase or when consumers have fewer choices because insurance producers have fewer products to offer their clients. Therefore, before the F Committee acts, it must first answer this question, “Does this proposal increase the cost of insurance for the consumer or make certain insurance coverage or products less available?”

**Reason 3.** This proposal directly conflicts with Delaware law and establishes a dangerous precedence to circumvent state law. This proposal is an example of the NAIC making state law without the concurrence of any state legislatures. The laws of Delaware and many other states contain a provision that only certain sections of the insurance laws apply to captive insurers and that no other insurance laws shall apply to these insurers unless specifically stated. By adopting this proposal, the F Committee is creating a de facto amendment of state laws merely by changing the wording in two paragraphs of the NAIC’s accreditation manual. When the accreditation manual states that certain types of captive insurers are subject to the Part A
standards laws, while the laws of multiple states say that they are not, a conflict arises. The dangerous precedence is that the NAIC can target certain types of insurers and then create and implement rules for them that are not only contrary to state laws, but also do so without any participation of the state legislatures.

Reason 4. The F Committee proposal diminishes and harms the state regulatory system. One of the foundations of the state based regulatory system is that it places the responsibility of making insurance laws on the shoulders of the state legislatures. When state legislatures do so, they create the public policy of each state upon which the public relies for certainty, predictability, and the rule of law. When the F Committee presents proposals such as the one now in question, the state level certainty, predictability, and rule of law is in jeopardy because in spite of what the state laws may say, the NAIC has adopted an entirely opposite approach. Instead of the NAIC adopting the laws, it is better to leave the lawmaking task with the state legislatures.

Commissioner Stewart’s Alternative Proposal. Delaware requests that the F Committee adopt a different proposal that is not fraught with the above-cited perils. The alternative path is to develop a model law that accomplishes the objectives of this proposal. This alternative proposal guarantees a more deliberate process in which the findings of the Variable Annuities Working Group and a long-term care captive reinsurer working group are considered before, instead of after, the making of a final decision of whether to impose the Part A standards on certain types of captive insurers. If after the fact-finding process the NAIC decides to adopt a model law, the various state legislatures can then decide whether they will adopt it. Commissioner Stewart is ready to devote the staff and resources in support of her proposal. Additionally, Delaware volunteers to actively participate in any working group appointed for drafting such a law and is also willing to serve as its chair. If such a group comes to fruition, Delaware will ensure a transparent process that will allow a full and robust debate whether such a model law serves the consumer and state based regulatory system.

In conclusion, if the F Committee desires to pursue its current path and adopt this proposal, the result will be a direct conflict with Delaware state law. It will needlessly create uncertainty and a lack of predictability for how insurance companies should comply with the rules imposed upon them and for how regulators should apply those rules. For the sake of certainty, predictability, and the legitimacy of the state based regulatory system, the F Committee should withdraw its proposal and adopt the alternative recommended by Commissioner Stewart.

Thank you for considering these comments.