Executive Summary

State insurance regulators have recognized a growing need to more fully coordinate their regulatory efforts to proactively share information. Although there is significant coordination in the area of financially troubled companies, similar efforts need to be focused on holding company systems or insurance groups that are financially strong. In 2000, the NAIC formed the Financial Services Holding Company Analysis/Examination/Review Working Group (now known as the Insurance Holding Company Working Group) in an effort to document a framework for information sharing and coordination of regulatory processes in analyzing holding companies and their insurance subsidiaries. The Framework for Insurance Holding Company Regulation (the “Framework”) is the result of the group’s work.

The overall purpose of the Framework is to provide guidance for state insurance regulators to understand the holding company structure of insurers operating in their state, as well as a coordinated approach to review of holding company transactions that impact insurance subsidiaries domiciled in multiple jurisdictions. The Framework employs a due diligence approach to acquiring a general understanding of the holding company structure and assessing current and/or potential risk to the insurance subsidiaries. The Framework achieves this goal by providing tools and guidance in the following areas:

Identifying Holding Companies and Coordinating Regulation of Insurance Subsidiaries
This section describes resources that regulators can use to identify insurance subsidiaries within a holding company structure. It also describes the roles of the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) under the Gramm-Leach-Bliley Act (GLBA) with respect to affiliates of a financial holding company (FHC), bank holding companies, national banks, thrifts and state banks that are engaged in insurance activities. In addition, it outlines initiatives being developed by the NAIC to assist state insurance regulators to identify affiliations and protocols to coordinate and share information, as appropriate, with the federal banking agencies and functional regulators consistent with the Gramm-Leach Bliley Act (GLBA) as well as with foreign regulators.

Concept of Lead State
This section describes the concept of lead state and examples of when multi-state coordination and cooperation is necessary. It stresses that multi-state coordination efforts are more effective when one or two states are identified to lead the coordination of regulatory activity. The concept of lead state is not intended to relinquish the authority of any state or to disadvantage any state; rather, it is intended to facilitate efficiencies when one state coordinates the regulatory processes of all states involved. This section also describes many factors to be considered when determining a lead state.

Role of the Lead State
This section describes the responsibilities common to the role of the lead state and notes that this role will vary depending on each situation. It stresses the need to maintain confidentiality of any information and provides a reference to current confidentiality arrangements in place between each state and federal banking agencies, state banking supervisors and functional regulators. Part of the lead state’s role is to
Framework for Insurance Holding Company Analysis

perform a review of the consolidated group, including analysis of the group’s financial results and overall business strategy.

Role of Other States
This section describes the broad role of each of the non-lead states and related responsibilities.

Understanding the Organizational Structure of the Group
This section describes several sources of information that provide pertinent data on the holding company group and its organizational structure. It provides examples of information that will give regulators a general understanding of the holding company structure. Perhaps most importantly, it stresses that regulators should leverage the knowledge and work performed by other states, federal banking agencies, state banking supervisors and functional regulators to avoid duplicative regulatory processes.

Assessing the Operations, Management, and Financial Condition of the Holding Company
This section further explains the sources of information that may be useful in assessing the operations and financial condition of the holding company. It states that such sources may be utilized by the state insurance regulators to develop a reasonable understanding of the core and non-core businesses of the group, the risk inherent in those businesses and the organization’s approach to risk management. It stresses that this assessment is not meant to impose insurance regulatory processes on the non-insurance holding company; rather, it is intended to facilitate a general understanding of the holding company system. This section also summarizes facets of the holding company’s financial condition that may be of particular interest to insurance regulators.

Assessing the Operations, Management, and Financial Condition of Insurers Within the Holding Company System
This section describes the information that is currently used to assess the operations, management and financial condition of individual insurers. Such information includes annual and quarterly statements, Management Discussion and Analyses (MD&As), audited statutory financial statements and filings under state holding company acts. Note, holding company filings are submitted by applicants or the insurer on behalf of the holding company. This language is not intended to suggest that additional filings will be imposed upon non-insurance holding companies. In addition, the assessment of the risk management practices of an organization’s insurance subsidiaries is identified as an enhancement to our present regulatory approach as a tool for understanding the risk inherent in the insurer’s operations as well as the controls in place to mitigate those risks. One of the NAIC’s Risk Assessment Working Group’s charges is to propose enhancements to our current financial analysis and examination processes to incorporate the risk assessment as a regulatory tool.

Assessing Holding Company Impact on Insurers
This section focuses the insurance regulator’s attention to significant events or transactions occurring within the holding company system that could have a financial impact on its insurance subsidiaries. It stresses the need for “professional skepticism” when evaluating transactions occurring among holding company affiliates in order to identify risks or transactions that may impact the insurance subsidiary. It also provides examples of the areas within the holding company, which may pose the most impact to the insurance subsidiaries. It also references a Sample Holding Company Analysis Checklist, which is included as Appendix B, which provides sample guidance for use by states beginning to implement the guidance of the Framework.
Analysis and Review of Holding Company Filings and Transactions
This section summarizes the filing requirements and related guidelines for holding company transactions. It includes references to Review Checklists for Form A, B, D, E and extraordinary dividend/distribution filings, which are included in the appendices, and encourages the lead state approach to analyzing and reviewing major holding company filings and completing the applicable review checklists.
# Framework for Insurance Holding Company Analysis

## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction ...........................................................................</td>
<td>2</td>
</tr>
<tr>
<td>II. Identifying Holding Companies and Coordinating Regulation of Insurance Subsidiaries</td>
<td>3</td>
</tr>
<tr>
<td>III. Concept of Lead State ......................................................</td>
<td>7</td>
</tr>
<tr>
<td>IV. Role of the Lead State ................................................................</td>
<td>10</td>
</tr>
<tr>
<td>V. Role of Other States ..................................................................</td>
<td>15</td>
</tr>
<tr>
<td>VI. Understanding the Organizational Structure of the Group ..............</td>
<td>15</td>
</tr>
<tr>
<td>VII. Assessing the Operations, Management, and Financial Condition of the Holding Company</td>
<td>16</td>
</tr>
<tr>
<td>VIII. Assessing the Operations, Management, and Financial Condition of Insurers Within the Holding Company System</td>
<td>24</td>
</tr>
<tr>
<td>IX. Assessing Holding Company Impact on Insurers ..........................</td>
<td>26</td>
</tr>
<tr>
<td>X. Analysis and Review of Holding Company Filings and Transactions ......</td>
<td>28</td>
</tr>
<tr>
<td>Appendix A: NAIC Model Protocol (Guidelines) for the Sharing of Confidential Information Among Regulators</td>
<td>A-1</td>
</tr>
<tr>
<td>Appendix B: Sample Insurance Holding Company Analysis Checklist ..........</td>
<td>B-1</td>
</tr>
<tr>
<td>Appendix C: Form A Review Checklist – Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer</td>
<td>C-1</td>
</tr>
<tr>
<td>Appendix D: Form B Review Checklist – Insurance Holding Company System Annual Registration Statement</td>
<td>D-1</td>
</tr>
<tr>
<td>Appendix E: Form D Review Checklist – Prior Notification of a Transaction</td>
<td>E-1</td>
</tr>
<tr>
<td>Appendix F: Form E Review Checklist – Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in This State or by a Domestic Insurer</td>
<td>F-1</td>
</tr>
<tr>
<td>Appendix G: Extraordinary Dividend/Distribution Review Checklist .......</td>
<td>G-1</td>
</tr>
</tbody>
</table>
Framework for Insurance Holding Company Analysis

I. Introduction

State insurance regulators examine and analyze the financial condition of individual insurers domiciled or licensed in their respective states based on individual state’s statutes, regulations, policies and procedures, as well as the handbooks and other tools developed and adopted by the NAIC. In many cases, particularly those involving major transactions, restructurings or financial distress of either the insurance companies or their holding companies, state insurance regulators have coordinated their efforts through communications, sharing of information and cooperative regulatory action or deferral of action. Such regulation has often been more focused at the legal entity level than on the overall holding company system.

For a number of reasons, state regulators have recognized a growing need to more fully coordinate their regulatory efforts. Those reasons include (i) the realization that analysis of an individual company may not be complete without understanding the context of the group and the markets in which the company operates, (ii) the increased consolidations within the insurance industry in recent years, (iii) the recent occurrence of a few major cases of fraud or mismanagement in the insurance industry, (iv) passage of GLBA that allows banking, securities and insurance firms to affiliate and encourages cooperation among regulators of those industries, (v) the increased globalization of financial services and the interdependence of the world’s economies and (vi) increased efficiencies and effectiveness by pooling resources and strengths.

In response to the issues identified above, the Framework for Insurance Holding Company Analysis (the “Framework”) has been created to document the best practices of states’ efforts in analyzing holding companies and their insurance subsidiaries and in sharing information and coordinating regulatory action. The overall purpose of this Framework is to provide state insurance regulators with the tools and guidance necessary to gain an overall understanding of the holding company structure and the impact its management, business practices and financial condition has on its insurance subsidiaries. The Framework is not intended to subject a non-insurance holding company or its non-insurance operations to statutory requirements; nor is intended to duplicate the role of the Federal Reserve as “umbrella supervisor” of FHCs. Rather, the Framework employs an integrated approach to acquiring a general understanding of the consolidated holding company structure and assessing current and/or potential risks to the insurance affiliates, including:

- the size and strategic role of the insurance subsidiary in relation to the entire holding company structure,
- the amount of financial leverage at the holding company and significant affiliates,
- cash flows at the holding company and its reliance on the insurance subsidiary to service debt or fulfill other obligations,
- the level, quality, volatility and diversification of earnings at the consolidated holding company level,
- the riskiness of the activities and assets of the holding company and significant non-insurance affiliates and
- the degree of independence of the insurance subsidiary and its ability or requirement to “stand alone.”

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Framework for Insurance Holding Company Analysis

While states will continue to use their specific statutes, regulations and practices, this document is intended to (i) provide guidance for state insurance regulators to analyze holding companies, including FHCs as defined by the GLBA, where insurers are affiliates of banks and/or thrift institutions, (ii) encourage initiative and cooperation among state insurance regulators for more effective and efficient state regulation, (iii) serve as a basis for accumulating information for discussions with the appropriate primary regulators of a diversified holding company’s banking, insurance and securities subsidiaries, (iv) provide standard review processes and procedures for holding company filings and (v) address the Report and Recommendations of the Ad Hoc Task Force on Solvency and Anti-Fraud dated April 13, 2000. Application of these guidelines will vary with the specific organizational and operational structure of each group.

II. Identifying Holding Companies and Coordinating Regulation of Insurance Subsidiaries

Holding company organizations vary in size and structure, from those that are established to hold only insurance operations, to those complex organizations that are formed to engage in multiple types of businesses. A holding company’s insurance operations often are not limited to one jurisdiction. State insurance regulators must identify (i) all insurance subsidiaries within the holding company structure and (ii) the states responsible for regulating the insurance subsidiaries within the holding company. Many complex holding companies include several lower-tier holding companies that hold insurance and non-insurance subsidiaries and operate as independent units under the ultimate controlling entity. The most common ways of identifying holding companies with insurance subsidiaries are through statutory filings submitted to state insurance regulators or the NAIC. These filings include, but are not limited to, initial applications for licensure, holding company registration statements (Form Bs), organization charts or group codes in annual statements, among others. For example, Schedule Y – Information Concerning Activities of Insurer Members of a Holding Company, which is required to be filed as part of the insurer’s annual statement, includes an organizational chart and details of the insurer’s transactions with any affiliates.

In addition to coordinating efforts among the states with respect to holding company analysis, GLBA encourages cooperation and information sharing among federal banking agencies and functional regulators with respect to the subsidiaries of a FHC and affiliates of depository institutions. The passage of GLBA permits banks, insurance providers, and securities firms to affiliate and expand into a variety of financial activities. Under GLBA, banks and insurance providers may affiliate through the formation of a FHC, which is a special type of bank holding company that includes bank and non-bank entities such as insurance underwriters and securities companies. GLBA also permits the formation of a financial subsidiary that may engage in the sale, solicitation and cross marketing of insurance and securities products. Financial subsidiaries are not permitted to engage in insurance underwriting.

GLBA also permits state-chartered banks to engage in insurance activities unless specifically precluded from doing so by state laws.

1 Holding companies include the ultimate parent which can be a non-insurance entity that holds the organization’s various business segments, a FHC which is a special type of bank holding company that holds a banking institution and other business engage in permissible financial activities related to banking as defined by GLBA, a lower tier non-insurance entity that holds an organization’s insurance operations or an insurance company that directly hold other insurers and non-insurance entities.
To facilitate cooperation and information sharing with banking regulators, following is a brief description of the structure of federal and state banking supervision in the United States. There are four federal banking agencies responsible for supervising the federally chartered banking or thrift institutions under their jurisdictions, as well as a regulatory body in each state responsible for supervising state-chartered institutions. Under the dual banking system, each institution has a primary federal regulator. Financial regulation in banking is referred to as the supervision of safety and soundness.

The Federal Reserve is the central bank of the United States. Its duties include conducting the nation's monetary policy, supervising and regulating banking institutions and protecting the credit rights of consumers, maintaining the stability of the financial system and providing certain financial services to the U.S. government, the public, financial institutions, and foreign official institutions. Headquartered in Washington, D.C., the Federal Reserve has twelve district banks in the United States that are responsible for the supervision of all bank holding companies, including FHCs, in their jurisdiction. In addition, the Federal Reserve serves as the primary federal regulator of state-chartered banks that are members of the Federal Reserve System. In situations where an insurance underwriter is affiliated with a FHC, the state responsible for regulating the insurer or serving in the capacity of lead state should coordinate its review with the Federal Reserve with the objective of placing reliance on the Federal Reserve’s oversight where possible and practical.

The OCC, which is a bureau of the U.S. Department of Treasury, charters, regulates, and supervises all national banks and the federal branches and agencies of foreign banks. Headquartered in Washington, D.C., the OCC has six district offices in the United States that are responsible for the supervision of institutions under their jurisdiction, as well as an office in London to supervise the international activities of national banks.

The OTS, which is also a bureau of the U.S. Department of Treasury, charters, regulates, and supervises all federal thrift institutions and thrift holding companies. Prior to the regulatory reorganization in 1989, thrifts were referred to as savings and loan associations or savings institutions. In addition, the OTS serves as the primary federal regulator of state-chartered thrifts that belong to the Savings Association Insurance Fund. Headquartered in Washington, D.C., the OTS has five regional offices in the United States that are responsible for the supervision of institutions under their jurisdiction.

The FDIC is an independent federal agency that is responsible for the administration of two federal deposit insurance funds (the Bank Insurance Fund and the Savings Association Insurance Fund) and is the primary federal regulator of state-chartered non-Federal Reserve System member banks. For insurance purposes, it is the back-up federal supervisor of the remaining federally insured banks and thrifts institutions. Headquartered in Washington, D.C., the FDIC has eight regional offices in the United States that are responsible for the supervision of the institutions under their jurisdiction.

The Securities Exchange Commission (SEC) was established in 1934 to enforce the Securities Act of 1933 and the Securities Exchange Act of 1934. The SEC is responsible for the laws and rules that govern the securities industry in the United States to promote stability in the markets and, most importantly, to protect investors. The SEC has the power to register, regulate and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation’s securities self regulatory organizations. Headquartered in Washington D.C., the SEC has 11 regional and district offices in the
The National Association of Securities Dealers (NASD) was created in 1938 by the Maloney Act amendments to the Securities Exchange Act of 1934. NASD Regulation, Inc. (NASDR) is the independent subsidiary of the NASD charged with regulating the securities industry and The NASDAQ Stock Market. Through its 11 districts and 15 offices, NASDR is responsible for the oversight of the registration, education, testing and examination of members firms and their employees, totaling more than 683,000 securities industry professionals. It also creates and enforces rules designed for the ultimate benefit and protection of investors. More information about the NASD and NASDR can be found at www.nasd.com and www.nasdr.com, respectively.

State securities departments charter and regulate broker-dealers, agents, investment advisors and investment advisor representatives under their jurisdiction as well as ensure compliance with the state securities law. State securities administrators are also members of the North American Securities Administrators Association (NASAA), which is a voluntary organization devoted to investor protection. More information about NASAA and links to its member websites can be found at www.nasaa.org.

Under GLBA, insurance companies may become subsidiaries of a FHC or form a FHC themselves. The Federal Reserve Board, on its website at www.bog.frb.fed.us, maintains a list of top-tier bank holding companies that have elected FHC status. Although the identification of FHCs is useful, state insurance regulators need a resource to identify (i) any insurers that are subsidiaries of a FHC and (ii) the states responsible for regulating an insurance FHC and/or its insurance subsidiaries. In addition to the Federal Reserve Board’s list of FHCs, the Federal Reserve will coordinate efforts with the NAIC to identify bank holding companies, including insurance companies that are subsidiaries of FHCs. In the absence of reporting requirements to identify banking or securities affiliation, each state should survey its own domestic industry to ensure that it has identified such affiliations. The NAIC’s Coordinating with Federal Regulators Working Group (CwFRWG) is developing an appropriate method to disseminate information to the states on insurance subsidiaries of FHCs and protocols on communication and information sharing with the Federal Reserve. Many states have already held meetings with various Federal Reserve district banks to discuss subsidiaries of FHCs that engage in insurance activities within their jurisdiction.

Similarly, the OTS will coordinate efforts with the NAIC to identify insurance companies that own or are affiliated with thrift institutions. The OTS maintains a list of organizations with significant insurance holdings and insurance trade organizations that have thrift charters. This information will eventually be available on the OTS’s website, www.ots.treas.gov. Identifying affiliations, developing protocols on communication and information sharing with the OTS are part of the CwFRWG’s charge. States responsible for regulating an insurer that owns or is affiliated with a thrift institution are
Framework for Insurance Holding Company Analysis

encouraged to meet and coordinate efforts with the OTS regional office responsible for supervising the thrift.

Federally chartered banks may have subsidiaries engaged in insurance underwriting activities whose ownership was grandfathered prior to the passage of the federal Bank Holding Company Act. States responsible for regulating an entity that is affiliated with a national bank should coordinate regulatory activities with the appropriate regional office responsible for supervising the bank (i.e., OCC for national banks, Federal Reserve for state-chartered member banks and FDIC for state-chartered non-member banks). Identifying affiliates of national banks that engage in insurance activities and developing protocols on communication and information sharing with the appropriate banking agency is also part of the CwFRWG’s charges.

State-chartered banks may also engage in insurance activities and FHCs may own state-chartered banks as well as national banks and thrifts. States responsible for regulating an entity that is affiliated with a non-member bank should coordinate regulatory activities with the FDIC regional office responsible for supervising the bank. Identifying affiliates of state-chartered banks that engage in insurance activities and developing protocols on communication and information sharing with the FDIC is being addressed by the CwFRWG.

Since banking institutions are permitted under GLBA to directly own or indirectly engage in the sale of insurance products through a marketing arrangement, CwFRWG is also charged with the identification of insurance agencies that are affiliated with financial institutions for the purpose of sharing information on sales activities, consumer complaints or business practices. Such information may assist insurance regulators in the assessment of a holding company that engages in cross marketing of financial products.

In addition, amendments to the annual statement and/or other filings that require the insurance companies to disclose affiliation with a FHC, national or state bank, thrift institution, or other entity subject to functional regulation, is being proposed to support the identification effort.

One of CwFRWG’s major initiatives is the development of a “regulators only” website to (i) assist state insurance departments in gaining an understanding of the role of the Federal Reserve, OCC, OTS and FDIC, SEC and NASD and their supervisory responsibilities, (ii) identify a central contract person in each state, each federal banking agency and in their regional offices to facilitate the sharing of information, (iii) delineate protocols for the sharing of information with each agency and (iv) compile a listing of insurance underwriters and agencies that are subsidiaries and/or affiliates of a FHC or financial institution. To assist in the collection of data, CwFRWG is developing surveys, for the state’s use, to identify affiliations of their domestic insurance companies and resident agencies with financial institutions since this information is not readily available. Ongoing work will be necessary to ensure the accuracy of information maintained on the website.

In addition, the Insurance Holding Company Working Group will make recommendations to improve the NAIC database to more accurately reflect updated group information, propose amendments to the annual statement and other filings to capture affiliate information and continue to maintain and update the Framework.
Finally, state insurance regulators should also identify organizations that have operations in other countries. State regulators should foster those relationships and seek to share information with the appropriate foreign regulatory authorities. The NAIC, through the International Insurance Relations (H) Committee and the Surplus Lines (C) Task Force, has established contacts with various regulators around the world.

### III. Concept of “Lead” State

The operations of an insurance company often are not limited to one jurisdiction. Many times, when multiple states are involved in monitoring the activities or approving the transactions of a company or group of companies, one or two states clearly emerge as the “lead” state(s) to coordinate the states’ efforts. These coordinated efforts have increased over the years as the insurance industry has consolidated and as insurance holding companies with insurers domiciled in more than one state have increased. Such multi-state involvement may arise because of:

1. solvency concerns involving domestic states and/or states with large exposure;
2. solvency, liquidity, or operational problems at an intermediate or the ultimate holding company level;
3. statutory requirements for licensure, such as incorporations or redomestications;
4. statutory requirements under state Holding Company Acts, such as acquisitions and mergers, payment of dividends, reinsurance, or management/service/tax allocation agreements; or
5. other reasons that concern regulators of various states.

Coordinated activities take various forms, including:

1. establishment and maintenance of procedures to communicate information regarding troubled insurers with other state insurance departments;
2. participation on joint examinations of insurers;
3. consensus assignment of specific regulatory tasks to different state insurance departments in order to achieve efficiency and effectiveness in regulatory efforts and to share personnel resources and expertise; and
4. establishment of task forces consisting of personnel from various state insurance departments to carry out coordinated actions.

These types of coordinated efforts have been effective for both regulators and the insurance companies involved. However, these efforts are more effective when one or two states are identified to coordinate the activities of the regulators involved. Ultimately, each state operates under its own statutory authority and is responsible for the protection of its own individual policyholders. The lead state concept is not intended to relinquish the authority of any state or to disadvantage any state; rather, it is intended to facilitate efficiencies that will be achieved when one state serves to coordinate the regulatory processes of all states involved. The lead state concept does not increase any state’s statutory authority. Additionally, the concept should not sever communications between the domiciliary state and its company. Because of this, complete and open communications and cooperation between all states must be established to consider the best role for each state as well as determining the most appropriate lead state and the role that state will play.
Framework for Insurance Holding Company Analysis

While the lead state concept has been used in many situations where groups of affiliated insurers or their holding companies are experiencing financial difficulties, this Framework suggests that the lead state concept should apply to all holding companies and groups of insurers, whether or not they are financially troubled. The current NAIC *Financial Condition Examiners Handbook* defines the lead state as the state where the parent company is domiciled or, if there is no insurance parent, the state where the largest (by direct written premium volume as shown by the last filed annual statement) insurance subsidiary is domiciled. Every insurance holding company system, however, has its own individual characteristics that make it unique and therefore require a slightly different monitoring process. Additionally, with the passage of GLBA, the importance of a lead state increases as other financial regulators, including the Federal Reserve, other federal and state banking agencies and state and federal securities regulators, must be able to identify a central point of contact to effectively and efficiently initiate and coordinate communication with the state regulator(s).

In most situations to date, the lead state has emerged by mutual agreement (i.e., self-initiative on its part and recognition by other states), generally as a result of the organizational structure of the group or as a result of the domicile of primary corporate and operational offices. Factors that may be considered when determining the lead state are:

- state with the largest number of domestic insurance companies in the group;
- state of large or largest premium volume or exposure;
- domiciliary state of top-tiered insurance company in an insurance holding company system;
- physical location of the main corporate offices or largest operational offices of the group;
- expertise in the area of concern and experience of staff in like situations; or
- state whose regulatory requirements have driven the design of the organization’s infrastructure.

Each of the factors are further described below:

A. State with the largest number of domestic insurance companies in the group

The lead state may emerge because the state has the largest number of domestic companies in the insurance group. This scenario would make sense if the state has developed strong contacts with management of the companies and/or gained significant knowledge and experience regarding the companies’ operations.

B. State of large or largest premium volume or exposure

A review of Schedule Y-Part 1 of the annual statement should identify all insurance companies (and state of domicile) within the holding company system. Schedule T of each company’s annual and quarterly statements reflects direct premium by state. Once this information is obtained, it may be fairly obvious who the lead state is based upon premium volume alone. Net premium may have to be considered for each particular company. Notwithstanding ordinary intercompany reinsurance agreements, which may change the amount of risk of each insurance company, intercompany pooling arrangements may significantly shift risk from one company to others based upon the respective participation in the pool.
In some cases, the holding company may have multiple insurance companies domiciled in various states but a significant amount of the premium may be written in a particular state. Because of this, it may be more appropriate to base the determination of the lead state on the premium volume by state rather than the premium volume of any one company. However, in cases like this, it would be important that the respective domestic regulators are agreeable to the non-domestic regulator as lead.

C. Domiciliary state of top-tiered insurance company in an insurance holding company system

The lead state may be determined by the organizational structure of the group. In many cases, insurance companies are stacked in a holding company structure, which may require the domestic state of the top-tiered company to be aware of the entire group’s operations. This concept is similar to the current concept, as outlined in the current NAIC Financial Condition Examiners Handbook, where the lead state would be the state where the parent insurance company is domiciled.

D. Physical location of the main corporate office or largest operational offices of the group

Even though a group writes a significant amount of its business in a small number of states and has companies domiciled in various states, it may be more appropriate to determine the lead state based upon the primary location of the insurance company’s operations, as long as at least one of the companies is licensed in that state. Many groups form separate insurance companies to write specific types of coverage or different policies in different states. However, in many cases, the primary location of the group is centralized in a specific location. In some cases, the regulator in this specific location may be the most appropriate choice for the lead state.

E. Expertise in the area of concern and experience of staff in like situations

The determination of lead state may be based upon available resources. As noted in Section IV below, the lead state assumes a role that may require certain expertise or expertise not available to some states when the situation requires. Because of this, all domestic regulators must work together to identify who has the resources and expertise to lead or participate in the situation. For purposes of determining the lead state, it should not be presumed that the larger states always have the best available resources.

F. State whose regulatory requirements has driven the design of the organization’s infrastructure

The lead state may be determined based on the fact that the companies’ systems and databases and infrastructure were designed to interface with a specific state’s laws and regulations. This factor encourages an assessment of any unique or subtle differences in the states’ requirements, which may affect the selection of the lead state.

In any case, the lead state should be determined by consensus among all states involved in a particular situation. The states should work together to analyze the holding company system and states involved to fully understand the situation. The states would then utilize the fact situation and specific or unique
circumstances to determine states’ roles and select the most appropriate state as lead. The initiative of a state to take the role of lead state, and the recognition of the lead state by other states, requires cooperation and communication among regulators. Currently, the concept of lead state is a voluntary means of state cooperation for fair, effective and efficient regulation and for the good of all policyholders, and in no way interferes with, or preempts, each state’s statutory authority. In reality, any state may be a lead state at one time or another, and every state should be prepared to recognize when and how it should assume that role.

Determining the lead state will vary in difficulty for regulators from one holding company system to another but is clearly a valuable step to the success of coordinated regulation. While the concept of lead state does not preclude communications between any state regulators and their licensed companies, it is designed to make the regulatory process more efficient and effective through complete and open communication and cooperation between all states.

IV. Role of the Lead State

The role of the lead state will vary, depending on the situation creating the need for regulatory coordination. Responsibilities may be either short-term or long-term, may be either specific transaction-based or based on broad financial monitoring, and may involve either financially-troubled insurance/holding companies or financially strong companies. Where insurance companies are subsidiaries of a FHC or affiliated with a bank or thrift, the lead state may coordinate the sharing of information with the appropriate banking agency. Certain responsibilities, however, are common to every lead state role. These include:

- designating its own lead person(s) and, if necessary, its team of internal/external experts assigned to the case;
- establishing lines of communication and serving as regulatory contact with top management of the organization under review;
- establishing points of contact with impacted states;
- establishing lines of communication and distribution of information with impacted states and other functional regulators;
- seeking consensus on content and timelines for analysis, examinations, reviews and other actions;
- obtaining a thorough understanding of the organization as a whole;
- establishing a structure for obtaining updated information;
- serving as primary spokesperson and coordinating public statements;
- serving as the central point of contact with the Federal Reserve, other federal banking and other functional regulators;
- serving as the central point of contact for foreign regulators that supervise insurers in the same holding company system.

Each of these duties is further described below.

A. Designating a lead person(s) and, if necessary, a team of internal/external experts assigned to the case
Framework for Insurance Holding Company Analysis

The lead state should determine who on its staff would be involved in the specific transaction or monitoring the case at hand. Preferably, the state should designate a primary and a back-up point of contact for communications with the organization under review, with other state insurance regulators, Federal Reserve, federal and state banking agencies, functional regulators and with the public. As an example, Section 307(c) of the GLBA requires the appropriate federal banking agency to consult with the appropriate state insurance regulator before making certain determinations related to the initial affiliation or continued affiliation of a FHC or depository institution with a company that engages in insurance activities. A mechanism must be established for the federal banking agencies to identify the designated lead state to notify for coordination purposes in the case of large insurance groups and/or companies that write in multiple states.

In addition to the state’s primary and back-up points of contact, the state should utilize any of its resources, direct or contracted, that are appropriate for the case at hand. These may include financial analysts, financial or market conduct examiners, actuaries, legal counsel, rate and form experts, or valuation experts.

B. Establishing lines of communication and serving as regulatory contact with top management of the organization under review

The lead state should assure that there are regular and candid discussions with top management of insurance companies and of intermediate and/or ultimate holding companies. In the case of a FHC, the lead state should consult with the Federal Reserve as umbrella supervisor, to coordinate the analytical review of the ultimate holding company and avoid duplicative regulatory efforts. The lead state should share their plans to communicate and coordinate the regulatory processes of all participating states to the appropriate level of management and should work out a level and frequency of reporting arrangement with management. The regulated entity itself should also be allowed to provide input on the lead state determination process where appropriate. The lead state should also develop a formal means for communicating with, or assisting other states in communicating with the Federal Reserve, federal and state banking agencies and functional regulators. The lead state should serve as the regulatory contact for efficient communication between the organization and states. This role clearly is not to result in the exclusion of other states participating in appropriate meetings and interactions with the organization.

The lead state should seek input from, and coordinate with, other impacted states on information to obtain from, or offer to, top management of the organization. Examples include business plans and projections, cash flow and dividend projections, debt servicing requirements and plans, restructuring plans, new business and surrender activity.

C. Establishing points of contact with impacted states

Once it has been determined that the lead state concept and multi-state coordination will be utilized, a determination should be made of all of the states that will have a direct role or be materially impacted. The state(s) should utilize their resources and the appropriate NAIC resources in making this determination. The number of states will vary with each situation.
Framework for Insurance Holding Company Analysis

After the lead state is determined, that state should contact the other identified states to establish points of contact by name/position and to determine the amount of interest in participating in the multi-state coordination.

D. Establishing lines of communication and distribution of information with impacted states and other functional regulators

Once the multi-state “team” has been established, clear procedures should be established as to how the information will be shared with other states and other functional regulators (i.e., by signing confidentiality or other agreements). This step is critical to ensuring that the lead state becomes a true “coordinator” by supplying states and other functional regulators with the appropriate information. One of the most effective ways this has been accomplished has been verbal or written updates from lead states to the broader group of state regulators. In some situations, a periodic briefing from company management to the impacted regulators is very helpful in providing essential information. These briefings should typically be arranged by the lead state, in conjunction with company management and input from other states and, as appropriate, functional regulators. Location, agenda and state participation varies with each situation.

Effective interdepartmental action requires timely and effective communication among the various state insurance departments. Insurance departments should develop methods to receive, as well as to communicate, pertinent information regarding holding companies and insurance groups to other affected states and other functional regulators. Communications to other state insurance departments and other functional regulators should be made in an atmosphere of appropriate confidentiality. Premature release of information regarding actual or contemplated regulatory activities may cause undue negative consequences to the insurer and its policyholders, and could decrease the opportunity for corrective action.

The NAIC Financial Regulation and Accreditation Program requires that states should allow for the sharing of otherwise confidential information, administrative or judicial orders, or other action with other state regulatory officials providing that those officials are required, under their law, to maintain its confidentiality. The state should have a documented policy to cooperate and share information with respect to domestic companies with other state regulators directly and also through committees established by the NAIC which may be reviewing and coordinating regulatory oversight and activities. This policy should also include cooperation and sharing information with respect to domestic companies subject to delinquency proceedings. In general, states have met this accreditation requirement either by adopting specific statutory language granting such authority or by utilizing the confidentiality language already contained in the NAIC Model Law on Examinations and extending such authority to other areas of the insurance department. Additionally, in 2000, the NAIC adopted its Model Protocol (Guidelines) for the Sharing of Confidential Information Among Regulators, which is included in Appendix A. This Protocol provides useful guidance for sharing and protecting confidential information.

The GLBA encourages federal and state regulators to coordinate the supervision of companies, subject to their jurisdiction, and permits sharing of confidential information relevant to such supervision. Since early 2000, the Board of Governors of the Federal Reserve, the OCC, the
OTS and the FDIC, NAIC, and states individually have worked very closely to execute confidentiality arrangements to comply with GLBA. All regulators should continue to negotiate agreements to ensure that, in all circumstances, any confidential information shared will remain confidential.

The lines of communication and sharing and distribution of information continue to be critical as regulators approach an insolvency and attempt to assure that there are minimal disruptions in claim payments and service. In these cases, coordination with the staff and national guaranty associations are also required.

E. Seeking consensus on content and timelines for analysis, examinations, reviews and other actions

Early in the process, the lead state should collect information on the status of company filings, analysis, examinations, and other activity from each of the other states. The lead state should also initiate and continue to lead cooperative discussions among involved states on needed actions, such as coordinated analysis and examinations of domestic companies to ascertain an updated financial condition assessment of the whole insurance group. Since, groups often have common information systems and may use the same investment advisor or operate under common management service agreements, the lead state should take an active role in coordinating and scheduling analysis and examination activities of all insurers within a holding company system to ensure the most efficient, effective and consistent process is developed. Efforts should be made to schedule the examinations of the individual entities using the same as-of dates. The lead state should endeavor to determine the requirements of each state, help to coordinate the same as-of date for routine examinations or targeted examinations and eliminate duplication of examination procedures. The lead state should also stress and monitor the timeliness of the reports of examination.

[Drafting Note: Current guidance for the coordination of financial examinations is located in the NAIC Financial Condition Examiners Handbook. The Insurance Group Review Subgroup continues to consider enhancements to the current guidance and is also researching enhancements to the analysis process for holding companies and insurance groups.]

To avoid duplication of effort, all other significant review activities, to the extent possible, should be coordinated through the lead state and utilize any electronic means available (such as the services of the NAIC Financial Reporting & Analysis Division).

F. Obtaining a thorough understanding of the organization as a whole

The lead state should begin obtaining as much insight as possible into the organization as a whole. To gain this understanding, the lead state should focus on the holding company, or ultimate controlling entity, and subsequently on its underlying subsidiaries. In the case of a FHC, the lead state should consult with the Federal Reserve as umbrella supervisor, to coordinate the analytical review of the ultimate holding company and avoid duplicative regulatory efforts. States should place reliance on the Federal Reserve’s oversight where possible and practical. The lead state should also take the predominant role in documenting the analysis of the organization as a whole by working with the individual domestic states and foreign regulators to
Framework for Insurance Holding Company Analysis

complete a collective analysis. The analysis should also address the organization’s non-insurance operations that could materially affect the insurance companies’ financial condition as well as the organization’s global operations. In the case of a FHC or a holding company in which an insurer is affiliated with a bank or thrift, the review should be coordinated with the appropriate federal or state-banking agency.

Sources of information include filings with the state, such as financial statements containing explanatory notes and organization charts, audited financial statements and internal control letters, registration statements (Form B), and other Holding Company Act filings. Discussions with other state or foreign regulators and researching information from other sources, such as SEC filings, ratings and analysis of rating agencies, press releases, information obtained from the Federal Reserve or appropriate federal or state banking agency and functional regulators, etc., should also be heavily utilized. This information will be helpful in preparing for discussions with insurance company and holding company management, which should also be utilized to obtain key information to complete the picture of the organization as a whole.

More detailed guidance on assessing the operations, management and financial condition of insurers and holding companies is found in Sections VII and VIII of this Framework.

G. Establishing a structure for obtaining updated information

This duty follows the establishment of lines of communication with top management of the organization under review as described in Section IV.B. above. The discussion here refers to examples that may be utilized.

If the situation is a major Holding Company Act transaction impacting multiple states, such as an acquisition, merger or dividend request, the lead state may simply poll the involved states by telephone conference call for an update on the filing, review and approval status in each state. (Drafting Note: Work is now underway within the NAIC to establish a Form A database by March 2002, which, when completed, may serve as a quick and automated tool for assessing the status of acquisition filings and reviews.)

The lead state may supplement its regulatory review by utilizing, on a regularly established or ad hoc basis, the services of the NAIC Financial Reporting & Analysis Division for financial analysis of companies subject to the lead state’s review and the services of the NAIC Securities Valuation Office for securities held or issued by target companies or groups in the case at hand.

The lead state, with input from other states, may establish regular reporting requirements for the targeted company or group, and should establish a process for capturing the information and assessing its impact. For example, cash flow statements may be requested on a frequent basis for companies experiencing significant policy surrenders or lapses. In the case of troubled companies, business plans may be required for all insurers with reporting of variance explanations when “actual” results are different from “projected” ones.
H. Serving as primary spokesperson and coordinating public statements

Since the lead state is responsible for coordinating multi-state activity and understanding the organization as a whole, the state will likely be the most knowledgeable regulator for a particular situation. For this reason, the lead state should coordinate and assist other states and/or appropriate federal and state banking agency and functional regulators when determining public statements that will be made about the organization. The lead state may wish to document the statements in a fact sheet, which would be available to other states to assure consistent public statements. The lead state may also want to poll other states to understand the nature and frequency of public inquiries regarding the companies and group under review. The lead state should be cognizant that public statements made about the organization affect the public’s confidence in its affiliates, including affiliated depository institutions.

V. Role of Other States

The broad role of each of the non-lead states is to pledge cooperation and coordination with other states generally and to give support and recognition to the lead state. This can be accomplished in a number of specific ways, including:

- actively participating in conference calls and meetings arranged by the lead state;
- being informed and prepared to share information pertinent to respective domestic insurers;
- offering constructive suggestions for information requests, coordinated actions and timelines;
- offering information and observations on individual company or group financial condition or operations;
- aggressively assessing what the state can contribute to simplifying the organizational structure and overall regulatory framework for the case at hand;
- limiting state-specific demands in the context of the overall regulatory framework to the benefit of the common good; and
- providing specific expertise and resources to assist the lead state(s) and other states throughout the process.

The end goal is that all states are willing participants, either active or passive depending on each situation, in a coordinated approach contemplated by the guidance in this document.

VI. Understanding the Organizational Structure of the Group

State insurance regulators have become increasingly aware that analysis of an individual insurance company may not be complete without understanding the context of the group and the market in which the individual company exists and operates. In addition, one criteria (see Section III preceding) for determining the lead state is based on the organizational structure of the group. Several sources of information provide pertinent data on the holding company group and its organizational structure. They include:

(i) statutory filings with state insurance regulators, including notes to financial statements, organization charts, registration statements (Form B), Form A and other holding
Framework for Insurance Holding Company Analysis

company filings, management discussion and analysis, audited financial statements and internal control letters;

(ii) Schedule Y – Information Concerning Activities of Insurer Members of a Holding Company;

(iii) examination reports that describe the location of insurers and agreements and transactions with affiliated companies;

(iv) correspondence and discussions with company representatives and management;

(v) filings made with the SEC by publicly traded or publicly issuing entities;

(vi) ratings and analyses by rating agencies;

(vii) trade and professional publications;

(viii) specific inquiries made to companies;

(ix) communication with the appropriate federal and state banking agency and/or functional regulator regarding insurance subsidiaries of a FHC or insurers affiliated with a bank or thrift; and

(x) GAAP consolidating worksheets prepared by management.

From these sources of information, regulators obtain an understanding of the group’s organization, including:

(i) the number and domicile of insurance companies in the group;

(ii) a general sense of the different types of companies within the group, such as marketing entities, investment entities, underwriting entities, and non-insurance related entities such as banks, thrifts, finance companies, securities brokers or real estate firms, a general sense of the geographic location of entities within the group, whether within a limited number of states, a specific region of the country, or a worldwide presence;

(iii) an understanding of the strategic importance of the insurance operations; and

(iv) familiarity with group’s management structure and location (e.g., centralized, autonomous, etc.).

Regulators may also obtain a general understanding of the materiality of the insurance underwriting entities to the whole structure, of the intermediate and ultimate controlling parties (public vs. private, widespread ownership vs. closely-held, etc.), as well as the reporting chain to those intermediate and ultimate controlling parties. This information will aid in the assessment of the holding company operations and management and will be useful in the determination of the lead state and participating states.

Regulators should, to the extent possible, leverage from the knowledge and work performed by other states and other functional regulators. In order to maximize resources and enhance efficiency, an effort should be made to ensure the regulator is not duplicating the work of other functional regulators.

VII. Assessing the Operations, Management, and Financial Condition of the Holding Company

Section VI provides examples of the various sources of information that can be useful in obtaining an understanding of the organizational structure and management of the holding company organization. These sources are of use in assessing the operations and financial condition of the holding company and should be utilized to the fullest extent possible by state insurance regulators to understand the financial
impact of the holding company on the insurance subsidiaries. These sources are further detailed below and include:

- SEC Filings (10-K, 10-Q, 8-K)
- Other Sources of Public Information on Publicly Traded Companies
- Annual Statement and Quarterly Statements
- Audited Statutory Financial Statements and Internal Control Letters
- Annual Report to Shareholders
- Proxy Statements
- Stock Trade and Price Activity
- Public Reports of Rating Agencies
- Press Releases/Publications
- Discussions with Management/Internal Management Reports
- Correspondence with Insurance Departments and Other Regulators
- The Organization’s Risk Management Strategy

A. SEC Filings (10-K, 10-Q, 8-K)

Form 10-K is the principal annual report filed with the SEC. Form 10-Q is the form to be used for quarterly reports filed with the SEC. Finally Form 8-K is filed with the SEC when certain specific events occur (e.g., change in control, acquisitions and dispositions of majority-owned subsidiaries, changes in CPAs, etc.). This information has been used in the analysis process to obtain a better understanding of the individual insurance company and to corroborate information filed. Regulators have also used the Form 10-K filing to obtain an understanding of the insurance and holding company structure. Generally, these filings are available on the internet or on request from the regulated entity. All of the forms have many sections that can be useful in understanding and evaluating a holding company system, including:

Form 10-K:

- **Business**: This section should include discussion of the general development of the filer’s business, financial information about industry segments and a narrative description of the business. (See further discussion on segment reporting below.)
- **Properties**: This section should state the location and general character of the principal offices and materially important physical properties of the filer and its subsidiaries.
- **Legal Proceedings**: This section briefly describes any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the filer or any of its subsidiaries is a party or which any of their property is the subject.
- **Management’s Discussion and Analysis (MD&A) of Financial Condition and Results of Operations**: This section should include discussion of the filer’s financial condition, and results of operations, including liquidity, capital resources, material changes in financial condition and results of operations.
- **Directors and Executive Officers**: This section should identify the directors, executive officers, certain significant employees, family relationships and their involvement in certain legal proceedings.
Framework for Insurance Holding Company Analysis

- **Executive Compensation**: This section includes information on the compensation paid to executives of the filer, including the types of compensation covered and a summary compensation table.

- **Security Ownership of Certain Beneficial Owners and Management**: This section describes the amount of the filer’s securities owned by certain beneficial owners, management and possible changes in control subsequent to the date of the filing.

- **Certain Relationships and Related Transactions**: This section includes discussion of transactions with management and others, certain business relationships, indebtedness of management and transactions with promoters.

- **Exhibits**: The Form 10-K will frequently include several exhibits, which are either listed or incorporated by reference. Reviewing the list of exhibits can be very informative as the exhibits will contain major agreements, ongoing lawsuits and other legal issues. The 10-K may also reveal additional intercompany agreements that were not previously disclosed to the regulator.

**Form 10-Q:**

- **MD&A of Financial Condition and Results of Operations**: This section should include discussion of the filer’s financial condition, and results of operations, including liquidity, capital resources, material changes in financial condition and results of operations for the most recent fiscal quarter.

**Form 8-K:**

- **Changes in Control of Registrant**: This section includes the name of the person(s) who acquired control, the amount and the source of consideration used by such person(s), the basis of the control, the date and a description of the transaction(s) which resulted in the change in control, the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control and the identity of the person(s) from which control was assumed.

- **Changes in Certifying Accountant**: This section includes information about the resignation or dismissal of the filer’s independent accountant.

- **Resignations of Directors**: This section provides information about the resignation of directors resulting from disagreements with the filer on any matter relating to the filer’s operations and policies or practices.

One of the most helpful sections of the Form 10-K may be the disclosure on segment reporting. Segment reporting in its current form was adopted in Statement of Financial Accounting Standard No. 131 (SFAS No. 131). SFAS No. 131 requires that a company determine its segments based upon how it operates its business. The segment disclosure is fairly broad, including information for each segment on net income/loss, total revenue and total assets. However, the disclosure is most helpful because it provides the reader of the financial statements with information that management considers in evaluating the results of the entire organization. The disclosure also provides a starting point for determining how to assess the entire organization.
For insurance holding companies, this type of reporting may result in a company determining its segments based on its products. This may be very similar to the type of information that is included in the annual statement except that the business is reported on a consolidated basis in the Form 10-K. Within these organizations, middle management exists at each of the insurance companies with senior management at the corporate or holding company level involved in many of the decisions that affect each company’s continued operations. Generally, top management assesses the operations of these companies based upon the earnings of the products in comparison to projections. An understanding of management’s approach to assessing the company’s operations will assist the lead state in ensuring that analysis and examination processes are designed to focus resources on higher risk areas of the company’s operations.

For holding companies that have more than insurance operations or that are affiliated with banks or thrifts, the entire insurance operation may be defined as one segment, while the other types of business may represent separate and distinct segments. This type of segment reporting in holding companies is not uncommon in a diversified holding company system since each line of business presents unique challenges to the organization that generally require different types of expertise to manage the risks inherent within the various operations. Because the other lines of regulated business may require as much expertise as the insurance segment, the lead state should utilize the knowledge of the applicable federal and state banking agency or functional regulator to gain an understanding of the insurance company’s affiliates. In cases when non-insurance business is subject to functional regulation, coordination with the functional regulator is critical to ensuring that regulatory activities are not duplicative or unnecessarily burdensome to the organization. Additionally, to the extent that information cannot be obtained from the federal banking or other functional regulator regarding the non-insurance company segments, the regulator may use the information that is available in the Form 10-K filing to assess the overall strengths and weaknesses of the non-insurance operations. Regulators may review statistical publications for the specified industry to help determine the segment’s strengths and weaknesses. This process of evaluating strengths and weaknesses will provide the regulator with a greater understanding of the risks that the holding company may pose to the insurance companies.

At a minimum, the regulator may focus on the overall profitability of the segment as well as the stability of earnings over a period of time. To the extent that the segment has reported inconsistent earnings, or has reported any losses, the lead state may wish to obtain a greater understanding of the causes. The regulator may also focus on the overall growth trend of the non-insurance operations as measured by its reported revenue. To the extent that the non-insurance operations have reported a significant increase in revenue, the regulator may wish to obtain a greater understanding of the causes.

The regulator may review the consolidated cash flow statement and compare it to the cash flow statement of the insurance companies, focusing primarily on the operating cash flows. The cash flows of the insurance companies can either be manually obtained by combining each of the insurance companies (statutory basis), or can be obtained from the company (GAAP basis). Although the two are on a different basis, the net operating cash flows should be the same, or substantially the same, under the two methods.
B. Other Sources of Public Information on Publicly Traded Companies

Effective October 23, 2000, the SEC adopted Regulation FD, Rule 10b5-1 and Rule 10b5-2 relating to Selective Disclosure and Insider Trading, which can be found at the SEC’s website at www.sec.gov/rules/final/33-7881.htm.

Regulation FD (Fair Disclosure) provides that when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons, such as securities information. Public disclosures of nonpublic information can be by conference call. According to the Manual of Publicly Available Telephone Interpretations of the SEC, adequate advance notice under Regulation FD must include the date, time, and call-in information for the conference call. Conference calls are usually announced through a company press release. Many publicly traded companies are now conducting their quarterly and annual earnings results over the internet by means of a webcast. Conference calls and webcasts usually include a question and answer session during which investors and securities analysts can ask questions of the company participants. This presents an informative forum to gain insight into the operations of a specific holding company.

Rule 10b5-1 addresses the issue of when insider trading liability arises in connection with a trader’s “use” or “knowing possession” of material public information. Rule 10b5-2 addresses the issue of when a breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading.

C. Annual Statement and Quarterly Statements

The Annual Statement and Quarterly Statements should be reviewed for changes in lines of business, net underwriting gains and losses and general trends that may indicate changes in the organizational or operational environment of the company. Schedule Y – Information Concerning Activities of Insurer Members of a Holding Company Group includes an organizational chart and a summary of insurer transactions among affiliates that provides significant insight into the organizational structure of the company. Particular attention should also be given to the notes and interrogatories to these statements, as well as balance sheet accounts relating to affiliates.

D. Audited Statutory Financial Statements and Internal Control Letter

The audited statutory financial statements of the insurance companies in a group, prepared by an independent accountant, may provide useful information about the organizational structure of the holding company system. Specifically, the footnotes to the audited financial statements will include information about the organizational structure and relationships among parent, subsidiary and other affiliated entities. Such disclosures should include significant related party transactions, significant reinsurance transactions, intercompany agreements, management agreements, and dividends to stockholders and capital contributions, among others. For those states that allow companies to file consolidated or combined financial statements, the disclosures should again provide significant insight into the organizational structure of the consolidated

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group. The regulator should request a copy of the internal control letter and, in certain circumstances, consolidating worksheets, although these may require confidential treatment.

In addition, regulators should consider requesting copies of audited or other financial statements of ultimate or available intermediate non-public holding companies.

E. Annual Report to Shareholders

The Annual Report to Shareholders may provide useful information about the organizational structure and operations of the company. The Annual Report to Shareholders generally includes management discussion and analysis with regards to the organization’s overall operations, segment information, historical performance and the audited financial statements with accompanying notes. The Annual Report to Shareholders is usually more condensed than the Form 10-K and is, oftentimes, filed with the Annual Registration Statement (Form B).

One of the most useful parts of the annual report is the letter from management to the shareholders. The letter provides a way for the holding company to communicate to its shareholders what it perceives as important. In some cases, the letter may provide the company a means to refuting perceptions that the market has of the company and its operations. In other cases, the letter may provide a vision for the future of the company.

Although the availability and comparability of the annual report may differ from company to company, it should be reviewed when available since it provides information that the company believes is important in communicating its overall financial condition, its results of operations and the corporate mission and vision.

F. Proxy Statements

The proxy statement, also referred to as Form 14A, is the document containing the information necessary to assist a stockholder in voting on the matters for which the proxy is solicited. The SEC has rules regarding the solicitation of proxies, which require disclosure of sufficient information in the proxy statement to allow a stockholder to exercise his/her right to vote on the various matters presented. These matters may include useful information to insurance regulators.

G. Stock Trade and Price Activity

If the stock of the intermediate or ultimate holding company is publicly traded, regulators should monitor the stock price and volume over time and compare the trends of price and volume of the holding company with peer organizations. Various factors may affect this activity, and the regulator should strive to determine what is impacting stock prices in the case at hand. Market information is readily available on the Internet.

H. Public Reports of Rating Agencies

Reports of rating agencies (e.g., Standard & Poor’s, Moody’s, A.M. Best, among others) provide a quick overview of the company. Such reports should be scanned for background information
Framework for Insurance Holding Company Analysis

about the company’s operations, management and significant changes. If the report of the entire insurance group is available, it may be useful in understanding the relationships of the each entity within the insurance group. Rating agencies often issue separate ratings and analyses on the credit rating of insurers or their holding companies and the claims paying ability of insurers.

I. Press Releases/Publications

Press releases and other publications may provide valuable information about important events and management decisions. These items may include significant transaction activity, changes in the company’s stock price, legal or regulatory problems, employee lay-offs, losses of key personnel, and problems with customers or providers, among others.

One of the goals of establishing a close reporting relationship between the group’s management and the lead state is for the regulator to be generally aware of events and decisions before they are publicly announced.

J. Discussions with Management/Internal Management Reports

This is one of the most important sources of information to the regulator, since senior management should be the most knowledgeable about the goals and progress of the organization it manages. The regulator may be able to develop a sense of management’s level of cooperation and candor, and, over time, determine how closely management’s information mirrors published reports and actual results. In the case of a FHC, the regulator should consult with the Federal Reserve as umbrella supervisor, to coordinate the analytical review of the ultimate holding company and avoid duplicative regulatory efforts.

It is also important to understand ultimate decision-makers within any organization, whether it is the Board of Directors or the company’s officers. Not only is it important for the regulator to assess a company’s ability to manage its business, it is also important for the regulator to develop an open line of communication with this group of people. The regulator should also identify an individual contact within the company to gather information at the group level. While the initial contact for insurance regulators is generally the annual statement contact, it will be necessary for the regulator to identify a contact that can address the management structure of the entire holding company system or insurance group. In some cases this may be a representative from the insurance company or the insurance holding company, while in other cases it may be the CEO or CFO of the entire organization. The frequency and level of communication, as well as the priority of obtaining external information in place of requesting information directly from management, will depend on the circumstances and are likely to vary from case to case.

As noted earlier, the SEC information on segment reporting is designed to provide readers of financial statements with information that management uses to make decisions. However, the amount of information provided under the disclosure is limited due to various types of organizations that exist. To the extent that a regulator has questions, such as details regarding a particular line of business, internal reports should be requested that address the specific concerns of the regulator. These may vary from the collectibility of goodwill to the history of the company’s stock price, etc. The regulator should utilize these reports in assessing the holding
company system or insurance group and related insurance subsidiaries. One internal report that can be the most useful in reviewing these concerns is the consolidating financial statements or worksheets. The consolidating financial statements allow the regulator to assess the individual details of the organization’s operations that cannot be done by reviewing the consolidated financials.

K. Correspondence with Insurance Departments and Other Regulators

Correspondence among other state or foreign insurance departments and federal regulators can be a critical source of information available to the domiciliary regulator as well as a designated lead state in a holding company situation. Sharing information, not only about the insurer, but also about procedures employed by other states and regulatory agencies, may provide significant efficiencies to the insurance regulator.

L. The Organization’s Risk Management Strategy

A well run organization should be aware of its potential entity-wide risk exposure, develop management strategies and institute controls by business segment, and incorporate the segment information into a corporate plan. The existence of an integrated risk management plan will give the regulator a general sense of the organization’s approach to the management of risk, that it is aware of and has considered its total exposure since some of the same risks are inherent in more than one business segment and that corporate controls are in place for the management and mitigation of risk on an entity-wide basis.

Through the above sources of information, the regulator will develop a sense of management’s direction and abilities to determine the level of confidence to place in management. In addition, regulators will develop a reasonable understanding of the core and non-core businesses of the group, financial condition, and perform general peer group comparisons of stock price and performance as needed. These steps are not meant to impose insurance regulatory processes on the holding company; rather, they are intended to facilitate a general understanding of the holding company’s performance within its market and possible risks it poses to its insurance affiliates.

In analyzing the financial statements of the group, regulators need to understand the materiality and expected contributions of the insurance operations. Examples of areas that regulators may particularly scrutinize are (1) goodwill and other intangible assets, and (2) debt obligations and covenants, with the goal of understanding the origins and ultimate ability to realize or address each. Many other areas of focus may arise from the specific characteristics of each holding company system.

A. Goodwill

Regulators should particularly note the description of goodwill in public filings, and should question management on the frequency and depth to which goodwill is evaluated. To the extent the holding company relies heavily on the insurance operations as its primary source of revenue, and the financial condition of the holding company may be impacted significantly by the realizability (or nonrealizability) of its goodwill (SAP or GAAP), consideration should be given to having the amount of goodwill reviewed by an independent party to assess whether it is
realizable. Goodwill on the holding company’s books that has questionable realizability may indicate the holding company’s reliance on the insurance subsidiaries to generate earnings. While regulators do not regulate the amount of goodwill recorded by the holding company, the regulator should take actions appropriate to protecting any vulnerability of the insurance subsidiary from the financial position of affiliates. The regulator is not regulating the holding company; rather they are assessing the financial impact the holding company has on the regulated insurance subsidiary.

B. Debt Obligations

One of the most obvious situations that may exist at the holding company that could affect the insurance companies is excessive debt, and other holding company obligations (e.g., preferred stock dividends, tax sharing arrangements and funding for other businesses). Debt includes not only long-term debt financed through the issuance of bonds, but also includes other long-term debt granted by a financial institution, as well as short-term vehicles such as commercial paper, repurchase agreements, or bank credit facilities. All types of debt arrangements should be considered when determining the amount and timing of cash flow payments needed to be made by the holding company.

Preferred stock and common stock are generally the most common types of equity financing used by holding companies. Although companies issue different types of stock, the most important concept to consider with all types of securities are the obligations due under the securities. Although the terms of these instruments may allow a company to forgo payments, the contractual obligations are generally overshadowed by the potential backlash from the shareholders when these anticipated payments are not made. Because of this, the fixed costs associated with preferred stock dividends should be considered an obligation of the holding company that may require funds from the insurance companies. Additionally, common stock dividends that are anticipated to be paid should also be considered an obligation of the holding company that may require funds from the insurance companies.

VIII. Assessing the Operations, Management, and Financial Condition of Insurers Within the Holding Company System

As previously noted, obtaining an understanding of the organizational structure and operations of a group of companies is one of the most important steps in assessing the risk profile, operations and financial condition of insurance companies. Sections VI and VII provide various sources of information to obtain an understanding of the organizational structure, management and operations of the holding company organization. Similar sources can be used in assessing the operations and financial condition of insurance companies and should be utilized to the fullest extent possible by state insurance regulators to understand the financial impact of other subsidiaries within the holding company on the insurance subsidiaries.

Regulators have access to the most direct and detailed information on individual insurers through the filings made with the states. These include annual and quarterly statements, MD&A, audited financial statements, and filings made pursuant to the state’s Holding Company Act and other regulatory filings.
Framework for Insurance Holding Company Analysis

A. Annual Statement and Quarterly Statements

An analysis and periodic examination, based on the annual or quarterly statements of each legal entity (e.g., insurer) is the responsibility of the domestic state. Since most groups may have common information systems and may use the same investment advisor or operate under common management, the lead state should take an active role in coordinating such reviews and examinations. Coordination of such exams among states will ensure that the most efficient, effective and consistent processes are utilized. The analysis and findings of each insurer’s examination should be collected and summarized by the lead state to determine the financial condition, compliance, and operations of the insurance group as a whole. This will provide the state with additional validation of representations made by company management. Regulators may also use the currently required combined statement for property/casualty companies, or may wish to capture elements of key financial data for each insurer from the NAIC database and consolidate the data into one document or spreadsheet for a quick summary of the insurance group. See Section IV.E. for discussion of the coordination of financial examinations.

B. Management Discussion and Analysis (MD&A)

Each company files a MD&A with, or shortly after, the annual statement filing. The level of detail varies from company to company, but the MD&A is intended to provide the regulator with information regarding the company’s operations. Most companies report the information consistent with its defined operating segments. This allows the reader to understand the specifics of the company’s operations, and to understand which segments management uses to assess its overall operations, both insurance and noninsurance.

C. Audited Financial Statements

Audited financial statements are prepared by an independent accountant and provide regulators a level of comfort on the reliability of the financial information in a more timely basis than a triennial, or longer, examination. Regulators should pay particular attention to the subsequent events information, since the audit report is typically not due until June 1, well after the March 1 filing of the annual statement. This information may reveal significant subsequent events, such as reinsurance transactions or acquisitions, which occurred after the annual statement filing. These independent audit reports should be used for these purposes as well as continuing to be used in evaluating the financial position of the individual insurance companies.

D. Holding Company Filings

The review of holding company filings is a significant piece of state insurance regulation. A separate section, Section IX below, has been devoted to the analysis of these filings.
E. Other Regulatory Filings

Regulators have access to other information filed by insurers that may provide useful information. The other filings would include items such as form filings, rate filings, complaint responses and corporate filings.

F. Risk Management Strategies for the Insurance Segment

Regulators should evaluate risk exposures, including strategies to manage risk for the organization’s insurance segment in addition to financial position, performance and business, management and corporate governance information to completely assess the stability and viability of an organization’s insurance operations. Risk management is usually done at the corporate or holding company level, but each business segment has unique risk exposures that must be incorporated in the organization’s integrated risk management program. It is important to note that not all organizations have formal plans and that risk management programs vary by entity and/or business segment. Although the plan should be tailored to the entity or business segment, an effective plan should include (i) overall risk management philosophy and policies, (ii) how risk arise in each business line, (iii) how risks are managed and controlled for each line of business, (iv) sensitivity to potential changes in circumstance and (v) the assumptions and measures on which the plan was based.

IX. Assessing Holding Company Impact on Insurers

Historically, most regulation of insurance companies has focused on “walling off” the insurance company from the holding company. This “walling off” takes various forms, from examinations of insurance companies on a state by state basis, to dividend restrictions on individual insurance companies, etc. While this walling off encourages adequate capitalization at the insurance company level, it may ignore significant events occurring within the holding company system that could have a material financial or operational impact on the insurance companies.

In general, the most obvious condition that holding companies place on insurance companies is the fulfillment of cash requirements. These cash requirements may be generated by debt obligations arising from the initial purchase of insurance company(ies), by other debt obligations of the holding company, by cash flow needs of other insurance or non-insurance companies within the holding company system, or by one time or ongoing expenses of the holding company.

The dependence on insurance subsidiaries to meet the holding company cash requirements varies with each organization. Some organizations are very simple, such as an insurance company subsidiary held by a shell holding company; in which case the holding company depends totally on the insurance company. Other organizations are far more complex, and the holding company may be supported by a number of business segments and companies. This is one of the reasons that an understanding of the whole organization is critical, including an assessment of goodwill and debt.

In some holding company systems, for example, the initial purchase of the insurance subsidiary accounts for the holding company debt, and the insurance subsidiary provides the primary operations, and therefore funding, of the holding company. In most of these cases, the acquisition cost is predicated on
the estimated future cash flows of the insurance company, and the debt requirements are met by ordinary dividends, or other payments, from the insurance company. The purchase price may far exceed the value (book value on a statutory basis, fair value on a GAAP basis) of the insurance company, and the excess represents goodwill. In such a case, the funding of debt is dependent on payments from the insurance company, the debt is based on purchase price, and the purchase price includes goodwill. If the goodwill is not recoverable through the insurance company’s normal operating results and cash flows, the holding company may seek other sources of cash flow from the insurance subsidiary, or default on its debt obligations, causing stress on the insurance company and the organization as a whole.

Other holding company systems are more complex, involving numerous insurance acquisitions, and the evaluation is more complicated. Since different assumptions are used in recording goodwill on each of the acquisitions, a separate analysis must be performed on each. The analysis must show that the company’s profits support the initial and ongoing goodwill and cash needs. Regulators of all domestic companies must use caution in reviewing these transactions at the time of purchase and on an ongoing basis, since poor management judgment in evaluating acquisitions and prices paid can result in non-recoverable goodwill and cash strains on the insurance and holding companies.

Regulators must exercise professional skepticism in evaluating all transactions of the consolidated holding company system to detect potential financial or operational strain on the insurance companies. In addition to acquisitions, these transactions include extraordinary dividends and intercompany agreements, which may be designed to move excessive amounts of cash to the holding company. The NAIC Financial Condition Examiners Handbook and the NAIC Financial Analysis Handbook address intercompany agreements. The procedures are critical in identifying holding company problems and abusive procedures, such as draining insurance companies of cash over time.

Regulators should be aware of other pressures on the holding company system and the resulting impact to its insurance entities. These pressures may result from rating agency activity, corporate expenses, or capital markets.

Rating agencies focus on liquidity available at the holding company, so that much of a subsidiary’s cash may be pushed up to the holding company (through dividends, management fees, or other intercompany arrangements) to get a better rating. A rating downgrade can have a drastic effect on the ability of the company to sell its products, particularly in the commercial property/casualty and annuity lines of business, or to compete in the marketplace in general. Events such as these can place a greater strain on the insurance companies, who may already be coping with high debt servicing requirements.

Similar stress may be placed on a holding company from the equity markets. Equity markets generally do not reflect early signs of financial difficulties, but are more reflective of estimated earnings, growth and sources of revenue. Usually the effects of a negative outlook by the equity markets are not as detrimental to a company in the short-term as a negative outlook by the debt markets. However, in some cases intense pressure from stockholders expecting significant increases in earnings, growth and dividends, may put additional pressure on management. This pressure can vary from an increase in the amount of dividends expected from the insurance companies, to new, riskier types of operations that can eventually have a negative impact on the insurance companies.
Corporate expenses take various forms, and a lack of control by the holding company is usually an indicator of difficulties. For the most part, however, the marketplace rewards companies that maintain low expense ratios because efficient companies are generally profitable.

The lead state should monitor, coordinate and distribute information to the other impacted states whenever significant changes occur or when potential cash flow or expense problems are detected.

To facilitate the analysis of a holding company’s impact on its insurance subsidiaries, the Sample Holding Company Analysis Checklist, which is included in Appendix B, is intended as a sample checklist for states beginning to implement the guidance of the Framework. The level of analysis and the assignment of certain procedures to either the analyst or the examiner, should depend on the circumstances and characteristics of the holding company system. Certain procedures should be performed in all holding company reviews, while other procedures should be performed only when areas of concern are noted.

X. Analysis and Review of Holding Company Filings and Transactions

Due to the element of control and risk in affiliate relationships, transactions within a holding company system between an insurer and an affiliated person are often the subject of special regulation. Most holding company filings are required by the Insurance Holding Company Systems regulation in each of the states. All states have adopted regulation that is the same or similar to the NAIC’s Insurance Holding Company System Regulatory Act (the Act). The Act and its related Insurance Holding Company System Model Regulation With Reporting Forms and Instructions (the Model) provide guidelines for holding company transactions and related filings, including Form A, B, C, D, E and extraordinary dividend filings. Effective administration of these guidelines requires:

(i) Awareness of and familiarity with the statutes and regulations of the domiciliary state.
(ii) A careful analysis of both form and substance of filings made pursuant to the holding company statutes and regulations of the domiciliary state to ensure compliance with holding company statutes and possible other statutes relating to changes of control, reorganization, the distribution of significant assets or actual or anticipated occurrence of other material transactions.
(iii) Timely reviews and follow up by analysts and supervisory staff particularly in those instances in which statutory deemers can result in automatic approvals.
(iv) Timely and properly documented interaction with other divisions of the insurance department.

Because holding company filings often affect many insurance companies, subject to different state and federal jurisdictions, it is important that the analysis of such filings be coordinated among all impacted states and other functional regulators. Every attempt should be made to coordinate the analysis and review of holding company filings to avoid duplicate processes. For this reason, the lead state should communicate the filing with all impacted states and should assume the role of “coordinator” (as described in Section IV) for the review processes applied to the filing, as agreed to by all impacted states. The lead state should coordinate the review processes and the communication and sharing of information among all regulators involved. The lead state should also ensure that all applicable steps of the applicable Form Review Checklist (included in Appendices C through G) are completed.
References to the analyst, analysis team or supervisory team within the Form Review Checklists are intended to include any states or other functional regulators involved in the analysis and review of the applicable holding company filing and may include analysts, examiners, market conduct specialists, or any other personnel involved in the review.

**Form A – Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer**

Section 3 of the Act outlines specific filing requirements for persons wishing to acquire control of or merge with a domestic insurer. To comply with Section 3 of the Act, a Form A is filed with the domestic state. The Form A Review Checklist, which is included in Appendix C, may be utilized to facilitate and document the review and analysis of each Form A.

The period for review and action on proposed affiliations for transactions falling under the GBLA is limited to 60 days prior to the effective date of the transaction, for transactions falling under the Act. Under Section 104(c)(2) of the GLBA, states have a 60-day period preceding the effective date of the acquisition or change or continuation of control in which to collect information and take action. Statutes and regulations should be reviewed to determine if amendments are necessary in order for states to adapt to this limitation. [Drafting Note: Revisions to the NAIC Holding Company Systems Regulatory Act, to comply with provisions of the GLBA, were adopted by the NAIC at the NAIC Commissioner’s Summit on October 24, 2001.]

**Form B – Insurance Holding Company System Annual Registration Statement**

Section 4 of the Act requires each insurer authorized to do business in a state to file a registration statement. To comply with Section 4 of the Act, a Form B is filed with the state in which it is registered. The Form B Review Checklist, which is included in Appendix D, may be utilized to facilitate and document the review and analysis of each Form B.

**Form D – Prior Notice of a Transaction**

Section 5 of the Act requires each insurer to give notice of certain proposed transactions. To comply with Section 5 of the Act, a Form D is filed with the domestic state. The Form D Review Checklist, which is included in Appendix E, may be utilized to facilitate and document the review and analysis of each Form D.

**Form E – Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in This State or by a Domestic Insurer**

Section 3.1 of the Act requires any domestic insurer, including any person controlling a domestic insurer, proposing a merger or acquisition to file a pre-acquisition notification form, Form E. The Form E Review Checklist, which is included in Appendix F, may be utilized to facilitate and document the review and analysis of each Form E.
Framework for Insurance Holding Company Analysis

As a reminder, the period for review and action on proposed affiliations is limited to 60 days prior to the effective date of the transaction, for transactions falling under the GLBA. Under Section 104(c)(2) of the GLBA, states have a 60-day period preceding the effective date of the acquisition or change or continuation of control in which to collect information and take action. While certain states may not be required to either approve or disapprove the Form E, they may only have a certain period of time in which an insurer’s license to do business in the state is denied or a cease and desist order is exercised. Statutes and regulations should be reviewed to ensure the Form E is processed in a timely manner.

Notice of Dividends and Distributions

Pursuant to Section 5B of the Act, no domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the 30-day period. Each state defines what is meant by “extraordinary”; however, the Act defines an extraordinary dividend or distribution as any dividend or distribution of cash or other property, whose fair value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of:

(i) Ten percent (10%) of the insurer’s surplus as regards policyholders as of the 31st day of December next preceding; or
(ii) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer’s own securities.

The Extraordinary Dividend/Distribution Review Checklist, which is included in Appendix G, may be utilized to facilitate and document the review and analysis of each extraordinary dividend/distribution notification.
This protocol provides guidance for Insurance Department staff sharing confidential information with other state, federal and international (non-U.S.) regulatory agencies, and with the National Association of Insurance Commissioners and its affiliates and subsidiaries, where appropriate. This protocol does not address the fundamental issue of whether confidential information can or should be obtained, but only how confidential information already in the possession of regulatory agencies should be shared and protected. This protocol does not apply to the sharing of confidential information by governmental agencies pursuant to a criminal investigation. As used in this protocol, “confidential” or “confidentiality” means confidential and/or privileged and/or proprietary.

A. Steps for Agency Requesting Confidential Information

1. The insurance department or other agency requesting confidential information (“Requesting Agency”) should designate specific persons to request and receive confidential information.

2. Requests for confidential information should be directed through a designated person at the Requesting Agency to a designated person at a Responding Agency.

3. If the Requesting Agency knows that an agency other than the Responding Agency was the original regulatory source of the confidential information requested, the Requesting Agency should direct its request to that original source.

4. Prior to sharing confidential information, the Requesting Agency and Responding Agency should have signed an information sharing agreement. If an information sharing agreement is not in force, the Requesting Agency must otherwise confirm in writing to the Responding Agency, prior to receiving confidential information, that it has the legal authority to maintain the confidentiality of the requested information and that it agrees to take appropriate actions to preserve the confidentiality of the information. These written assurances should contain a reference to relevant statutory and/or case law.

5. Upon receipt of requested confidential information, entries should be made in a log of confidential information received. The entry should include:
   a. A description adequate to identify the information, but that will not disclose confidential information if the log is made available under the state Freedom of Information Act (FOIA) or public records laws;
   b. The date the confidential information was received;
   c. The agency from which the confidential information was received; and
   d. The user within the Requesting Agency who will maintain the confidential information.

6. If, upon examination, the information is not as requested, it should be returned without being copied.

7. All confidential information retained by the Requesting Agency should be labeled as “confidential.”
8. After completion of the previous steps, the information may be delivered to the ultimate user within
the Requesting Agency with a notice that further dissemination of the confidential information to other
agencies may only occur in accord with the information sharing agreement or this protocol, through the
agency’s designated person.

B. Steps for Responding Agency

1. The insurance department or other agency receiving an information request (“Responding Agency”) should designate specific persons to respond to requests for confidential information.

2. All requests for confidential information received by the Responding Agency should be directed to a designated person.

3. The designated person must verify that the Requesting Agency is authorized to receive confidential information under applicable statutory provisions allowing sharing of confidential information. (See Section (A)(4)). Responding Agency counsel should be consulted where appropriate.

4. The designated person should verify whether an information sharing agreement with the Requesting Agency is in place and whether the requested confidential information is covered by the agreement.

5. If an information sharing agreement is not in place, the Responding Agency’s legal counsel should review the Requesting Agency’s written assurances concerning authority and intent to maintain the confidentiality of the information.

6. If the Requesting Agency is an international (non-U.S.) regulatory agency, best regulatory practices dictate that the Responding Agency, in addition to the steps above, notify the original, non-regulatory source of the confidential information (the source that originally provided the information to the Responding Agency). The Responding Agency should consider any objections the original source of the information may have to sharing the information, such as the ability of the Requesting Agency to maintain the confidentiality of the information, prior to deciding whether to share the information.

7. Approval of the sharing of confidential information with the Requesting Agency should be obtained from a person within the Responding Agency who is responsible for the information. The Responding Agency may decide there is a reasonable basis not to share the requested information.

8. The requested confidential information should then be located, copied for transmittal, and marked or labeled as “confidential.” If locating, copying, or marking the requested information will generate a cost that the Responding Agency wishes to pass on to the Requesting Agency, the Requesting Agency should be advised of that cost before the Responding Agency prepares and sends the information.

9. An entry should be placed in a log of confidential information transmittals. The entry should include:
Framework for Insurance Holding Company Analysis

a. A description adequate to identify the information, but that will not disclose confidential information if the log is made available under state Freedom of Information Act (FOIA) or public records laws;

b. The date on which the confidential information is sent; and

c. The agency and person to whom it is sent.

10. The person to whom the confidential information is sent should be a designated contact person at the Requesting Agency.

11. A cover letter should be attached requesting confidential treatment in accordance with an information sharing agreement, other written assurances given by the Requesting Agency, or this protocol.

12. If the confidential information originated outside the Responding Agency, that fact should be noted in the cover letter.

13. If the confidential information is sent electronically, appropriate security measures, including encryption, should be taken.

14. If some or all of the information requested is subject to a reasonable, but unresolved, claim of confidentiality, the Requesting Agency should treat the information as confidential in accordance with these guidelines until there is a final determination that it is public. (See also Section (B)(6)).

15. The above guidelines assume the Requesting Agency knows the material is confidential when requested. If the Requesting Agency does not know the information is confidential, the Responding Agency should direct the request through the designated person as soon as confidentiality issues are identified. Such designated person should advise the Requesting Agency of the confidential nature of the information and obtain the necessary assurances on maintaining the confidentiality of the information.

C. Secondary Governmental Requests for Confidential Information

1. Unless the information sharing agreement between the Requesting and Responding Agencies provides otherwise, the Requesting Agency may share confidential information received from the Responding Agency with other regulatory agencies in the Requesting Agency’s state government, (“intrastate” request), so long as those agencies are authorized and required to maintain the confidential nature of the information.

2. In most circumstances, if the Requesting Agency receives a request from another state, (“interstate” request), federal or international (non-U.S.) regulatory agency, or the National Association of Insurance Commissioners or any of its affiliates or subsidiaries for confidential information that was originally obtained from another regulator (the original Responding Agency), the secondary requesting agency should be referred to the information’s regulatory source (the original Responding Agency) to obtain the confidential information. If the Requesting Agency does not refer the matter, the original Responding Agency should be informed and steps in Sections A and B followed.
D. Non-Governmental Requests for Confidential Information

1. In the event the Requesting Agency receives from a non-governmental party (a party other than a governmental agency) a request for confidential information furnished by the Responding Agency, or in the event the Requesting Agency is served with a subpoena, order, or other process requiring production of such confidential information or testimony related thereto, best regulatory practices dictate that the Requesting Agency:

a. Follow the applicable Freedom of Information Act (FOIA) and public records procedures;

b. Immediately notify the original Responding Agency that production of confidential information is being sought, afford that Agency the opportunity to take whatever action it deems appropriate to protect the confidential nature of the information, and cooperate fully in preserving and protecting the full scope of all claims of confidentiality which may apply to the information;

c. Notify the party seeking production of the confidential information that the Responding Agency is the original regulatory source and that requests for release of the information should be made directly to the Responding Agency;

d. Resist production of the confidential information pending written permission of the Responding Agency to produce the information; and

e. Consent to any application by the Responding Agency and the original non-governmental source to intervene in any action for the purpose of asserting and preserving any claim of confidentiality with respect to the confidential information.

2. Best regulatory practices dictate that a Responding Agency will inform the original non-regulatory source of confidential information (the source that originally provided the information to the Responding Agency) that the information has been requested by a non-governmental party, thereby giving that source notice and an opportunity to take legal steps to prevent improper disclosure of confidential information.
Framework for Insurance Holding Company Analysis

Sample Insurance Holding Company Analysis Checklist

<table>
<thead>
<tr>
<th>Holding Company/Insurance Group Name</th>
<th>NAIC Group Code</th>
<th>Domestic Insurer</th>
<th>NAIC Company Code</th>
<th>Analyst(s) (initial and date)</th>
<th>Supervisor(s) (initial and date)</th>
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The primary objective of this Holding Company Analysis Checklist is (1) to gain an overall understanding of the holding company structure or insurance group and how the insurance subsidiary fits into the organization and (2) to assess the potential risks the holding company or other affiliates pose to the insurance subsidiary and should be used in connection with the Framework for Insurance Holding Company Analysis (the Framework). This checklist is not intended to encourage an in-depth review of the holding company or its noninsurance operations; rather, it employs a due diligence approach to acquiring a general understanding of the holding company structure and the current or potential risks to which the insurance subsidiary may be exposed. Among the risks to be considered are:

- The size of the insurance subsidiary in relation to the entire holding company structure,
- The amount of leverage at the holding company and significant affiliates,
- Cash flows at the holding company and the holding company’s reliance on the insurance subsidiary to service debt or fulfill other obligations,
- The level, quality and volatility of earnings at the consolidated holding company level,
- The risk associated with the activities and assets of the holding company and significant affiliates, and the degree of independence of the insurance subsidiary and its ability to “stand alone.”

In fact, the checklist is intended as a sample for use by states beginning to implement the guidance of the Framework for Insurance Holding Company Analysis. The level of analysis and the assignment of certain procedures to either the analyst or the examiner, should depend on the circumstances of the holding company system. Certain procedures should be performed in all holding company reviews, while certain other procedures should be performed only when areas of concern are noted. The Insurance Holding Company Working Group will likely work to enhance this checklist in an effort to design a financial analysis handbook for holding companies.

The following steps may be followed to assist in documenting your analysis and findings.
1. Identify all insurance subsidiaries within the holding company system or insurance group and the domestic regulator for each insurance subsidiary. Utilize statutory filings, specifically Schedule Y – Information Concerning Activities of Insurer Members of a Holding Company Group, to identify these subsidiaries.

2. Determine if any entity in the holding company structure is functionally regulated by the Federal Reserve, Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC) or other functional regulator.

3. Determine the lead state for the holding company or insurance group. Complete and open communications between all impacted states must be established before the lead state is determined. Factors that may be considered when determining the lead state are outlined in Section III of the Framework. Describe the rationale supporting the consensus among all states involved in determining the lead state.

4. The role of the lead state is described in Section IV of the Framework. While the lead state’s role may vary from situation to situation, the lead state should coordinate the communication and regulatory processes of all states and functional regulators involved. Although the lead state may delegate certain tasks to other states, the lead state should ensure that the remaining steps, if applicable, of the Holding Company Analysis Checklist are completed.

5. Establish a line of communication with top management of the insurance companies and of intermediate and/or ultimate holding companies. Communicate the lead state’s plan to coordinate the communication and regulatory processes of all participating states to the appropriate level of management.
Appendix B
Framework for Insurance Holding Company Analysis

6. Establish points of contact with each impacted state and determine their level of interest in participating in the multi-state coordination.

7. Establish lines of communication and distribution of information with impacted states and other functional regulators. Agreement should be reached among the involved states to clearly define the role that each state will play and how the status of examinations, analysis or other reviews will be communicated.

8. Ensure that any confidential information shared will remain confidential by executing the appropriate confidentiality and information sharing agreements. See Section IV.D. of the Framework for further discussion of confidentiality arrangements.

9. Identify the status of company filings, state examinations and other activity from each of the states involved. Work with each state involved to coordinate and schedule examinations, holding company filing reviews and other analysis for all insurers with the holding company system or insurance group to ensure the most efficient, effective and consistent examination process is developed. Work closely with all states involved to determine which examination procedures each state will conduct. Significant effort should be taken to avoid the duplication of such processes.

10. Obtain an understanding of the holding company system or insurance group and document such in a format that can be shared with all impacted states and other functional regulators. Consider reviewing the following sources of information to gain this understanding: [Note: Section VI of the Framework provides a description and discussion of these sources.]

   a. Statutory filings with state insurance regulator including notes to financial statements, organization charts, registration statements (Form B), management’s discussion and analysis, audited financial statements and internal control letters.

c. Examination reports that describe the location of insurance subsidiaries and agreements and transactions with affiliated companies.

d. Correspondence and discussions with company representatives and management, as well as specific inquiries made to companies.

e. Filings made with the SEC (e.g., Form 10-K, Form 10-Q, Form 8-K).

f. Annual Report to Shareholders and Proxy Statements

g. Ratings and analysis reports from rating agencies.

h. Trade and professional publications.

i. Communication with the Federal Reserve regarding insurance subsidiaries in a FHC.

11. Evaluate the financial condition of the holding company and its impact on the financial condition of its insurance subsidiary(ies) by considering the following factors:

   a. Is the holding company a shell? If yes, go to question b. If no, skip to question e.
      
      Yes _________ No _________

   b. Is the shell only engaged in investing cash from dividends or proceeds from stock sales?
      
      Yes _________ No _________

   c. Does the shell have only minimal debt that can easily be serviced by its own resources?
      
      Yes _________ No _________
d. In its cash management, does the shell invest solely in U.S. government securities or other liquid non-leveraged cash instruments, or does it invest in high risk, highly leveraged instruments?

If the answers to question a., b. and c. are “yes” and the answer to question d. is liquid interest bearing instruments, you may not need to investigate much further, as this holding company may pose very little risk to its affiliates. However, if any of the answers to question a., b. and c. are “no” or the answer to question d. is high risk or highly leveraged, you may wish to continue to assess the nature of any risk such circumstances pose to the holding companies’ insurance subsidiaries.

e. Does the holding company lack a consistent source of reliable cash flow and stable earnings from operations other than proceeds from the insurance subsidiary?

   Yes __________     No __________

If yes, you may proceed to the following steps:

(i) Determine the extent to which the holding company relies on earnings/dividends from its insurance subsidiary(ies).

(ii) Determine if the holding company is pressuring the insurance subsidiary(ies) to pay out a high level of dividends or boost earnings by engaging in higher risk activities, and whether this has a negative effect on the insurance subsidiary(ies).

(iii) Determine and compare dividend payout ratios for all holding company subsidiaries.

(iv) Determine if the holding company’s dividend payout ratio or debt service requirements and prospective rate of earnings may place a burden on the insurance subsidiary(ies).
(v) Ensure that all capital distributions received from the insurance subsidiary(ies) are within the prescribed limits and that prior application or notification, as appropriate, had been submitted to the applicable state insurance department.

(vi) Review Schedule Y – Part 2 of the Annual Statement of the insurance subsidiary to determine the amount of service fees, consolidated tax payments, lease payments, or other fees payable under affiliate agreements that are being paid to the holding company or another affiliate.

f. Is the holding company significantly leveraged, either with high debt levels, other hybrid instruments with debt-like features, or highly volatile investments, such as futures, options, interest only securities or residuals?

Yes ________    No ________

If yes, you may proceed to the following steps:

(i) Analyze the holding company’s level of debt, and identify changes in both dollar amounts and ratio to holding company capital, to help determine the risk posed to the insurance subsidiary(ies).

(ii) Assess the leverage of the holding company’s investments.

(a) Consider if the holding company is investing in leveraged instruments such as futures and options that can require volatile cash needs.

(b) Determine to what degree the holding company has retained recourse related to off-balance sheet funding activities such as asset securitization.
Consider whether the holding company is committed to investments with material cash needs, such as major construction projects and other capital intensive business activities.

Assess whether the holding company is relying on debt to fund its investment in the insurance subsidiary(ies) and if so, determine the extent of double coverage.

Determine if the holding company’s capital position has deteriorated over the last five years. If so, cite the reasons.

Determine if the holding company has bank debt that comes due within 12 months.

Analyze whether the holding company has significantly restructured its asset/liability portfolio or made significant acquisitions or divestitures.

g. Even if the holding company currently has low levels of debt and conservative investments, is it in a cyclical industry that is distressed or clearly experiencing adverse trends?

Yes ________ No _________

h. Does the holding company have a history of volatile operating earnings?

Yes ________ No _________

If yes, you may proceed to the following steps:

Evaluate the earnings trends of the holding company’s noninsurance operations/subsidiary(ies) over the prior three years and determine the causes for weak or deteriorating performance.
Appendix B
Framework for Insurance Holding Company Analysis

(ii) Determine whether the sources of earnings of pre-tax income are recurring.

(iii) Determine whether financial flexibility exists from noninsurance sources that would enable the holding company to service its short-term obligations.

(iv) For those companies unable to fully meet cash flow needs from internal resources, identify the cause and level of the deficit and assess the three year trend.

(v) In cases of worsening or deficit cash flow positions, obtain or prepare a maturity schedule comparing the levels of resources available to funding requirements over the short-term (up to 90 days), intermediate term (91 days to 1 year), and long-term (over 1 year).

(vi) Quantify the amount of cash flow provided to the holding company by the insurance subsidiary(ies) and determine what the company’s cash flow position would be without funds from the insurance subsidiary(ies).

i. Has the holding company or any of its affiliates recently had a downgrade in debt ratings by a major debt rating agency such as Moody’s or Standard and Poor’s?

Yes __________ No __________

If yes, identify any changes to the ratings of the holding company or significant affiliates as established by ratings services and assess the causes for any downgrades.

12. Evaluate the financial dependence of the insurance subsidiary on the holding company by considering the following factors:
## Framework for Insurance Holding Company Analysis

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<th>W/P Ref.</th>
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<th>Date</th>
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### a. Is the insurance subsidiary dependent on the holding company for access to the capital markets?

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</table>

Yes _________  No _________

If yes, proceed to the following steps:

(i) Review the composition of consolidated capital.

(ii) Review the access of the holding company to the capital markets.

(iii) In cases where capital is considered inadequate, discuss with management any plans to access the capital markets or otherwise augment capital.

(iv) Determine the effect to consolidated capital of the company’s dividend practices and identify situations where the holding company or its subsidiaries must borrow funds or sell assets to maintain dividend payments.

### b. Is the insurance subsidiary unlikely to survive the financial collapse of the holding company or major affiliate?

<p>| | | |</p>
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</table>

Yes _________  No _________

If yes, proceed to the following steps:

(i) Evaluate the financial interdependence within the holding company’s corporate structure. Consider counterparty and concentration risks.

(ii) Evaluate whether the insurance subsidiary can be insulated from adverse events within the holding company structure and carved out as a stand-alone operating entity, if necessary. Ensure that separate corporate identity is maintained.
Evaluate the operational independence of the insurance subsidiary on the holding company by considering the following factors:

a. Do the insurance subsidiary’s management and BOD consistently act in a manner beholden to the holding company?

   Yes __________     No __________

If yes, proceed to the following steps:

(i) Assess the influence of the Board of Directors and management on the insurance subsidiary.

(ii) Assess the independence of the Board of Directors of the holding company, other affiliates and the insurance subsidiary.

(iii) Identify the principal decision makers of the holding company, including major shareholders. Does the holding company share common officers with the insurance subsidiary? If so, expand your review in the insurance subsidiary examination to ensure they are fulfilling their fiduciary role to the insurance subsidiary.

(iv) Obtain a management organization chart identifying the insurance subsidiary line of reporting to the holding company.

b. Are the insurance subsidiary’s systems dependent upon the holding company or any of its affiliates?

   Yes __________     No __________

If yes, proceed to the following steps:
(i) Determine the extent to which the operations of the insurance subsidiary are integrated with the holding company and other affiliates.

(ii) Assess the risk posed by integrated systems, common risk management practices, central decision making, joint marketing and delivery systems, linked market reputation, size of the insurance subsidiary in relation to the holding company, and common controls.

(iii) Review policies and procedures concerning the operation of the holding company and its affiliates.

(iv) Review any business plans for the holding company and its affiliates.

c. Is the insurance subsidiary basically a “shell” with no or few full time employees dedicated only to the insurance subsidiary’s well-being, as opposed to having a distinct management team devoted to the insurance subsidiary?

   Yes _________   No _________

d. Are the insurance subsidiary’s audit functions consolidated within the holding company, as opposed to having a separate, distinct audit department?

   Yes _________   No _________

e. Are most, if not all, key functions of the insurance subsidiary, such as risk management, underwriting, investment advice, trading, and other banking or lending functions, being performed by the holding company or any of its affiliates?

   Yes _________   No _________
f. Is the compensation of the insurance subsidiary’s management, either directly or indirectly through stock options, tied to the performance of the holding company?

Yes __________ No __________

14. Evaluate the reputational risk that the holding company poses to the insurance subsidiary by considering the following:

a. Is the insurance subsidiary’s public identity linked with the holding company, such as a similar name and marketing strategy?

Yes __________ No __________

b. Is there a great deal of cross-selling of proprietary products, like trusts, insurance policies, mutual funds and the like?

Yes __________ No __________

c. Is the insurance subsidiary limited purpose in that it serves only to facilitate the sale of services and products of the holding company, as opposed to being a full service insurance company?

Yes __________ No __________

d. Do virtually all of the insurance subsidiary’s assets or liabilities come, directly or indirectly, from the holding company or any of its affiliates, as opposed to a widely diverse customer base?

Yes __________ No __________
Appendix B

Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>W/P Ref.</th>
<th>Examiner/Analyst</th>
<th>Date</th>
</tr>
</thead>
</table>

a. Is the holding company inexperienced in running an insurance company, as opposed to a history of managing such entities?

Yes __________ No __________

b. Is the holding company management itself relatively new, as opposed to a well-established business with many years of successful operations?

Yes __________ No __________

If yes, proceed to the following steps:

i. Analyze changes in the holding company’s organizational structure since acquisition or previous analysis.

(a) Compare a current organization chart with one submitted at the time of acquisition or in the previous analysis.

(b) Review organizational data provided by any other functional regulator.

(c) Identify all tiers of the holding company.

(d) Determine if the holding company has diversified itself of, acquired, or formed any new subsidiaries.

(e) Determine what activities the holding company and other affiliates are engaged in and whether the holding company is diversified or nondiversified.

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c. Is the holding company in a significantly different business than financial services, such as manufacturing, with different auditing and accounting guidance?

Yes _________  No __________
Appendix C

Framework for Insurance Holding Company Analysis

Form A Review Checklist—Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer

<table>
<thead>
<tr>
<th>Applicant Name</th>
<th>NAIC #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Insurer</td>
<td>NAIC #</td>
</tr>
<tr>
<td>Other Party/Parties to Transaction</td>
<td></td>
</tr>
<tr>
<td>Date Notification Received</td>
<td>Deemer/Approval Deadline</td>
</tr>
<tr>
<td>Analyst(s) (initial and date)</td>
<td>Supervisor(s) (initial and date)</td>
</tr>
</tbody>
</table>

Section 3 of the NAIC’s Insurance Holding Company System Regulatory Act (the Act) outlines specific filing requirements for persons wishing to acquire control of or merge with a domestic insurer Form A. To comply with Section 3 of the Act, a Form A is filed with the domestic state. The procedures and criteria described below reflect those of the model Act. The analyst/reviewer should be aware of and address any differences between the model Act and the applicable state regulations. Every attempt should be made to coordinate the analysis and review of holding company filings among all impacted states and other functional regulators to avoid duplicate processes. For this reason, the domestic state or lead state should communicate the filing with all impacted states and should assume the role of “coordinator” (as described in Section IV) for the review processes applied to the filing, as agreed to by all impacted states. References to the analyst, analysis team or supervisory team that follow are intended to include any states or other functional regulators involved in the analysis and review of the applicable holding company filing.

The designated analyst or analysis team should review the filing thoroughly and make a timely and appropriate written recommendation to their supervisor(s) as follows:

1. The analyst or analysis team (“analyst(s)”) must check for the proper form and content as prescribed in the state’s holding company regulation.

2. If the document is not complete, the analyst(s) should inform the applicant in writing that the filing has been deemed incomplete and request that the applicant provide the missing material in an amendment to the filing.

3. The analyst(s) should consider the real and potential impact of the change of control to the insurer. The review should include both the direct impact on surplus, operations, etc., and indirect effects, such as the financial position of acquiring person and any debt service or dividend requirements that need to be funded by the insurer.

4. The analyst(s)’s review should be documented on the Form A Review Checklist. The analyst(s) should report the results of the review to their supervisor(s) in a memorandum which contains (i) the major features of the acquisition, (ii) an analysis of the transaction and (iii) a recommendation.
Appendix C

Framework for Insurance Holding Company Analysis

5. The supervisor(s) should be responsible for reviewing the transaction and providing comments, and making an appropriate recommendation to the chief officials responsible for approving Form A filings. The supervisor(s) should complete these actions in a timely manner and sign off and document their concurrence.

6. The chief officials should promptly review the supervisors’ comments and recommendation of approval or disapproval, passes the supervisors’ memorandum and accompanying materials to the final reviewer (e.g., Commissioner, Deputy Commissioner, Chief Examiner). The chief officials are responsible for communicating the responsive actions of the final reviewer to the supervisor(s) and the supervisor(s) and/or analyst(s) should ensure that the recommendation is properly documented in the insurer’s files.

   a. Ten days before the projected date of deemed approval, if the supervisor(s) has/have not been advised of definitive action on the application, the supervisor(s) shall contact the chief officials directly concerning the status of the filing.

   b. Upon notice that a Form A application has been approved or disapproved, the supervisor(s) is/are responsible for conveying the appropriate information to the applicant and also to any insurer which is party to the transaction. Formal notices of approval shall be in writing and documented in the holding company files of the affected companies.

   c. The supervisor(s) is/are also responsible for communicating the Form A’s status to other divisions within the insurance department, especially examination and analysis staff responsible for the affected companies.

The period for review and action on proposed affiliations for transactions falling under the GBLA is limited to 60 days prior to the effective date of the transaction, for transactions falling under the Act. Under Section 104(c)(2) of the GLBA, states have a 60-day period preceding the effective date of the acquisition or change or continuation of control in which to collect information and take action. Statutes and regulations should be reviewed to determine if amendments are necessary in order for states to adapt to this limitation. [Drafting Note: Revisions to the NAIC Holding Company Systems Regulatory Act, to comply with provisions of the GLBA, were adopted by the NAIC at the NAIC 2001 Fall National Meeting.]

The following procedures address the use of the NAIC’s Form A database:
1. Review the NAIC’s Form A database to determine whether or not the Form A is pending or has been approved, denied or withdrawn in another state.

2. Perform a query of the NAIC Form A database on the name of the applicant, directors, executive officers or owners of 10% or more of the voting securities of the applicant to identify the nature of other filings made in other states by similar individuals.

3. Ensure the appropriate data elements from the Form A are entered into the NAIC’s Form A database.

4. Consider making contacts with other states to discuss the status and/or disposition of the current and prior filings made with those states.

The following procedures address whether the Form A was completed in compliance with the Form A filing requirements from the Act.

Item 1  Does the Form A provide a brief description of how control is to be acquired?

Item 2  (a) Does the Form A state the name and address (legal residence for an individual or street address if not an individual) of the applicant?

   (b)  

   i. Does the Form A state the nature of the applicant’s business operations for the past five years, if the applicant is not an individual?

   ii. Does the Form A describe the business intended to be done by the applicant and its subsidiaries?
(c) Does the organization chart identify and state the relationship of every member of the insurance holding company system, except for affiliates with total assets less than ½ of 1% of the total assets of the ultimate controlling person within the holding company system?

**Drafting Note:** States may wish to request the applicant to list the domestic state for each company within the organizational chart. Additionally, if any affiliated contracts are proposed as part of the acquisition, states may want to have all parties to the transaction(s) identified in the organizational chart regardless of the entity’s size.

<table>
<thead>
<tr>
<th>Item 3</th>
<th>Does the Form A provide adequate background information (i.e., biographical affidavits) on the (1) applicant, if s(he) is an individual, or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant, if the applicant is not an individual? The background information should include name and business address, present business activity, material occupations for the preceding five years, and identify any convictions in criminal proceedings (excluding traffic violations excluding injury) in the past ten years.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 4</td>
<td>(a) Does the Form A describe the nature, source and amount of funds or other consideration (e.g., pledge of stock, other contributions, etc.) used or to be used in effecting the merger or acquisition of control?</td>
</tr>
</tbody>
</table>
### Appendix C

**Framework for Insurance Holding Company Analysis**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>If amounts will be borrowed, does the Form A describe the relationship between the borrower and lender, the amounts to be borrowed, and include copies of all agreements, promissory notes and security arrangements relating thereto? Although not specifically required under Item 4, if amounts will be borrowed, the Form A should state the sources of funds to be used to service the debt.</td>
<td></td>
<td></td>
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<tr>
<td>(c)</td>
<td>Does the Form A explain the criteria used in determining the nature and amount of such consideration?</td>
<td></td>
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</tbody>
</table>

**Item 5**
Does the Form A describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate the insurer, to enter into material agreements (including affiliated agreements), to sell the insurer’s assets or to merge the insurer with any person or persons or to make any other material change in the insurer’s business operations or corporate structure or management?

**Item 6**
Does the Form A state the number of each class of shares of the insurer’s voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at?

**Item 7**
Does the Form A state the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3?
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Does the Form A give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option agreements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies? (Note: The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into.)</td>
</tr>
<tr>
<td>9</td>
<td>Does the Form A describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of the Form A? (Note: The description shall include the dates of purchase, the names of the purchasers, the consideration paid or agreed to be paid therefore, and whether any shares so purchased are hypothecated.)</td>
</tr>
<tr>
<td>10</td>
<td>Does the Form A describe any recommendations to purchase any voting securities of the insurer made by the applicant, its affiliates or any person listed in Item 3, or by anyone based upon interviews or the suggestion of the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of the Form A?</td>
</tr>
<tr>
<td>11</td>
<td>Does the Form A describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto?</td>
</tr>
<tr>
<td>12</td>
<td>Does the Form A summarize the financial statements and exhibits attached to the filing?</td>
</tr>
</tbody>
</table>
### Appendix C

Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>i. Does the Form A include the annual audited financial statements of the persons identified in Item 2 for the preceding 5 fiscal years and similar information covering the period from the end of such person’s last fiscal year if the information is available? <em>(Note: The financial statements may be filed on an individual or, unless the Commissioner otherwise requires, on a consolidated basis if consolidated statements are prepared in the usual course of business.)</em></td>
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<td></td>
<td>ii. Are the financial statements accompanied by a certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended?</td>
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<tr>
<td>(c)</td>
<td>Does the Form A include copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A?</td>
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</table>

Item 13 Does the Form A contain the required signature and certification?

Item 14 Was the appropriate filing fee submitted?
If any of the information required by items 1 through 14 above is omitted, the information should be requested from the applicant.

The following procedures should also be performed on the Form A to identify any significant and/or unusual items or inconsistencies:

<table>
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<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Verify the applicant’s source of funds used to purchase the insurer.</td>
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<tr>
<td>2.</td>
<td>After the change of control, will the insurer be able to satisfy the requirements for the issuance of a license to write the classes of insurance for which it is presently licensed?</td>
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<tr>
<td>3.</td>
<td>Is the acquisition of control likely to lessen competition substantially or likely to lead to a monopoly in insurance in the state?</td>
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<tr>
<td>4.</td>
<td>Is the financial condition of any acquiring person such that it might jeopardize the financial stability of the insurer, or prejudice the interest of the insurer’s policyholders? The analyst should review all relevant sources of information (i.e., SEC reports, rating agency reports, etc.) The analyst should evaluate the acquiring person’s earnings history, debt/equity ratio, liquidity, etc. in order to assess whether it is likely that the acquiring person will need financial support from the insurer.</td>
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<tr>
<td>5.</td>
<td>Will dividends from the insurer be required to support debt payments of the applicant or the applicant’s subsidiaries?</td>
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<tr>
<td>6.</td>
<td>Has the applicant disclosed any plans or proposals to liquidate the insurer, sell the insurer’s assets, or consolidate or merge with any person?</td>
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<tr>
<td>7.</td>
<td>If the answer to 6. above is yes, are the plans fair and reasonable to the interests of the insurer’s policyholders and the public?</td>
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<tr>
<td></td>
<td>Question</td>
<td>Yes</td>
<td>No</td>
<td>Examiner</td>
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<tr>
<td>8.</td>
<td>Has the applicant disclosed any plans to make any other material change in the insurer’s business or corporate structure or management?</td>
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<tr>
<td>9.</td>
<td>If any answer to 8. above is yes, are the plans fair and reasonable to the insurer’s policyholders and in the interest of the public? The analyst should request detailed information regarding any material, if not provided. Such information may include descriptions of any product changes, financial projections and the rationale supporting proposed changes.</td>
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<td></td>
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<tr>
<td>10.</td>
<td>Are the competence, experience, and integrity of those persons who would control the operation of the insurer such that it would not be in the interest of the insurer’s policyholders and of the public to permit the acquisition of control?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>After the change in control, will the insurer’s surplus as regards policyholders be reasonable in relation to its outstanding liabilities and adequate for its financial needs?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Request financial projections for both the applicant and the insurer for the succeeding 3 years on a quarterly basis, including assumptions utilized, if not included in the Form A filing. Review the projections to ensure that they are consistent with the description of the intended business plan of the insurer and other assertions and representations made in the Form A filing and are based on reasonable expectations.</td>
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<tr>
<td>13.</td>
<td>Where the applicant issues or assumes debt obligations or is required to fulfill other future obligations as a result of the purchase or through existing agreements, review the holding company’s cash flow projections to ensure cash flows appear adequate to cover such obligations without relying heavily on cash flows from the insurer.</td>
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</table>
## Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
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<tbody>
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</table>

14. Request copies of all contracts between the applicant, or other entities for which it exhibits control, and the insurer, if not included in the Form A filing. Review these contracts to ensure that the terms are arms-length, fair and reasonable to the insurer.

15. Review the business plan for the domestic insurer post transaction and note any unusual items?

16. Review the biographical affidavits of the executive officers and directors and of the proposed management of the company.
   
   a. Have background checks been obtained on key individuals (e.g., individuals identified in Item 3 above)?
   
   b. Do the executive officers and directors of the applicant have insurance experience?
   
   c. Do the proposed executive officers and directors of the insurer have insurance experience?
   
   d. Are the officers and directors of the applicant and the proposed officers and directors of the insurer clear of any criminal convictions?

17. Will the proposed merger or acquisition comply with the state’s competitive standards?

18. Will the proposed merger or acquisition comply with the various provisions of the state’s General Administrative Amendments or Business Corporation Law (e.g., board resolutions, plans of merger, draft articles of merger, etc.)?

19. Has the application been publicized to all interested persons both inside and outside of the insurance department in accordance with the department’s policy.

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### Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>Have the comments received from both inside and outside the insurance department been reviewed and considered.</td>
<td></td>
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<tr>
<td>21.</td>
<td>Has the applicant included information on the assignment of specialized personnel, such as an attorney, actuary or CPA, to the transaction?</td>
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</tr>
<tr>
<td>22.</td>
<td>Has the insurance department identified any reasons or circumstances surrounding the transaction to warrant the hiring of outside experts or consultants?</td>
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<tr>
<td>23.</td>
<td>Prepare review summary as described in the initial instructions. The review should critically evaluate all areas described and clearly document any problems noted or any areas where the analyst had concerns or was unable to come to a conclusion on.</td>
<td></td>
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<tr>
<td>24.</td>
<td>Was the Form A reviewed and action taken by the state to (1) ensure compliance with the state’s statutory deadline and (2) ensure compliance with the 60-day period preceding the effective date of the acquisition or change or continuation of control, mandated by Section 104(c)(2) of the Gramm-Leach-Bliley Act?</td>
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</tbody>
</table>
Appendix D

Framework for Insurance Holding Company Analysis

Form B Review Checklist – Insurance Holding Company System Annual Registration Statement

<table>
<thead>
<tr>
<th>Domestic Insurer</th>
<th>NAIC #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Party/Parties to Transaction</td>
<td>Supervisor(s) (initial and date)</td>
</tr>
<tr>
<td>Analyst(s) (initial and date)</td>
<td></td>
</tr>
</tbody>
</table>

Section 4 of the NAIC’s Insurance Holding Company System Regulatory Act (the Act) requires each insurer authorized to do business in a state to file a registration statement (Form B). To comply with Section 4 of the Act, a Form B is filed with the state in which it is registered (its domiciliary state). The procedures and criteria described below reflect those of the model Act. The analyst/ reviewer should be aware of and address any differences between the model Act and the applicable state regulations. The designated analyst should conduct a thorough and timely review of each filing made by or on behalf of an assigned company as follows:

1. The analyst must check for the proper form and content as prescribed in the state’s holding company regulation.

2. If the document is not complete, the analyst should inform the applicant in writing that the filing has been deemed incomplete and request that the company provide the missing material in an amendment to the filing.

3. The analyst should review the contents of the filing for possible violations, such as insider transactions, or the occurrence of material transactions that required but did not receive department approval.

4. The analyst’s review of the Form B and related Form C (summary of changes in the Form B since that last annual filing of Form B) should be documented on the Form B Review Checklist. The analyst should report the results of the review to their supervisor in a memorandum which identifies (i) governing statutes, (ii) material documents, (iii) essential considerations, (iv) the analyst’s conclusions concerning the actual and projected financial condition of the insurer and (v) any indications of violations of law.

5. In developing a conclusion, the analyst should consider the above procedures, as well as any other procedures, which, in the analyst’s judgment, are relevant to evaluating the holding company Form B under the specific circumstances involved.

6. The supervisor shall be responsible for reviewing the analyst’s memorandum and shall document the review with proper signoff.
Framework for Insurance Holding Company Analysis

The Form B should be reviewed for the following:

<table>
<thead>
<tr>
<th>Item</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 1</td>
<td>(a) Does the Form B include the exact name of each insurer registering or being registered and the home office address and administrative offices of each?</td>
</tr>
<tr>
<td></td>
<td>(b) Does the Form B include the date on which each registrant became part of the insurance holding company system?</td>
</tr>
<tr>
<td></td>
<td>(c) Does the Form B describe the method by which control of each registrant was acquired or maintained?</td>
</tr>
<tr>
<td>Item 2</td>
<td>Does the organizational chart identify and state the relationship of every member of the insurance holding company system, except for affiliates with total assets of less than the statutory minimum or ½ of 1% of the total assets of the ultimate controlling person within the holding company system?</td>
</tr>
<tr>
<td>Item 3</td>
<td>Is the ultimate controlling person identified and is the following information relating to the ultimate controlling person provided?</td>
</tr>
<tr>
<td></td>
<td>(a) Name;</td>
</tr>
<tr>
<td></td>
<td>(b) Home office address;</td>
</tr>
<tr>
<td></td>
<td>(c) Principal executive office address;</td>
</tr>
<tr>
<td></td>
<td>(d) The organizational structure of the person (i.e., corporation, partnership, individual, trust, etc.);</td>
</tr>
<tr>
<td></td>
<td>(e) The principal business of the person;</td>
</tr>
</tbody>
</table>
### Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(f)</td>
<td>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;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(g)</td>
<td>The nature and commencement date of any pending court proceedings involving a reorganization or liquidation along with the title and location of the court.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Item 4**

Does the Form B contain biographical information for the directors and executive officers of the ultimate controlling person to provide a level of comfort that there are no concerns such as convictions of crimes?

**Item 5**

Does the Form B report the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates? *(Note: Adequate reporting includes a description of the transaction or agreement, including at least the nature and purpose of transaction, the nature and amounts of any payments or transfers of assets, the identity of all parties to the transaction, and the relationship of the affiliated parties to the registrant. The materiality threshold is ½ of 1% or more of the registrant’s admitted assets as of the 31st day of December next preceding.)*

(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;
Framework for Insurance Holding Company Analysis

| Item 6 | Did the registrant describe any litigation or administrative proceeding involving the ultimate controlling person or any of its directors or executive officers such as criminal prosecutions or proceedings which may have material effect upon the solvency or capital structure of the ultimate holding company such as bankruptcy, receivership or other corporate reorganizations? |
| Item 7 | Was there an affirmative statement that transactions entered into since the filing of the prior registration statement are not part of a plan or series of like transactions to avoid statutory threshold amounts and the review that might otherwise occur? |
| Item 8 | (a) Does the Form B 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? |
Appendix D

Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>Are the financial statements audited?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Does the Form B include copies of the latest annual reports to shareholders of the ultimate controlling person, proxy material used by the ultimate controlling persons, and any additional documents or papers required?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 9</td>
<td>Was a <strong>Form C – Summary of Registration Statement</strong> outlining all items in the current registration statement representing changes from the prior registration statement properly filed? If yes, was the Form C properly executed and signed?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 10</td>
<td>Does the Form B contain the required signature and certification?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 11</td>
<td>If the Form B is not complete, inform the insurer, in writing, that the filing has been deemed incomplete and request that the insurer provide the missing material in an amendment to the Form B.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 12</td>
<td>Was the appropriate filing fee submitted?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Form B should also be reviewed for any significant and/or unusual items or inconsistencies as follows:

<table>
<thead>
<tr>
<th>1.</th>
<th>Were there any significant or unusual items noted when reviewing the Form B, such as:</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Persons holding 10% or more of any class of voting security or otherwise controls the insurer who also have a history of transacting business of any kind directly or indirectly with the insurer?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>Biographical information about directors or officers which may elevate concerns such as convictions of crimes?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>c. Any litigation or administrative proceeding involving the ultimate controlling entity or any of its directors and officers such as criminal prosecutions or proceedings which may have material effect upon the solvency or capital structure of the ultimate holding company such as bankruptcy, receivership, or other corporate reorganizations?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. The absence of an affirmative 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 to avoid statutory threshold amounts?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Was there any unusual information included in the holding company financial statements, such as:

   a. Heavy reliance on dividends from the insurer to fund any holding company debt service requirements?
   b. Lenders of the holding company that are open depositaries of the insurer?
   c. Evidence of any financial problems or weakness that may potentially impact the insurer or may impose additional demands on the insurer?
   d. Note key financial information of the ultimate controlling person and identify any concerns? A comparison with prior year data may benefit the analysis.

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liabilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. If affiliates receive significant dividends and/or fees from the insurer, evaluate these sources to determine their validity and reasonableness.

4. Was there any change in the holding company’s debt structure? If yes, ensure that restructure is not an indication of potential financial difficulty or risk to the insurer.

5. Compare the Form B to previously submitted notifications and requests. Were there any inconsistencies between responses indicated in other holding company filings and this Form B?

6. Does the Form B and Form C appear to report all required transactions and relationships as compared to Schedule Y of the Annual Statement, CPA audit report and management discussion and analysis?

7. Have all reported transactions that required departmental approval been submitted for approval?

8. Are there any new management agreements, service contracts or cost-sharing agreements that have not been subject to regulatory review? If yes, consider the following steps:
   a. Obtain and review the supporting contract.
   b. Determine that amounts involved are reasonable approximations of actual costs.
   c. Determine that actual amounts paid are in agreement with the supporting contract.
d. For any agreement based on a cost plus formula or percent of premiums formula, request justification from the insurer for amounts in excess of the actual cost of providing the service.

e. For those services being performed by/for an affiliate, and which are also provided by unrelated third-party vendors, at a significant level compared to those performed by/for the affiliate, contact such vendors or review vendor pricing schedules in order to determine the reasonableness of the intercompany transfer pricing level.

f. Evaluate whether any portion of such fees is in substance a dividend that should be evaluated in the context of dividend regulations.

9. Review the report of affiliate transactions. For any significant or unusual affiliate transactions, consider performing additional review as outlined in the affiliate transactions section of the Annual Statement General Checklist and the Supplemental Checklist of the NAIC *Financial Analysis Handbook*.

10. Are the changes listed in Form C consistent with transactions approved in Form D filings since the last Form B filing?

11. Develop and document an overall conclusion regarding the holding company Form B.
## Framework for Insurance Holding Company Analysis

### Form D Review Checklist– Prior Notice of a Transaction

<table>
<thead>
<tr>
<th>Domestic Insurer</th>
<th>NAIC #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Party/Parties to Transaction</td>
<td>Deemer/Approval Deadline</td>
</tr>
<tr>
<td>Date Notification Received</td>
<td>Supervisor(s) (initial and date)</td>
</tr>
<tr>
<td>Analyst(s) (initial and date)</td>
<td></td>
</tr>
</tbody>
</table>

Section 5 of the NAIC’s Insurance Holding Company System Regulatory Act (the Act) requires each insurer to give notice of certain proposed transactions. To comply with Section 5 of the Act, a Form D is filed with the domestic state. The procedures and criteria described below reflect those of the model Act. The analyst/reviewer should be aware of and address any differences between the model Act and the applicable state regulations. The designated analyst or analysis team should review the filing thoroughly and make a timely and appropriate written recommendation to their supervisor as follows:

1. The analyst or analysis team (“analyst(s)”) must check for the proper form and content as prescribed in the state’s holding company regulation.

2. If the document or the company’s explanation and description of the transaction is not complete, the analyst(s) should inform the applicant in writing that the filing has been deemed incomplete and request that the applicant provide the missing material in an amendment to the filing.

3. The analysts’ review should be documented on the Form D Review Checklist. The analyst(s) should report the results of the review to their supervisor(s) in a memorandum which (i) outlines the proposed transaction, (ii) details the analysis made and (iii) recommends appropriate action.

4. The supervisor(s) shall be responsible for reviewing the transaction, indicating proper signoff and making an appropriate recommendation to the chief officials responsible for reviewing Form D filings. The supervisor(s) should complete these actions in a timely manner.

5. The chief officials should promptly review the supervisors’ recommendation and, after appending comments and a recommendation of approval or disapproval, passes the supervisors’ memorandum and accompanying materials to the final reviewer (e.g., Commissioner, Deputy Commissioner, Chief Examiner). The chief officials are responsible for communicating the responsive actions of the final reviewer to the supervisor(s) and the supervisor(s) should ensure that the recommendation is properly documented in the insurer’s files.

   a. Ten days before the projected date of deemed approval, if the supervisory team has not been advised of definitive action on the application, the supervisor(s) shall contact the chief officials directly concerning the status of the filing.
b. While recommendations are under consideration, the supervisor(s) shall keep the chief officials advised of changes in circumstances and the receipt of additional information concerning the insurer.

c. Upon notice that a Form D application has been approved or disapproved, the supervisor(s) is/are responsible for conveying the appropriate information to the applicant and also to any insurer which is party to the transaction. Formal notices of approval shall be in writing and documented in the holding company files of affected companies.

d. The supervisor(s) is/are also responsible for communicating the Form D’s status to other divisions within the insurance department, especially examination and analysis staff responsible for the affected companies.

The Form D should be reviewed for the following:

<table>
<thead>
<tr>
<th>Item</th>
<th>Information Required</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Does the Form D include the following information for each party to the transaction?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Name:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Home office address;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Principal executive office address;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(d) The organizational structure (i.e., corporation, partnership, individual, trust, etc.);</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(e) A description of the nature of the parties’ business operations;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(f) The relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Item 2</th>
<th>Does the Form D include the following information for each transaction for which notice is being given?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A statement as to what section of the holding company the Form D filing is being made.</td>
</tr>
<tr>
<td></td>
<td>A statement as to the nature of the transaction; and</td>
</tr>
<tr>
<td></td>
<td>The proposed effective date of the transaction.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 3</th>
<th>Does the Form D include a description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If the transaction involves other than cash, does the Form D include a description of the consideration, its cost and its fair value, together with an explanation of the basis for evaluation?</td>
</tr>
<tr>
<td></td>
<td>If the transaction involves a loan, extension of credit or a guarantee, does the Form D include a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest?</td>
</tr>
</tbody>
</table>

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### Appendix E

**Framework for Insurance Holding Company Analysis**

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d)</td>
<td>If the transaction involves an investment, guarantee or other arrangement, does the Form D state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>Does the Form D include a statement as to the effect of the transaction upon the insurer’s surplus?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item 4 (a)</td>
<td>If the transaction involves a loan or extension of credit to any person who is not an affiliate, does the Form D include a description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>Does the Form D specify the manner the proceeds are to be used to loan to, extend credit to, purchase assets of or make investments in any affiliate?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Does the Form D describe the amount and source of funds, securities, property or other consideration for the loan or extension of credit?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d)</td>
<td>If the transaction involves consideration other than cash, does the Form D describe its cost and its fair value and basis for evaluation?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>Does the Form D make a statement as to the effect of the transaction upon the insurer’s surplus?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Framework for Insurance Holding Company Analysis

#### Appendix E

<table>
<thead>
<tr>
<th>Item 5</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) If the transaction is a reinsurance agreement or modification thereto, does the Form D include a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer’s affiliates?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Does the Form D describe the consideration involved in the transaction?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Does the Form D make a statement as to the effect of the transaction upon the insurer’s surplus?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Does the reinsurance agreement comply with the requirements for credit for reinsurance?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Does the reinsurance agreement’s right of offset limit the offset specifically to the reinsurance agreement(s) and not other balances which may accrue as a result of other transactions?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Item 6

For management and service agreements, does the Form D provide:

(a) A description of the managerial responsibilities, or services to be performed;

(b) A description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made?
Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Item 7</th>
<th>Does the Form D contain the required signature and certification?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(c) **Is the agreement written as an arms-length transaction, included expected clauses like hold harmless and indemnification?**

For cost-sharing arrangements, including tax allocation agreements, does the Form D provide:

(a) A description of the purpose of the agreement;
(b) A description of the period of time during which the agreement is to be in effect;
(c) A description of each party’s expenses or costs covered by the agreement;
(d) A description of the accounting basis to be used in calculating each party’s costs under the agreement;
(e) A description of when amounts are settled and a provision for interest in the event that settlements are not made timely?

The Form D should also be reviewed for any significant and/or unusual items or inconsistencies as follows:

<table>
<thead>
<tr>
<th>1.</th>
<th>Is the transaction fair and reasonable?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In determining whether or not a transaction is fair and reasonable to the interest of the insurer, the analyst should at a minimum consider the information obtained above and:</td>
</tr>
</tbody>
</table>

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### Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) In the case of a reinsurance agreement, whether the general terms, settlement provisions and pricing are consistent with those of non-affiliated agreements.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) In case of a management, service or cost-sharing agreement, whether the fees to be paid by/to the insurer are reasonable in relation to the cost of such services.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In general, fees paid or services performed by the insurer should reflect actual or the best estimate of such. Dividends are the appropriate method for owners of the insurance company to secure profits.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Will the insurer have adequate surplus?

3. Does the transaction comply with statutory accounting?

4. Note any unusual circumstances, or concerns that need to be addressed by the insurer.
Appendix F
Framework for Insurance Holding Company Analysis

Form E Review Checklist – Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in This State or by a Domestic Insurer

<table>
<thead>
<tr>
<th>Applicant Name</th>
<th>NAIC #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Insurer</td>
<td>NAIC #</td>
</tr>
<tr>
<td>Other Party/Parties to Transaction</td>
<td></td>
</tr>
<tr>
<td>Date Notification Received</td>
<td>Deemer/Approval Deadline</td>
</tr>
<tr>
<td>Analyst(s) (initial and date)</td>
<td>Supervisor(s) (initial and date)</td>
</tr>
</tbody>
</table>

Section 3.1 of the NAIC’s Insurance Holding Company System Regulatory Act (the Act) requires any domestic insurer, including any person controlling a domestic insurer, proposing a merger or acquisition to file a pre-acquisition notification form, Form E. The procedures and criteria described below reflect those of the model Act. The analyst/ reviewer should be aware of and address any differences between the model Act and the applicable state regulations. The designated analyst or analysis team should review the filing thoroughly and make a timely and appropriate written recommendation to their supervisor as follows:

1. The analyst or analysis team must check for the proper form and content as prescribed in the state’s holding company regulation.

2. If the document is not complete, the analyst or analysis team should inform the applicant in writing that the filing has been deemed incomplete and request that the company provide the missing material in an amendment to the filing.

3. The analysts’ review should be documented on the Form E Review Checklist. The analyst(s) should report the results of the review to their supervisor in a memorandum which contains (i) the nature and purpose of the proposed merger or acquisition, (ii) the nature of the business and (iii) a recommendation.

4. The supervisor or supervisory team shall be responsible for reviewing the transaction, indicating proper signoff and making an appropriate recommendation to the chief officials responsible for reviewing Form E filings. The supervisory team should complete these actions in a timely manner.

5. The chief officials should promptly review the supervisors’ recommendation and, after appending comments and a recommendation of approval or disapproval, pass the supervisors’ memorandum and accompanying materials to the final reviewer (e.g., Commissioner, Deputy Commissioner, Chief Examiner). The chief officials are responsible for communicating the
Appendix F

Framework for Insurance Holding Company Analysis

responsive actions of the final reviewer to the supervisor(s) and the supervisor(s) should ensure
that the recommendation is properly documented in the insurer’s files.

a. Ten days before the projected date of deemed approval, if the supervisory team has not
been advised of definitive action on the application, the supervisor(s) shall contact the
chief officials directly concerning the status of the filing.

b. Upon notice that a Form E application has been approved or disapproved, the supervisory
team is responsible for conveying the appropriate information to the applicant and also to
any insurer, which is party to the transaction. Formal notices of approval shall be in
writing and documented in the holding company files of affected companies.

c. The supervisory team is also responsible for communicating the Form E’s status to other
divisions within the insurance department.

As a reminder, the period for review and action on proposed affiliations is limited to 60 days prior to the
effective date of the transaction, for transactions falling under the GLBA. Under Section 104(c)(2) of
the GLBA, states have a 60-day period preceding the effective date of the acquisition or change or
continuation of control in which to collect information and take action. While certain states may not be
required to either approve or disapprove the Form E, they may only have a certain period of time in
which an insurer’s license to do business in the state is denied or a cease and desist order is exercised.
Statutes and regulations should be reviewed to ensure the Form E is processed in a timely manner.

The Form E should be reviewed for the following:

<table>
<thead>
<tr>
<th>Item 1</th>
<th>Does the Form E state the names and addresses of the persons who providing notice of their involvement in a pending acquisition or change in corporate control?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item 2</td>
<td>(a) Does the Form E state the names and addresses of the persons affiliated with those listed in Item 1?</td>
</tr>
<tr>
<td></td>
<td>(b) Does the Form E adequately describe their affiliations?</td>
</tr>
<tr>
<td>Item 3</td>
<td>Does the Form E adequately state the nature and purpose of the proposed merger or acquisition?</td>
</tr>
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<td>Item 4</td>
<td>Does the Form E adequately state the nature of the business performed by each of the persons identified in Item 1 and 2?</td>
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</tbody>
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Appendix F

Framework for Insurance Holding Company Analysis

<table>
<thead>
<tr>
<th>Item 5</th>
<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
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<tbody>
<tr>
<td>(a) Does the Form E specifically state the market and market share in each relevant insurance market the persons identified in Item 1 and 2 currently enjoyed in the state? (Note: Market means direct written insurance premiums in the state for a line of business as contained in the annual statement.)</td>
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<tr>
<td>(b) Does the Form E provide historical market and market share data for each person identified in Item 1 and 2 for the past five years?</td>
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<td>(c) Does the Form E identify the sources of such data?</td>
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</table>

The Form E should also be reviewed for the following:

1. If the Form E identifies certain thresholds that are exceeded, which are evidence of the transaction’s violation of the competitive standards within the state, has the applicant provided appropriate information or arguments that the transaction does not violate the competitive standard?

2. Was the Form E reviewed and action taken by the state (1) to ensure compliance with the state’s statutory deadline and (2) to ensure compliance with the 60-day period preceding the effective date of the acquisition or change or continuation of control, mandated by Section 104(c)(2) of the GLBA?
Pursuant to Section 5B of the NAIC’s Insurance Holding Company System Regulatory Act (the Act), no domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the 30-day period. Each state defines what is meant by “extraordinary”; however, the Act defines an extraordinary dividend or distribution as any dividend or distribution of cash or other property, whose fair value together with that of other dividends or distributions made within the preceding 12 months exceeds the lesser of:

(i) Ten percent (10%) of the insurer’s surplus as regards policyholders as of the 31st day of December next preceding; or

(ii) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer’s own securities.

The designated analyst or analysis team should review the notice of extraordinary dividends or distribution thoroughly and make a timely and appropriate written recommendation to their supervisor as follows:

1. The analyst or analysis team must review the proposed dividend or distribution to ascertain if it is indeed extraordinary as defined by the state’s insurance law.

2. If the company’s explanation and description of the proposed dividend is not complete, the analyst or analysis team should inform the applicant in writing that the filing has been deemed incomplete and request that the company provide the missing material in an amendment to the filing.

3. The analysts’ review should be documented on the Extraordinary Dividend/Distribution Review Checklist. The analyst(s) should report the results of the review to their supervisor in a memorandum which (i) outlines the proposed dividend/distribution, (ii) details the analysis made and (iii) recommends appropriate action.

4. The supervisor or supervisory team shall be responsible for reviewing the transaction, indicating proper signoff and making an appropriate recommendation to the chief officials responsible for
reviewing notices of extraordinary dividends or distributions. The supervisory team should complete these actions in a timely manner.

5. The chief officials should promptly review the supervisors’ recommendation and, after appending comments and a recommendation of approval or disapproval, passes the supervisors’ memorandum and accompanying materials to the final reviewer (e.g., Commissioner, Deputy Commissioner, Chief Examiner). The chief officials are responsible for communicating the responsive actions of the final reviewer to the supervisor(s) and the supervisor(s) should ensure that the recommendation is properly documented in the insurer’s files.

a. Ten days before the projected date of deemed approval, if the supervisory team has not been advised of definitive action on the application, the supervisor(s) shall contact the chief officials directly concerning the status of the filing.

b. While recommendations are under consideration, the supervisory team shall keep the chief officials advised of changes in circumstances and the receipt of additional information concerning the insurer.

c. Upon notice that an extraordinary dividend or distribution has been approved or disapproved, the supervisory team is responsible for conveying the appropriate information to the applicant and also to any insurer, which is party to the transaction. Formal notices of approval shall be in writing and documented in the holding company files of affected companies.

d. The supervisory team is also responsible for communicating the status of the extraordinary dividend or distribution to other divisions within the insurance department, especially examination and analysis staff responsible for the affected companies.

The notification should be reviewed for the following:

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<th>Yes</th>
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<th>Examiner</th>
<th>Date</th>
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1. Does the request for approval include the following:

(a) The amount of the proposed dividend?

(b) The date established for the payment of the dividend?

(c) 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 value together with an explanation of the basis for valuation?

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The workpaper shall include the following information:
Framework for Insurance Holding Company Analysis

(i) 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 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;

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

(iii) 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;

(iv) 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

(v) 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 calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statements filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted?
Appendix G

Framework for Insurance Holding Company Analysis

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<th>Yes</th>
<th>No</th>
<th>Examiner</th>
<th>Date</th>
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<tbody>
<tr>
<td>1.</td>
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| (f) | 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?  [Drafting Note: This step may require a review of the company’s business plan/projections for one or two years to ensure the dividend does not strain the insurer’s surplus.]
| 2. |     |    |          |      |
|     | Does the notice include adequate information regarding the purpose of the dividend? |   |          |      |
| 3. |     |    |          |      |
|     | Does the purpose of dividend appear reasonable? |   |          |      |
| 4. |     |    |          |      |
|     | Based on the information obtained above, is the dividend or other distribution, in fact, extraordinary in nature? |   |          |      |
| 5. |     |    |          |      |
|     | Based on the information obtained above: |   |          |      |
|     | (a) Is the dividend or distribution fair and reasonable? |   |          |      |
|     | (b) Will the insurer have adequate surplus? |   |          |      |
|     | (c) Does the transaction comply with statutory accounting rules? |   |          |      |
|     | (d) Note any unusual circumstances, or concerns that need to be addressed by the insurer. |   |          |      |
| 6. |     |    |          |      |
|     | Was the request for approval submitted to the state 30 days prior to the dividend’s proposed payment date, in order to ensure timely approval by the state? |   |          |      |

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