EXECUTIVE (EX) COMMITTEE

Executive (EX) Committee Minutes of Oct. 19, 2010
2011 Proposed Charges (Attachment One)
Request for Model Law Development, Amendments to Model Risk Retention Act (Attachment Two)
Request for Model Law Development, Amendments to Credit for Reinsurance Model Law (Attachment Three)
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Executive (EX) Committee Task Force, Working Group and Subgroup Reports (Attachment Five)

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Executive (EX) Committee
Orlando, FL
October 19, 2010

The Executive (EX) Committee met in Orlando, FL, Oct. 19, 2010. The following Committee members participated: Jane L. Cline, Chair (WV); Susan E. Voss, Vice Chair (IA); Kevin M. McCarty, Vice President (FL); Kim Holland, Secretary-Treasurer represented by Darren Ellingson (OK); Roger A. Sevigny, Immediate Past President (NH); Linda S. Hall (AK); Christina Urias (AZ); Thomas R. Sullivan (CT); Michael T. McRaith (IL); James J. Donelon (LA); Mila Kofman (ME); Monica J. Lindeen (MT); Thomas Considine (NJ); Mary Jo Hudson (OH); Scott H. Richardson (SC); Merle D. Scheiber (SD); and Leslie A. Newman represented by Larry Knight (TN).

1. Adopt Report of Joint Meeting of Executive (EX) Committee and Internal Administration (EX1) Subcommittee

Commissioner Cline reported the Executive (EX) Committee and Internal Administration (EX1) Subcommittee met Oct. 18 in a joint regulator-to-regulator session in accordance with the NAIC Policy Statement on Open Meetings, to discuss internal administrative matters of the NAIC.

The Executive Committee reported it met in interim regulator to regulator sessions and: 1) selected BlackRock Solutions to model commercial mortgage-backed securities (CMBS) for the 2010 year-end reporting period; 2) appointed Director John M. Huff (MO) as the NAIC representative and voice of state insurance regulators on the Financial Stability Oversight Council (FSOC); 3) approved NAIC filing an amicus brief in *Anthem Blue Cross and Blue Shield v. Superintendent Kofman* supporting the Superintendent's discretionary authority to interpret approved rate increase requests as meeting the required statutory and NAIC model standards; 4) agreed to fund an impact study of principle-based reserve methodology modifications to the *Standard Valuation Law* (#820) as adopted by the membership in September 2009; and 5) approved moving forward with a public presentation of the NAIC's 2011 budget.

The Executive (EX) Committee authorized NAIC management to proceed with lease negotiations to move the Central Office from its current location to Town Pavilion in Kansas City, MO. The Committee and Subcommittee approved the Hyatt Regency Chicago as the venue for the 2015 Summer National Meeting. The Committee and Subcommittee approved the use of expiring 2010 NAIC zone grant funds for technical training of zone members and approved holding elections of zone officers between Nov. 3 and Dec. 1 to accommodate the 2010 national and state election results.

Director Scheiber made a motion, seconded by Commissioner Sevigny, to adopt the Oct. 18 joint report of the Committee and Subcommittee. The motion passed.

2. Adopt Executive (EX) Committee 2011 Proposed Charges

The Committee considered its 2011 Proposed Charges, including appointing a subgroup to review the NAIC bylaws and recommend amendments, as necessary. Director Richardson made a motion, seconded by Commissioner Lindeen, to adopt its 2011 Proposed Charges (Attachment One). The motion passed.

3. Continue Work of Task Forces and Working Groups

Commissioner Cline reported that, under the NAIC bylaws, task forces, except for those designated as standing task forces, terminate after the last meeting of the year, absent a recommendation of the parent committee, as approved by the Executive (EX) Committee, for the work of that task force to continue. As the last national meeting is earlier than usual this year, Commissioner Cline recommended that the Committee approve the continuation of all committees, task forces, councils and working groups until Dec. 31, 2010.

Upon a motion by Commissioner McCarty, seconded by Director Hall, the Committee approved continuation of the work of all committees, task forces, councils and working groups until Dec. 31, 2010.

4. Adopt Model Law Development Requests

Amendments to *Model Risk Retention Act* (#705)

Director McRaith presented a request from the Property and Casualty Insurance (C) Committee for development of amendments to the *Model Risk Retention Act* (#705) to incorporate issues of accreditation and corporate governance into the model, which would provide a vehicle for state implementation. This request also addresses a recommendation contained in a U.S. Government Accountability Office (GAO) report recommending the improvement of corporate governance for risk retention groups.

Upon a motion by Director McRaith, seconded by Director Hudson, the Committee approved the request to amend the *Model Risk Retention Act* (#705) (Attachment Two).

Amendments to *Credit for Reinsurance Model Law* (#785)

Director Richardson presented a request from the Reinsurance (E) Task Force to amend Section 2D(3) of the *Credit for Reinsurance Model Law* (#785) related to the minimum trusteed surplus requirement for a multiple-beneficiary trust fund maintained by an assuming insurer in run-off and to amend this model to incorporate key elements of the Reinsurance Regulatory Modernization Framework Proposal, as adopted by the NAIC membership at the 2008 Winter National Meeting.

Amendments to *Credit for Reinsurance Model Regulation* (#786)

Director Richardson presented a request from the Reinsurance (E) Task Force to amend Section 7B of the *Credit for Reinsurance Model Regulation* (#786) related to the minimum trusteed surplus requirement for a multiple-beneficiary trust fund maintained by an assuming insurer in run-off. The Reinsurance (E) Task Force also sought approval to begin discussions on amending the model to incorporate key elements of the Reinsurance Regulatory Modernization Framework Proposal, as adopted by the NAIC membership at the 2008 Winter National Meeting.

Upon a motion by Director Richardson, seconded by Commissioner Voss, the Committee approved the requests to develop amendments to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) (Attachment Three and Attachment Four).

5. Adopt Task Force, Working Group and Subgroup Reports

The Committee members received written reports from the 15 appointed Executive (EX) Committee task forces, working groups and subgroups: AIG Managing (EX) Task Force; Climate Change and Global Warming (EX) Task Force; Government Relations (EX) Leadership Council; Health Care Reform Cost Containment (EX) Subgroup; Health Care Reform Interstate Compact Standards (EX) Subgroup; International Insurance Relations (EX) Leadership Group; Long-Term Care (EX) Task Force; Market Regulation Accreditation (EX) Task Force; Multi-State Enforcement (EX) Task Force; Producer Licensing (EX) Task Force; Regulatory Modernization (EX) Task Force; SVO Initiatives (EX) Working Group; Solvency Modernization Initiative (EX) Task Force; Speed to Market (EX) Task Force; and Surplus Lines Implementation (EX) Task Force.

Upon a motion by Director McRaith, seconded by Superintendent Kofman, the Committee adopted its task force, working group and subgroup reports (Attachment Five).

6. Receive the Reports on Model Law Development Efforts

Commissioner Cline presented written reports of ongoing model law development efforts:

Model Law to Regulate Insurance Scoring Vendors (*approved by Executive (EX) Committee at 2010 Summer National Meeting).* This request for model law development was adopted by the Executive (EX) Committee at the 2010 Summer National Meeting. The request was developed to address the regulation of firms that sell credit information to insurers for use in pricing and underwriting. No action has been taken to date with regard to the draft.

Model Language for Dependent Coverage of Individuals to Age 26 (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approved requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing this proposed model language template to assist the states with implementing the provisions of Section 27114 of the Public Health Service Act of the Patient Protection and Affordable

Care Act (PPACA) and the interim final regulations implementing that section published in the *Federal Register* May 13, 2010. The Task Force distributed an initial draft for comment Sept. 30, held a conference call Oct. 4 to discuss the comments and approved various revisions to the draft. It is anticipated that the Task Force will continue discussions of the draft at its meeting Oct. 18.

New Model Law: Risk-Based Capital for Fraternal Benefit Societies Model Act—This request for model law development was adopted by the Executive (EX) Committee at the 2009 Winter National Meeting. The request was developed based on the need for regulatory authority to take corrective actions with a fraternal society having less than the minimum amount of capital as calculated by the fraternal RBC formula, because most of the states currently lack such authority. Additional discussion by the Capital Adequacy (E) Task Force, which drafted the initial request, is expected at the Fall National Meeting.

American Health Benefit Exchanges Model Act (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*—The Exchanges (B) Subgroup of the Health Insurance and Managed Care (B) Committee is developing this new model act to carry out the requirements of Section 1311 of the PPACA, as amended by the Health Care and Education Reconciliation Act of 2010. The draft model act was distributed for comment Sept. 27. The Subgroup will discuss comments received during the Fall National Meeting. The Subgroup intends to finalize the model and forward it to the Health Insurance and Managed Care (B) Committee sometime in November.

Model Language for Choice of Healthcare Professional (*falls under the September 2008 federal law exemption to Executive (EX) Committee-approval requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing this proposed model language template to assist the states with implementing the provisions of Section 2719A of the PPACA and the interim final regulations implementing that section, which were published in the *Federal Register* June 28, 2010. The Task Force distributed an initial draft for comment Sept. 22. The Task Force held conference calls Sept. 27 and Oct. 4 to discuss the comments received on the draft. During these calls, the Task Force approved various revisions to the draft. It is anticipated the Task Force will continue discussions of the draft during its meeting Oct. 18.

Model Language for Lifetime and Annual Limits (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing proposed model language to assist the states with implementing the provisions of Section 2711 of the Public Health Service Act of the PPACA and the interim final regulations implementing that section, which were published in the *Federal Register* June 28, 2010. The Task Force distributed an initial draft for comment Sept. 9 and held conference calls Sept. 13, Sept. 20, Sept. 27 and Oct. 4 to discuss the comments received. During these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

Model Language for Preventive Services (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing proposed model language to assist the states with implementing the provisions of Section 2713 of the PPACA and the interim final regulations implementing that section, which were published in the *Federal Register* July 19, 2010. The Task Force distributed an initial draft for comment Sept. 9 and held conference calls Sept. 13, Sept. 20, Sept. 27 and Oct. 4 to discuss the comments received on the draft. During these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

Model Language for Prohibition on Rescissions of Coverage (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing this proposed model language to assist the states with implementing the provisions of Section 2712 of the Public Health Service Act of the PPACA and the interim final regulations implementing that section, which were published in the *Federal Register* June 28, 2010. The Task Force distributed an initial draft for comment Sept. 9 and held conference calls Sept. 13, Sept. 20, Sept. 27 and Oct. 4 to discuss the comments received on the draft. During these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

Prohibition on Preexisting Condition Exclusion for Individuals Under the Age of 19 (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is developing this proposed model language to assist the states with implementing the provisions of Section 2704 of the Public Health Service Act of the PPACA and the interim final regulations implementing that section, which were published in the *Federal Register* June 28, 2010. The Task Force distributed an initial draft for comment Sept. 16 and held conference calls Sept. 20, Sept. 27 and Oct. 4 to discuss the

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comments received on the draft. During these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

Regulation for Uniform Definitions and Standardized Rebate Calculation Methodology for Plan Years 2011, 2012 and 2013 per Section 2718(b) of the Public Health Service Act (*falls under the September 2008 federal law exemption to the Executive (EX) Committee approval requirement)*. Section 2718 of the PPACA establishes a medical loss ratio (MLR) and rebate program that begins Jan. 1, 2011. Under this section, not later than Dec. 31, 2010, the NAIC is required to establish, subject to the certification of the Secretary of the federal Department of Health and Human Services (HHS), uniform definitions and standard methodologies for calculating the MLR. Such methodologies shall be designed to take into account the special circumstances of smaller plans, different types of plans and newer plans.

The MLR is defined as the sum of clinical services and quality improvements divided by the earned premium, minus all federal and state taxes and licensing or regulatory fees. The issues considered were 1) aggregation of the business; 2) whether the calculation would be done on a calendar year or a plan year basis; 3) credibility; 4) group conversion charges; 5) claim run out; and 6) reinsurance.

Since April, the PPACA Actuarial Subgroup of the Accident and Health Working Group of the Life and Health Actuarial Task Force worked through several issues to develop the model regulation. The Subgroup held conference calls twice a week, during which comments from regulators and interested parties were discussed. The Subgroup held a joint conference call Oct. 5 with the Accident and Health Working Group, the Life and Health Actuarial Task Force and the Health Insurance and Managed Care (B) Committee. The model regulation was approved and sent to the Health Insurance and Managed Care (B) Committee for its consideration.

The Health Insurance and Managed Care (B) Committee exposed the draft model regulation for additional comment, and held a conference call Oct. 11 to consider those comments and to give stakeholders the opportunity to discuss any remaining issues of concern with the draft model regulation. On Oct. 14, the Health Insurance and Managed Care (B) Committee adopted the model regulation as exposed with some changes. The model regulation is scheduled to be considered for adoption during the Jt. Executive (EX) Committee/Plenary session at the Fall National Meeting.

Amendments to *Insurance Holding Company System Regulatory Act* (#440) and Amendments to *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450)—The request for model law development for amendments to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) was adopted by the Executive (EX) Committee at the 2009 Fall National Meeting. The Group Solvency Issues (EX) Working Group and Financial Condition (E) Committee adopted revisions to the model act and model regulation prior to the Summer National Meeting, and these items will be considered for adoption during the Jt. Executive (EX) Committee/Plenary session at the Fall National Meeting.

Amendments to *Annuity Disclosure Model Regulation* (#245)—The Annuity Disclosure (A) Working Group is continuing to discuss draft annuity illustration guidelines to be included in the model and is continuing its work on revising the annuity buyer's guides. The Working Group will continue these discussions during the Fall National Meeting. The Executive (EX) Committee approved a model law development request to work on revisions to the *Annuity Disclosure Model Regulation* (#245) at the 2008 Fall National Meeting. The Working Group did not meet the deadline to complete the revisions by the 2009 Winter National Meeting and received approval for an extension to complete its work and expects to finish by the end of this year.

Amendments to *Standard Nonforfeiture Law for Life Insurance* (#808)—The Executive (EX) Committee approved the request to work on this model law at the 2007 Summer National Meeting. This is a simple change that will be needed when the principle-based reserving system is authorized. It delinks the interest rates from the valuation interest rate and links them to the formula currently used. On a Nov. 14, 2008, conference call, the American Council of Life Insurers (ACLI) said the method of introducing new mortality tables for determining the minimum nonforfeiture values would have to be reviewed. Otherwise, the nonforfeiture mortality standard might not be comparable with the valuation mortality. At the 2009 Spring National Meeting, the Task Force decided to defer consideration of this model law until more work is done on the *Standard Valuation Law* (#820) and the Valuation Manual. Now that the principle-based reserving methodology for life insurance is close to completion and the method of introducing new valuation mortality tables is known, work on this model will resume.

Amendments to *Health Carrier Grievance Procedure Model Act* (#72)—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is amending the *Health Carrier Grievance Procedure Model Act* (#72) for consistency with Section 2719 of the PPACA and the interim final regulations published in the *Federal Register* July 23, 2010, implementing that section. Section 2719 sets out requirements health carriers must follow for the internal review of

adverse benefit determinations. An initial draft of proposed revisions was distributed for comment Sept. 9. The Task Force held conference calls Sept. 13, Sept. 20, Sept. 27 and Oct. 4 to discuss the comments received and, during these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

Amendments to *Utilization Review and Benefit Determination Model Act* (#73)—The Regulatory Framework (B) Task Force of the Health Insurance and Managed Care (B) Committee is amending the *Utilization Review and Benefit Determination Model Act* (#73) for consistency with Section 2719 of the PPACA and the interim final regulations published in the *Federal Register* July 23, 2010, implementing that section. Section 2719 sets out requirements health carriers must follow for the internal review of adverse benefit determinations. An initial draft of proposed revisions was distributed for comment Sept. 9. The Task Force held conference calls Sept. 13, Sept. 20, Sept. 27 and Oct. 4 to discuss the comments received on the revisions. During these calls, the Task Force approved various revisions to the draft. The Task Force will continue discussions of the draft during its meeting Oct. 18.

7. Receive Report of NIPR Board of Directors

Director Hall reported the NIPR Board of Directors met Oct. 17 to discuss progress on the upcoming negotiation of the NAIC/NIPR license and services agreement, and the plan to finalize the agreement by the end of 2010. The NIPR Board also approved the proposed pricing for a new NIPR product, Interactive Appointments and Terminations, which is scheduled for release in early 2011. At the conclusion of the meeting, the new industry representative board members rotated onto the board for their two-year terms. They are representatives from America's Health Insurance Plans (AHIP), National Association of Health Underwriters (NAHU), Independent Insurance Agents & Brokers of America (IIABA) and American Insurance Association (AIA).

Director Hall referred members to the distributed NIPR maps that track progress toward achieving the NIPR "one-stop-shopping" vision, particularly related to the electronic licensing of surplus lines brokers, as required within two years of the signing of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. The goal is to have all the maps, including surplus lines, show 100% participation. NIPR continues to add additional states for resident licensing and renewal products and recently signed an MOU with Massachusetts with a planned implementation of June 2011.

8. Receive Report of SERFF Board

Director Hudson reported that SERFF usage through August 2010 continues to grow. Most of the states report that they are receiving 85%–90% of their product filings via SERFF. All SERFF jurisdictions have implemented all lines of business. Fifty states, District of Columbia and Puerto Rico accept filings via SERFF. Since the Summer National Meeting, the SERFF marketing team has licensed 17 companies. More than 3,100 unique companies are currently licensed. SERFF v5.9 was released in September and improved IIPRC's Statement of Intent feature and refreshed a significant portion of the SERFF user interface. The Product Steering Committee (PSC) is reviewing enhancements originating from user design suggestions. NAIC staff is working diligently with the office of U.S. Department of Health and Human Services (HHS) to define reporting requirements related to the Health Insurance Premium Review Grant. The first phase of grant requirements is expected to move into production in December.

The SERFF Board approved a proposal to use SERFF to provide access to PPACA-related filings via the Internet to fulfill recommendations from HHS. The Filing Access Working Group will continue to consider the larger issue of public access to SERFF filings.

The 2011 SERFF Board elections are under way, as two regulator, one commissioner and one industry position expire at the end of 2010. SERFF Board candidate applications will be accepted through Oct. 20, with voting expected to end Nov 8.

9. Receive Report of the IIPRC

Director Hudson reported the IIPRC held its annual joint meeting of the Management Committee and IIPRC members Oct. 17. The Commission elected its 2011 officers: Director Hudson was re-elected chair; Commissioner Sevigny was elected vice chair and Commissioner Wayne Goodwin (NC) was elected treasurer. The IIPRC also adopted its 2011 budget, which anticipates that it will be close to break-even next year and might need only a minimal line of credit from the NAIC. Also adopted were two new uniform standards for additional life benefit features, including graded death benefits and longevity benefits. The individual long-term care uniform standards were promulgated Sept. 2 and become available for filing Dec. 1.

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The IIPRC adopted amendments to the IIPRC's Filing Fee Rule and updated the definition of a regional filer to include companies that file in 15 or fewer states within an annual period. Regional filers pay lower registration and IIPRC filing fees.

Indiana has notified the IIPRC of its election to opt-out of the long term care insurance standards by regulation. The IIPRC granted Indiana's request for a stay of the effective date of the long-term care insurance standards for Indiana while they pursue their regulation-making process. New Jersey recently approved the compact legislation, pending a study and recommendation regarding participation in the IIPRC's long-term care insurance standards.

More than 100 companies have registered in 2010 to file with the IIPRC, which represents a 140% increase over the total number of 2009 filings.

Having no further business, the Executive (EX) Committee adjourned.

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2011 PROPOSED CHARGES
EXECUTIVE (EX) COMMITTEE

The mission of the Executive (EX) Committee is to manage the affairs of the NAIC in a manner consistent with the Articles of Incorporation and Bylaws.

Ongoing Support of NAIC Programs, Products, or Services:

1. Based on input of the membership, identify goals and priorities of the organization and make recommendations to achieve such goals and priorities. Make recommendations by 2011 Commissioners' Conference—*Essential*

2. Create/terminate task force(s) and/or executive working groups to address special issues and monitor the work of these groups. Create necessary task forces and/or executive working groups throughout 2011 as necessary—*Essential*

3. Submit reports and recommendations to NAIC members concerning the activities of its subcommittee and the standing committees. Submit report at each national meeting—*Essential*

4. Consider requests from NAIC members for friend-of-the-court briefs—*Essential*

5. Establish and allocate functions and responsibilities to be performed by each zone—*Essential*

6. Pursuant to the Bylaws, oversee the NAIC offices to assist the organization and the individual members in achieving the goals of the organization—*Essential*

7. Conduct strategic planning on an ongoing basis—*Essential*

8. Plan, implement and coordinate communications and activities with other state, federal, local, and international government organizations to advance the goals of the NAIC and promote understanding of state insurance regulation—*Essential*

9. Review all requests for development of model laws and give approval of those requests if it is determined the mandated criteria has been satisfied. Reporting at each national meeting is required on model laws approved for development—*Essential*

10. Appoint a subgroup to review NAIC By-Laws and make recommendations for amendments as necessary—*Essential*

Staff Support: Therese M. Vaughan/Andrew J. Beal/Kay Noonan

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REQUEST FOR MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ **New Model Law** **or** ☒ **Amendment to Existing Model**

1. **Name of group to be responsible for drafting the model:**

   Risk Retention (C) Working Group
   August 14, 2010

2. **NAIC staff support contact information:**

   Aaron Brandenburg
   abranden@naic.org
   816-783-8271

3. **Please provide a description and proposed title of the new model law. If an existing law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.**

   Model Risk Retention Act

   The Risk Retention (C) Working Group has considered issues of accreditation and corporate governance by developing corporate governance standards that were adopted by the Property and Casualty (C) Committee in June 2007 and referred to the Financial Condition (E) Committee for consideration to include the standards in the Property/Casualty Annual Statement Instructions. The Risk Retention (E) Task Force found that the Annual Statement Instructions were not the proper place for this guidance, but instead, should be incorporated into a model law or regulation so that a state insurance department could compel the RRG to comply with these requirements. Incorporating the corporate governance standards into Section III of the Model Risk Retention Act will fulfill this goal.

4. **Does the model law meet the Model Law Criteria?** ☒ **Yes** **or** ☐ **No** **(Check one)**
   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

   a. **Does the subject of the model law necessitate a national standard and require uniformity amongst all states?** ☒ **Yes** **or** ☐ **No** **(Check one)**

      If yes, please explain why

      By incorporating the corporate governance standards into the Model Risk Retention Act, the regulators can then add the standards into the Financial Regulation Standards and Accreditation Program. The accreditation standards would be for those states that are able to and have formed risk retention groups. This would also address a 2005 U.S. Government Accountability Office (GAO) report that called for additional corporate governance standards for risk retention groups.

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b. **Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?**
☒ **Yes** **or** ☐ **No** **(Check one)**

5. **What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?**

☒ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary:

6. **What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?**

☐ **1** ☒ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary:

7. **What is the likelihood that state legislature will adopt the model law in a uniform manner within three years of adoption by the NAIC?**

☐ **1** ☒ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary:

8. **Is this model law referenced in the Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?**

The Model Law is not referenced in the Accreditation Standards but the Working Group plans to make a referral to the Financial Regulation Standards and Accreditation (F) Committee as to what parts of the corporate standards within the newly revised Model Risk Retention Act should be a part of the Accreditation Standards.

9. **Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.**

This model law is closely related to federal law in that its purpose is to regulate the formation and/or operation of risk retention groups and purchasing groups formed pursuant to the provisions of the federal Risk Retention Act of 1986. Because this federal law sets parameters for the existence of risk retention groups, Congress and the GAO have shown great interest in how states regulate risk retention groups, including the establishment of corporate governance standards on such groups. The added corporate governance standards address the concerns made in the 2005 GAO report.

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MODEL RISK RETENTION ACT

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Section 1. Purpose

The purpose of this Act is to regulate the formation and/or operation of risk retention groups and purchasing groups in this State formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 (“RRA 1986”), to the extent permitted by such law.

Section 2. Definitions

As used in this Act

A. “Commissioner” [director, superintendent] means the insurance commissioner [director, superintendent] of [insert name of state] or the commissioner, director or superintendent of insurance in any other state;

B. “Completed operations liability” means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by

(1) Any person who performs that work; or

(2) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

Drafting Note: The definition of “completed operations liability” is taken from the definition in the Product Liability Risk Retention Act of 1981 (Product Liability RRA 1981) Section 2(a)(1). A purpose of RRA 1986 was to expand the permissible coverage offered by risk retention groups from product liability and completed operations to general liability insurance, as further defined in RRA 1986. Some risk retention groups that were chartered under the Product Liability RRA 1981 are “grandfathered” by RRA 1986 to the extent that they can continue to provide product liability and completed operations coverage if they meet the criteria established by RRA 1986. The definitions relating to product liability and completed operations coverage, therefore, are relevant to any such groups which may continue to so operate.

C. “Domicile”, for purposes of determining the state in which a purchasing group is domiciled, means

(1) For a corporation, the state in which the purchasing group is incorporated; and

(2) For an unincorporated entity, the state of its principal place of business;

D. "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able

(1) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(2) To pay other obligations in the normal course of business;

Drafting Note: The definition of "hazardous financial condition" stipulates that a regulator, in looking at the financial condition of a risk retention group, can base his conclusions on reasonable expectations of future performance. In determining the present or reasonably anticipated financial condition of a risk retention group, the commissioner may utilize all relevant financial tests, ratios and other factors used in determining the financial condition of authorized insurers, including an analysis of actuarial soundness of rates charged.

E. "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state;

Drafting Note: Definition taken from RRA 1986 Section 2(a)(1).

F. "Liability"

(1) Means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of

(a) Any business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations; or

(b) Any activity of any state or local government, or any agency or political subdivision thereof; and

Drafting Note: A state may specify acceptable means for managing the liability of the state or its local governments, or any agency or political subdivision thereof, by including or excluding insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source; or through a broker, agent, purchasing group, or any other person. Similarly, a state may specify acceptable means of demonstrating financial responsibility as a condition for obtaining a license or permit to undertake specified activities pursuant to Section 6(d), RRA 1986.

(2) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

G. "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in Subsection F;

H. "Plan of operation" or "feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum;

(1) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

(2) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer;

(3) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(4) Pro forma financial statements and projections;

(5) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(6) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements;

(7) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

(8) Such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

I. "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

Drafting Note: The definition of "product liability" is identical to that contained in Product Liability RRA 1981, Section 2(a)(3), for a "grandfathered" risk retention group. See Drafting Note following Subsection 2B of this Act.

J. "Purchasing group" means any group which

(1) Has as one of its purposes the purchase of liability insurance on a group basis;

(2) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in Paragraph (3);

(3) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(4) Is domiciled in any state;

Drafting Note: The Product Liability RRA 1981 contained a very loose definition of "purchasing group." RRA 1986 offers a more restrictive definition of those groups that can qualify as "purchasing groups." A purchasing group must only offer liability insurance to its group members, and the insurance must cover their similar or related liability exposure. Further, the group members must have businesses or activities that are similar or related with respect to the liability to which group members are exposed. Finally, the purchasing group must be domiciled in one of the states of the United States, i.e., it cannot be domiciled offshore.

K. "Risk retention group" means any corporation or other limited liability association:

(1) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(2) Which is organized for the primary purpose of conducting the activity described under Paragraph (1);

(3) Which

(a) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(b) Before January 1, 1985 was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk Retention Act of 1986);

(4) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(5) Which

(a) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(b) Has as its sole owner an organization which has as

(i) Its members only persons who comprise the membership of the risk retention group; and

(ii) Its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(6) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar or common business trade, product, services, premises or operations;

(7) Whose activities do not include the provision of insurance other than

(a) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(b) Reinsurance with respect to the liability of any other risk retention group (or any members of such other group) which is engaged in businesses or activities so that the group or member meets the requirement described in Paragraph 6 from membership in the risk retention group which provides such reinsurance; and

(8) The name of which includes the phrase “Risk Retention Group;”

Drafting Note: RRA 1986 changes the definition of “risk retention group” by further restricting the permissible membership and its activities. A risk retention group must be chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of one of the fifty states unless it qualifies under the “grandfather” provision of Subsection K(3)(b). In that event, it may only continue to provide product liability or completed operation coverage.

Each of the members of the group must have an “ownership interest” in the group. In addition, all owners must be provided insurance by the group. One purpose of this requirement is to prevent participation by third parties which may not be interested in the specific insurance problems of group members but merely may be interested in making a profit. The single exception to this requirement is when the sole member and sole owner of the organization is an entity consisting of persons, each of whom is a member of the risk retention group and is provided insurance by the group.

The members "who are also the owners" are required to be engaged in businesses or activities "similar or related with respect to the liability to which they are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operation." This restriction is for the purpose of requiring substantial identity among the members (who are also the owners and insureds) in regard to the nature of the risks faced.

A risk retention group may not provide insurance other than liability insurance. Further, it can only provide reinsurance to another risk retention group if all of that group's members would qualify for membership in the risk retention group offering the reinsurance. This provision was designed to restrict a risk retention group to only reinsuring its own risks or the similar risks of similarly situated businesses. For example, a risk retention group whose membership consists of grocery store owners, could not reinsure a risk retention group whose membership consists of hazardous waste transporters.

The risk retention group must be chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of one of the fifty states unless it qualifies under the "grandfather" provision of Subsection K(3)(b).

L. "State" means any state of the United States or the District of Columbia.

Section 3. Risk Retention Groups Chartered in this State

A. (1) A risk retention group shall, pursuant to the provisions of Section [insert appropriate reference to Insurance Law], be chartered and licensed to write only liability insurance pursuant to this Act and, except as provided elsewhere in this Act, must comply with all of the laws, rules, regulations and requirements applicable to insurers chartered and licensed in this state and with Section 4 of this Act to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state.

(2) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the department and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC and in diskette form, if required by the Commissioner and completed in accordance with its instructions and the NAIC Accounting Practices and Procedures Manual.

B. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten (10) days of any such change. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the commissioner.

C. At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information: the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners. Providing notification to the NAIC is in addition to and shall not be sufficient to satisfy the requirements of Section 4 or any other sections of this Act.

Drafting Note: RRA 1986 allows for the chartering state to apply the full range of its insurance laws to a risk retention group wishing to charter in that state, except for requiring participation in the guaranty fund. The language of this section is derived from Product Liability RRA 1981 Section 3(a)(1) (which was not amended by RRA 1986 as it relates to this issue). The function of the office of the National Association of Insurance Commissioners shall be solely to provide administrative services for its member states and territories. Although RRA 1986 specifically requires that the phrase "Risk Retention Group" be included in the name, the chartering state is not precluded from prohibiting the use of deceptive or misleading words, designations or phrases in the name. Further, a state may require a risk retention group it charters and licenses to locate books and records or administrative functions within that state to the same extent it imposes those requirements on its domestic insurers.

Section 4. Risk Retention Groups Not Chartered in this State

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

Model Risk Retention Act

Drafting Note: RRA of 1986 exempts a risk retention group from any state law regarding its operation in a state in which it is not domiciled except those laws referred to in RRA 1986. The state of domicile, however, retains under that section the full authority to regulate the formation and operation of the group.

However, if a risk retention group fails to qualify under the definitional requirement of RRA 1986, it will not benefit from this exemption from state law. The commissioner, therefore, would be authorized to apply any of the laws that may be preempted by RRA 1986 because the group will not qualify for the preemption.

A. Notice of Operations and Designation of Commissioner as Agent.

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the NAIC:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, charter date, its principal place of business, and such other information, including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under Section 2K of this Act;

Drafting Note: The commissioner may need to take appropriate action in order to preserve the confidentiality of any proprietary or other confidential information, such as lists identifying the specific members of the group and their location.

(b) A copy of its plan of operations or feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed; provided, however, that the provision relating to the submission of a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(i) Was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and

(ii) Was offered before that date by any risk retention group which had been chartered and operating for not less than three (3) years before that date; and

(2) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by Section 3B of this Act at the same time that the revision is submitted to the commissioner of its chartering state.

Drafting Note: The plan of operations or feasibility study required under this provision is that submitted to and accepted by the chartering state.

(3) The risk retention group shall submit a statement of registration, for which a filing fee shall be determined by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

B. Financial Condition. Any risk retention group doing business in this state shall submit to the commissioner:

(1) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist (under criteria established by the National Association of Insurance Commissioners);

(2) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(3) Upon request by the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group; and

(4) Such information as may be required to verify its continuing qualification as a risk retention group under Section 2K.

Drafting Note: RRA 1986 also added the opportunity for a state to require that a risk retention group submit a notice of operations and financial condition. The purpose of this provision is to require a risk retention group to give the commissioner of any state in which it intends to operate adequate notice of its intended activity and financial condition so that the commissioner can take appropriate action if the possibility of a potential insolvency or commercial abuse exists.

C. Taxation.

(1) Each risk retention group shall be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(2) To the extent licensed agents or brokers are utilized pursuant to Section 12 of this Act, they shall report to the commissioner the premiums for direct business for risks resident or located within this state which the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(3) To the extent that insurance agents or brokers are utilized pursuant to Section 12 of this Act, each agent or broker shall keep a complete and separate record of all policies procured from each risk retention group, which record shall be open to examination by the commissioner, as provided in [insert appropriate reference to Insurance Law]. These records shall, for each policy and each kind of insurance provided thereunder, include the following:

(a) The limit of liability;

(b) The time period covered;

(c) The effective date;

(d) The name of the risk retention group which issued the policy;

(e) The gross premium charged; and

(f) The amount of return premiums, if any.

Drafting Note: RRA 1986 does not specify which premium tax rate will be applied. The NAIC has recommended applying the rate for foreign admitted insurers; some states, however, may apply the surplus lines rate.

D. Compliance with Unfair Claims Settlement Practices Law. Any risk retention group, its agents and representatives shall comply with the Unfair Claims Settlement Practices Act of this state, [insert section of the Insurance Code].

Drafting Note: The provisions regarding the liability of risk retention groups to state taxation, compliance with the unfair claims settlement practices law, and registration and designation of the commissioner as agent for purpose of service of process were included in the Product Liability RRA 1981 and continued in RRA 1986.

E. Deceptive, False, or Fraudulent Practices. Any risk retention group shall comply with the laws of this state, [insert sections of the Insurance Code], regarding deceptive, false or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

Drafting Note: The provision regarding compliance with state laws regarding deceptive, false or fraudulent practices was added by RRA 1986. The chartering state retains all of its authority to deal with an unfair trade practice under all its laws generally, including its insurance law. However, the 1986 Act preempts those portions of non-chartering states' Unfair Trade Practices Acts contained in their insurance laws that relate to methods of competition and acts or practices that are unfair, if such methods, acts or practices are not also deceptive. Nonetheless, state antitrust and state unfair practice laws which apply to commerce generally are applicable and are not preempted by the federal law.

F. Examination Regarding Financial Condition. Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the commissioner of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the NAIC's Examiner Handbook.

Drafting Note: A provision regarding submission to examination by the nondomiciliary state was included in the Product Liability RRA 1981. However, it was modified to eliminate the requirement that the commissioner had "reason to believe" the risk retention group was in a financially impaired condition. This deletion gives the commissioner greater latitude in requiring the group to submit to an examination.

G. Notice to Purchasers. Every application form for insurance from a risk retention group, and every policy (on its front and declaration pages) issued by a risk retention group, shall contain in ten (10) point type the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

Drafting Note: A provision regarding the notice to purchasers concerning the limitation of regulatory oversight of risk retention groups and the lack of insolvency guaranty fund protection was added by RRA 1986. The purpose is to allow the states to require minimal disclosure to consumers.

H. Prohibited Acts Regarding Solicitation or Sale. The following acts by a risk retention group are hereby prohibited:

(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or financially impaired.

Drafting Note: The provision regarding the prohibition of solicitation or sale of insurance by the risk retention group to any person who is not eligible for membership or by a group that is in hazardous financial condition or financially impaired was included in RRA 1986 for the purpose of enhancing state regulatory authority. These provisions have not been included in state insurance codes due to the limitation on the coverages permissibly offered under the Product Liability RRA 1981. This provision is not intended to limit those acts against which a commissioner can take action but rather to expand those acts by identifying acts that would not have been violations of the law prior to the passage of RRA 1986.

I. Prohibition on Ownership by an Insurance Company. No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

Drafting Note: The prohibition on ownership by an insurance company of a risk retention group was added by RRA 1986 for the purpose of limiting the involvement of fully regulated insurance companies in risk retention groups. The states should also amend the appropriate licensing law applying to authorized insurers to include a similar prohibition. The Congress believed that this was a method to avoid the possibility that fully regulated companies would choose the Risk Retention Act as a vehicle to avoid full regulation.

J. Prohibited Coverage. The terms of any insurance policy issued by any risk retention group shall not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

Drafting Note: The provision regarding prohibited coverages was added by RRA 1986 for the purpose of enabling a state to regulate the coverages that could be offered within its borders. The Congress believed that this was a matter of public policy to be determined by each state.

K. Delinquency Proceedings. A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under Section 4F of this Act.

L. Penalties. A risk retention group that violates any provision of this Act will be subject to fines and penalties including revocation of its right to do business in this state, applicable to licensed insurers generally.

M. Operation Prior to Enactment of this Act. In addition to complying with the requirements of this section, any risk retention group operating in this state prior to enactment of this Act shall, within thirty (30) days after the effective date of this Act, comply with the provision of Subsection A(1) of this section.

Drafting Note: A risk retention group which qualifies under the grandfather provision contained in Section 2K(3)(b) is exempt from Subsection M above, so long as it only offers product liability or completed operations coverage.

Section 5. Compulsory Associations

A. No risk retention group shall be required or permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by a risk retention group.

B. When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, shall be covered by any insurance guaranty fund or similar mechanism in this state.

C. When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state shall be covered by the state guaranty fund subject to [insert appropriate reference to Insurance Law].

D. (OPTIONAL) Notwithstanding [insert appropriate references to JUA provisions], the commissioner may require or exempt a risk retention group from participation in any mechanism established or authorized under the law of this state for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism, and such risk retention group shall submit sufficient information to the commissioner to enable the commissioner to apportion on a nondiscriminatory basis the risk retention group's proportionate share of such losses and expenses.

Drafting Note: Product Liability RRA Section 3(a)(2) specifically exempts risk retention groups from participation in the state guaranty fund. Section 3(a)(1)(C) of RRA 1986 permits a state to require that a risk retention group participate in JUAs or similar mechanisms on a nondiscriminatory basis. In making such a determination, each state should take into account the different considerations which are applicable to JUAs and to assignments under assigned risk plans, respectively, as well as to the impact on the financial condition of risk retention groups.

Section 6. Countersignatures not Required

A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned as otherwise provided in Section [insert reference] of the Insurance Code.

Drafting Note: Product Liability RRA Section 3(a)(3) preempts the states from requiring policies to be countersigned by resident agent or brokers. This section is optional depending on states' existing countersignature laws.

Section 7. Purchasing Groups—Exemption from Certain Laws

A purchasing group and its insurer or insurers shall be subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

A. Prohibit the establishment of a purchasing group;

B. Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters;

C. Prohibit a purchasing group or its members from purchasing insurance on a group basis described in Subsection B of this section;

D. Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

E. Require that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

F. Require that a certain percentage of a purchasing group must obtain insurance on a group basis;

G. Otherwise discriminate against a purchasing group or any of its members; or

H. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance agent or broker residing in this state.

Drafting Note: RRA 1986 establishes that the scope of the exemption from state law for risk retention groups is greater than that for purchasing groups. RRA 1986 in Section 3 states that a risk retention group is exempt from the laws of non-chartering states and then specifies those powers which are retained by those states. In regard to purchasing groups, however, Section 4 of RRA 1986 specifically lists those laws from which a purchasing group is exempt and which are in the nature of prohibiting or otherwise discriminating against purchasing groups. Therefore, a state can apply all other provisions of its laws to purchasing groups and persons dealing with purchasing groups. As noted in regard to risk retention groups, if a purchasing group does not meet any of the criteria specified to define it as a purchasing group, it does not benefit from any federal preemption of state law and all state laws apply.

Section 8. Notice and Registration Requirements of Purchasing Groups

A. A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the commissioner which shall, on forms prescribed by the NAIC:

(1) Identify the state in which the group is domiciled;

(2) Identify all other states in which the group intends to do business;

(3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(4) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of such company;

(5) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(6) Identify the principal place of business of the group; and

(7) Provide such other information as may be required by the commissioner to verify that the purchasing group is qualified under Section 2J of this Act.

B. A purchasing group shall, within ten (10) days, notify the commissioner of any changes in any of the items set forth in Subsection A of this section.

Drafting Note: The notice provisions regarding purchasing groups are designed to require that purchasing groups provide adequate information to the commissioner so that an evaluation can be made as to whether a purchasing group is (a) bona fide and (b) is likely to operate in a manner and to purchase insurance coverage that is consistent with the laws of the state.

C. The purchasing group shall register with and designate the commissioner (or other appropriate authority) as its agent solely for the purpose of receiving service of legal documents or process, for which a filing fee shall be determined by the commissioner, except that such requirements shall not apply in the case of a purchasing group which only purchases insurance that was authorized under the federal Products Liability Risk Retention Act of 1981, and:

(1) Which in any state of the United States

(a) Was domiciled before April 1, 1986; and

(b) Is domiciled on and after October 27, 1986;

(2) Which

(a) Before October 27, 1986 purchased insurance from an insurance carrier licensed in any state; and

(b) Since October 27, 1986 purchased its insurance from an insurance carrier licensed in any state; or

(3) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 before October 27, 1986.

D. Each purchasing group that is required to give notice pursuant to Subsection A of this section shall also furnish such information as may be required by the commissioner to:

(1) Verify that the entity qualifies as a purchasing group;

(2) Determine where the purchasing group is located; and

(3) Determine appropriate tax treatment.

E. Any purchasing group which was doing business in this state prior to the enactment of this Act shall, within thirty (30) days after the effective date of this Act, furnish notice to the commissioner pursuant to the provisions of Subsection A of this section and furnish such information as may be required pursuant to Subsections B and C of this section.

Drafting Note: The provision regarding registering with and designating the commissioner as legal agent is designed to allow the commissioner to take prompt legal action against the purchasing group by facilitating proper legal service of process. The purchasing groups "grandfathered" out of this registration requirement are only those that were prior to April 1986, and continue to be, domiciled in one of the United States, that purchase insurance only from U.S. carriers, that qualified as a purchasing group under the Product Liability Risk Retention Act of 1981, and that do not currently purchase insurance other than that authorized under the Product Liability RRA 1981.

Section 9. Restrictions on Insurance Purchased by Purchasing Groups

A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such state.

Drafting Note: Although Section 4(f) of RRA was one of the most significant provisions dealing with regulation of insurance purchased by purchasing groups, the term "located" was not defined in the federal act.

B. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group which have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and regulations of this state.

Drafting Note: This provision, with respect to non-admitted insurers, applies only if a state requires this notice to policyholders in the state with respect to other insurers not covered by insurance insolvency guaranty funds.

C. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

D. Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits which are applicable to all purchases of group insurance.

Drafting Note: A state may prescribe limitations with respect to aggregate limits to all purchases of group insurance, as long as such limitations are not applied in a manner which discriminates against purchasing groups.

Section 10. Purchasing Group Taxation

Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups shall be:

A. Imposed at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds; and

B. Paid first by such insurance source, and if not by such source by the agent or broker for the purchasing group, and if not by such agent or broker then by the purchasing group, and if not by such purchasing group then by each of its members.

Drafting Note: The term "insurance source" refers to admitted, licensed and authorized carriers on the one hand and non-admitted, surplus line carriers on the others. The enacting states may wish to include applicable taxing provisions of its Code.

Section 11. Administrative and Procedural Authority Regarding Risk Retention Groups and Purchasing Groups

The commissioner is authorized to make use of any of the powers established under the Insurance Code of this state to enforce the laws of this state not specifically preempted by the Risk Retention Act of 1986 including the commissioner's administrative authority to investigate, issue subpoena, conduct depositions and hearings, issue orders, impose penalties and seek injunctive relief. With regard to any investigation, administrative proceedings or litigation, the commissioner can rely on the procedural laws of this state. The injunctive authority of the commissioner, in regard to risk retention groups, is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

Drafting Note: This provision regarding the administrative and procedural authority retained by the states under Sections 3(f) and 4(g) of RRA 1986 is designed to permit the commissioner to investigate for potential hazardous financial condition or market conduct abuses and to take appropriate action where necessary. It clarifies that no federal preemption takes place regarding the procedural and administrative authority of the commissioner.

However, RRA 1986 requires that any injunction sought by the commissioner must be obtained from a court of competent jurisdiction. See RRA 1986 Section 3(a)(1)(G), Section 3(e), and Section 3(f). However, this restriction on the injunctive authority of the commissioner does not carry over to any action that the commissioner may take under its state administrative procedural law regarding purchasing groups. Section 4 of RRA 1986, which addresses the limited preemption from state law provided to purchasing groups, does not refer to any restriction on the commissioner's injunctive authority. More specifically, the "savings clause" regarding state authority, RRA Section 4(g), makes no mention of such requirement.

Section 12. Duty of Agents or Brokers to Obtain License

A. Risk retention groups.

(1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].

B. Purchasing groups.

(1) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].

(2) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance coverage in this state for any member of a purchasing group under a purchasing group's policy unless such person, firm, association or corporation is licensed as an insurance agent or broker in accordance with Section [insert appropriate reference to Insurance Law].

(3) No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless such person, firm, association or corporation is

licensed as a surplus lines agent or excess line broker in accordance with [insert appropriate reference to Insurance Law].

Drafting Note: The RRA (1986) does not preempt state law with respect to licensing and regulation of agents and brokers, with the exception of the elimination of the residence requirement and of countersignature laws, as provided in Subsection C of this section, and Sections 6 and 7H of this Act.

C. For purposes of acting as an agent or broker for a risk retention group or purchasing group pursuant to Subsections A and B of this section, the requirement of residence in this state shall not apply.

D. Every person, firm, association or corporation licensed pursuant to the provisions of [insert appropriate references to Insurance Law], on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by Subsection G of Section 4 of this Act in the case of a risk retention group and Subsection C of Section 9 of this Act in the case of a purchasing group.

Section 13. Binding Effect of Orders Issued in U.S. District Court

An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating in any state (or in all states or in any territory or possession of the United States) upon a finding that such a group is in hazardous financial or financially impaired condition shall be enforceable in the courts of the state.

Section 14. Rules and Regulations

The commissioner may establish and from time to time amend such rules relating to risk retention groups as may be necessary or desirable to carry out the provisions of the Act.

Section 15. Severability

If any clause, sentence, paragraph, section or part of this act or the application thereof to any person or circumstances, shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder of this act, and the application thereof to other persons or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgement shall have been rendered and to the person or circumstances involved.

Section 16. Effective Date

This Act will be effective on [insert date].

Legislative History (all references are to the Proceedings of the NAIC).

1983 Proc. I 6, 35, 789-790, 795, 799-805 (adopted).
1987 Proc. I 11, 20, 744, 857-865 (amended and reprinted).
1987 Proc. II 15, 24, 774-775, 776-788 (amended).
1991 Proc. II 25, 58, 976, 992-1003 (amended and reprinted).

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REQUEST FOR MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ **New Model Law** **or** ☒ **Amendment to Existing Model**

1. Name of group to be responsible for drafting the model:

Reinsurance (E) Task Force

2. NAIC staff support contact information:

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3. Please provide a description and proposed title of the new model law. If an existing law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

Credit for Reinsurance Model Law (Model #785) (copy attached)

Sections Proposed to be Amended: Section 2(D)(3) would be amended to allow the commissioner with principal regulatory oversight of the trust the discretion to reduce the minimum trusteed surplus requirement for a multiple-beneficiary trust fund maintained by an assuming insurer in run-off.
Please note that the Reinsurance Task Force is submitting a corresponding request to make identical amendments to the Credit for Reinsurance Model Regulation (Model #786).

UPDATE: The Reinsurance Task Force will also begin discussions on amending Model #785 to incorporate key elements of the Reinsurance Regulatory Modernization Framework Proposal, which was previously adopted by the NAIC at the Winter 2008 National Meeting. The Task Force previously approved a resolution for NAIC staff to initiate the model law process with respect to these changes at the Summer 2009 National Meeting, and it is expected that the Task Force will confirm this request at this meeting.

4. **Does the model law meet the Model Law Criteria?** ☒ **Yes** **or** ☐ **No** **(Check one)**
(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. **Does the subject of the model law necessitate a national standard and require uniformity amongst all states?** ☒ **Yes** **or** ☐ **No** **(Check one)**

If yes, please explain why

Model #785 provides that credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the assuming insurer meets one of the following criteria:

1. The assuming insurer is licensed in the same state of domicile as the ceding company for a like kind of business.

2. The assuming insurer is accredited by the domiciliary insurance department of the ceding company.

3. The assuming insurer is domiciled and licensed in a state with substantially similar credit for reinsurance laws as the domiciliary state of the ceding company.

4. The assuming insurer provides collateral in the form of a multiple-beneficiary trust.

5. The assuming insurer provides collateral or other security to the ceding insurer.

With respect to number (4) above, Section 2(D) of Model #785 provides the requirements for an assuming insurer that maintains a multiple-beneficiary trust for the purposes of securing reinsurance obligations to U.S. ceding companies. With respect to the required balance for such a multiple-beneficiary trust, Model #785 provides the following: "The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000."

After considering a proposal submitted by an interested party, the Reinsurance Task Force reached a consensus that the $20 million minimum trusteed surplus requirement for a multiple-beneficiary trust can become problematic with respect to solvency and liquidity for an assuming insurer that has entered into run-off. As the liabilities attributable to the U.S. trust are reduced, the percentage of total collateral in the trust becomes disproportionately high in relation to the assuming insurer's obligations to U.S. cedants. The Reinsurance Task Force has determined that under the appropriate circumstances, it is prudent for the minimum trusteed surplus requirement to be reduced as the assuming insurer's obligations to U.S. cedants decrease. State laws based on (or substantially similar to) Model #785 would require amendment in order to prevent such reduction in a multiple-beneficiary trust balance from negatively impacting the policyholders' surplus of U.S. ceding companies that are taking financial statement credit for reinsurance ceded to the applicable assuming insurer.

The Task Force is proposing to amend Model #785 to allow the commissioner with principal regulatory oversight of the trust the discretion to reduce the minimum trusteed surplus requirement for a multiple-beneficiary trust fund maintained by an assuming insurer in run-off. The Task Force reached a consensus that the reduction in trusteed surplus would be subject to the following parameters: At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than (30% of 50% minimum is yet to be decided) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers.

While the proposed amendment would potentially reduce the minimum trusteed surplus requirement applicable to a multiple-beneficiary trust, it should be noted that it would not alter the requirement that the trust balance cover 100% of the assuming insurer's obligations to U.S. cedants.

Model #785 is referenced in the current Accreditation Standards. It is understood that specific state law which is determined to be more conservative than the related accreditation standard is generally considered to be acceptable in meeting such standard. As the proposed amendment would result in a less conservative minimum trusteed surplus requirement for a multiple-beneficiary trust than the requirement under the current standard, no U.S. jurisdiction that is accredited under the current standard would be required to adopt this proposed amendment in order to maintain its accreditation status. However, in order for the proposed amendment to be effective in practice, uniform adoption throughout all U.S. jurisdictions would be necessary. An assuming insurer providing creditable reinsurance within the U.S. pursuant to this section of Model #785 maintains a single trust account in the U.S. for the benefit of its U.S. cedants. Therefore, the single trust account would have to meet the requirements of the most conservative state laws with respect to minimum trusteed surplus/minimum trust balance in order for U.S. cedants domiciled in such jurisdictions to be eligible to receive full financial statement credit for reinsurance ceded to the applicable assuming insurer.

b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?
☒ Yes or ☐ No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood Low Likelihood

Explanation, if necessary: The Task Force contemplated possible language to address this issue during its consideration of the proposal. Based on the high degree of consensus expressed during those discussions, it is very likely that the Task Force will finalize the amendment language in a very short time frame.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood Low Likelihood

Explanation, if necessary: Given the high degree of consensus among the 30 members of the Reinsurance Task Force during consideration of this proposal (no members expressed opposition in proceeding with the request for Model Law development), it is likely that a two-thirds majority of NAIC members would be in support of the proposed amendment.

7. What is the likelihood that state legislature will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☐ 1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood Low Likelihood

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Explanation, if necessary: Ultimate adoption by state legislatures is less certain. States would not be required to adopt the proposed amendment in order to maintain NAIC accreditation, as the current accreditation standard would be considered more conservative. The degree of likelihood will probably increase in the event that state legislatures consider more extensive reinsurance collateral reforms in the near future.

8. Is this model law referenced in the Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

Model #785 is referenced in the Accreditation Standards for Reinsurance Ceded. Section 10 reads as follows:

10. Reinsurance Ceded

State law should contain the NAIC Model Law on Credit for Reinsurance, the NAIC's Credit for Reinsurance Model Regulation and the NAIC Life and Health Reinsurance Agreement Model Regulation or substantially similar laws.

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

Not Applicable

CREDIT FOR REINSURANCE MODEL LAW

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Section 1. Purpose

The purpose of this Act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. The legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations. In furtherance of that state interest, the legislature hereby provides a mandate that upon the insolvency of a non-U.S. insurer or reinsurer that provides security to fund its U.S. obligations in accordance with this Act, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic U.S. insurance companies. The legislature declares that the matters contained in this Act are fundamental to the business of insurance in accordance with 15 U.S.C. §§ 1011-1012.

Section 2. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Subsections A, B, C, D or E of this section. Credit shall be allowed under Subsections A, B or C of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under Subsections C or D of this section only if the applicable requirements of Subsection F have been satisfied.

A. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

Drafting Note: A state that provides for licensing of reinsurance by line, for consistency should adopt an amended version of Subsection A requiring the assuming insurer to be "licensed to transact reinsurance in this state."

B. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. An accredited reinsurer is one that:

(a) Files with the commissioner evidence of its submission to this state's jurisdiction;

(b) Submits to this state's authority to examine its books and records;

(c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

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(d) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(i) Maintains a surplus as regards policyholders in an amount not less than $20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

(ii) Maintains a surplus as regards policyholders in an amount less than $20,000,000 and whose accreditation has been approved by the commissioner.

(2) Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

Drafting Note: To qualify as an accredited reinsurer, an assuming insurer must meet all of the requirements and the standards set forth in Subsection B. If the commissioner of insurance determines that the assuming insurer has failed to continue to meet any of these qualifications, the commissioner may, upon written notice and hearing, revoke accreditation.

C. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or U.S. branch of an alien assuming insurer:

(a) Maintains a surplus as regards policyholders in an amount not less than $20,000,000; and

(b) Submits to the authority of this state to examine its books and records.

(2) The requirement of Section 2 C(1)(a) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

Drafting Note: The term "substantially similar" means standards that equal or exceed the standards of the enacting state, as determined by the commissioner of the enacting state. It is expected that the NAIC will maintain a list of states whose laws establish standards that equal or exceed the standards of this model act.

D. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified U.S. financial institution, as defined in Section 4B, for the payment of the valid claims of its U.S. ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

(2) (a) Credit for reinsurance shall not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(i) The commissioner of the state where the trust is domiciled; or

(ii) The commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

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(b) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's U.S. ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner.

(c) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(3) The following requirements apply to the following categories of assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000.

(b) (i) In the case of a group including incorporated and individual unincorporated underwriters:

(I) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(II) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, not-withstanding the other provisions of this Act, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(III) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all years of account; and

(ii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

Section 5. Credit for Reinsurance—Accredited Reinsurers

A. Pursuant to Section [cite state law equivalent of Section 2B of the Credit for Reinsurance Model Law] the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer:

(1) Files a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(2) Files with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(a) Maintains a surplus as regards policyholders in an amount not less than $20,000,000 and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission; or

(b) Maintains a surplus as regards policyholders of less than $20,000,000, and whose accreditation has been approved by the commissioner.

B. If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and hearing revoke the accreditation. Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner.

Section 6. Credit for Reinsurance—Reinsurer Domiciled in Another State

A. Pursuant to Section [cite state law equivalent to Section 2C of the Credit for Reinsurance Model Law] the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(1) Is domiciled in (or, in the case of a U.S. branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this regulation;

Drafting Note: This subsection is intended to apply to an assuming insurer domiciled in (or, in the case of the U.S. branch of an alien assuming insurer, entered through) another state only if the assuming insurer also is licensed in that state and is therefore subject to the application of the state's credit for reinsurance standards as the result of the imposition of licensure requirements and also regulatory oversight and examination as a domiciliary company.

(2) Maintains a surplus as regards policyholders in an amount not less than $20,000,000; and

(3) Files a properly executed Form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commissioner determines equal or exceed the standards of the Act and this regulation.

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Section 7. Credit for Reinsurance—Reinsurers Maintaining Trust Funds

A. Pursuant to Section [cite state law equivalent to Section 2D of the Credit for Reinsurance Model Law] the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in Section [cite state law equivalent to Section 4B of the Credit for Reinsurance Model Law] of the Act, for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20,000,000.

(2) (a) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) In addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3) (a) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

(i) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(ii) Maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

(iii) File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(b) Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. (1) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

(b) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns and successors in interest;

(c) The trust shall be subject to examination as determined by the commissioner;

(d) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

(2) (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

D. For purposes of this regulation, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers that are not otherwise secured by acceptable means, and, shall include:

(1) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

(a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(b) Reserves for losses reported and outstanding;

(c) Reserves for losses incurred but not reported;

(d) Reserves for allocated loss expenses; and

(e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

(a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) Aggregate reserves for accident and health policies;

(c) Deposit funds and other liabilities without life or disability contingencies; and

(d) Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to [cite state law equivalent to Section 2 of the Credit for Reinsurance Model Law] and this section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in [cite state law equivalent of Section 4A of the Credit for Reinsurance Model Law], clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in [cite state law equivalent of Section 4A of the Credit for Reinsurance Model Law], and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs (1)(e), (3), (6)(b) or (7) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section [cite state law equivalent to Section 2 of the Credit for Reinsurance Model Law] shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) The United States or by any agency or instrumentality of the United States;

(b) A state of the United States;

(c) A territory, possession or other governmental unit of the United States;

(d) An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory of otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(e) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing

insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

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(c) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection shall be subject to the following additional limitations:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

(b) An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

(c) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

(d) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

(5) As used in this regulation:

(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(I) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

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(II) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (i)(I) and (i)(II) of this subsection;

(b) "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(6) Equity interests

(a) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

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(c) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

(7) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

Drafting Note: Banks such as the International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, African Development Bank, International Finance Corporation are intended to qualify under this section.

(8) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Paragraph (1), (2) or (3) of this subsection; or

(ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(a) of this subsection;

(b) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(i) An investment in an investment company qualifying under Subparagraph (a)(i) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(ii) Investments in an investment company qualifying under Subparagraph (a)(ii) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Paragraph (6)(a) of this subsection.

(9) Letters of Credit

(a) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(b) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 8. Credit for Reinsurance Required by Law

Pursuant to Section [cite state law equivalent of Section 2E of the Credit for Reinsurance Model Law], the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section [cite state law equivalent of Sections 2A, B, C, D or other appropriate section of the of the Credit for Reinsurance Model Law] but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

Drafting Note: Examples of assuming insurers for which credit may be allowed under this section include state owned or controlled insurance or reinsurance companies or ceding company participation in pools, guaranty associations or residual market mechanisms required by statute, regulation or administrative order.

Section 9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 8

A. Pursuant to Section [cite state law equivalent of Section 3 of the Credit for Reinsurance Model Law], the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section [cite state law equivalent of Section 2 or other appropriate section of the Credit for Reinsurance Model Law] in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section [cite state law equivalent of Section 4B of the Credit for Reinsurance Model Law]. This security may be in the form of any of the following:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section [cite state law equivalent of Section 4A of the Credit for Reinsurance Model Law], effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 13 and the applicable portions of Sections 10, 11 and 12 of this regulation have been satisfied.

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Section 10. Trust Agreements Qualified under Section 9

A. As used in this section:

(1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

Drafting Note: The NAIC has adopted the above definition as part of the "Uniform Letter of Credit." However, the state may choose to utilize the following definition: "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.

(2) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "Obligations," as used Subsection B(11) of this section means:

(a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) Reserves for reinsured losses reported and outstanding;

(c) Reserves for reinsured losses incurred but not reported; and

(d) Reserves for allocated reinsured loss expenses and unearned premiums.

B. Required conditions.

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution as defined in Section [insert citation to state law equivalent to Section 4B of the Credit for Reinsurance Model Law].

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) It is not subject to any conditions or qualifications outside of the trust agreement; and

(d) It shall not contain references to any other agreements or documents except as provided for in Paragraph (11) of this subsection.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive assets and hold all assets in a safe place;

(b) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(11) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate

account, in the name of the ceding insurer in any qualified U.S. financial institution as defined in Section [insert citation to state law equivalent of Section 4B of the Credit for Reinsurance Model Law] apart from its general assets, in trust for such uses and purposes specified in Subparagraphs (a) and (b) above as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of Section 9 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (a) and (b) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required in Subsection D(1)(b) of this section, so long as these required conditions are included in the trust agreement.

C. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection D(1)(b) of this section.

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(b) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

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(c) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

(b) Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (1)(e) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Paragraph (1)(e) of this subsection;

SVO Initiatives (EX) Working Group—The SVO Initiatives (EX) Working Group was formed by the Executive (EX) Committee at the 2008 Fall National Meeting for the purpose of conducting a comprehensive review of criteria and explore whether to register the NAIC as a nationally recognized statistical rating organization (NRSRO) or otherwise establish an NAIC-affiliated NRSRO. As part of these efforts, the Working Group has focused its review on the costs and benefits, as well as the risks, to the NAIC in seeking NRSRO status. Given the Working Group's review of the potential costs and uncertainties in establishing an NRSRO, the current environment and regulatory scrutiny of the existing rating agencies, and the continued work of the NAIC Rating Agency (E) Working Group to evaluate and address several issues important to regulatory reliance on existing NRSROs, it has been determined this effort will not be pursued at this time.

Solvency Modernization Initiative (EX) Task Force—During the Fall National Meeting, the Task Force is planning to discuss the new International Association of Insurance Supervisors' (IAIS) Common Framework for the Supervision of Internationally Active Insurance Groups project (ComFrame). The SMI Working Groups will be discussing three ground-breaking exposure drafts: group capital assessment options, primary considerations of a policy decision regarding the future of statutory accounting and financial reporting, and the Own Risk and Solvency Assessment (ORSA); the International Accounting Standards Board Insurance Contracts exposure draft; and a summary of corporate governance principles and standards placed upon insurers in numerous other jurisdictions.

The Solvency Modernization Initiative (EX) Task Force met Aug. 16, 2010. During this meeting, the Task Force:

1. Adopted the Solvency Modernization Initiative (SMI) Roadmap as a working document.
2. Heard a report on the Risk-Based Capital (RBC) aspect of the SMI. The Capital Adequacy (E) Task Force's SMI/RBC Subgroup will provide a detailed action plan prior to the Fall National Meeting.
3. Planned a conference call to discuss the IAIS ComFrame project. A report will be written by the Center for Insurance Policy (CIPR) and Research that summarizes the CIPR's Group Symposium held July 15-16.
4. Adopted reports from the Task Force's Working Groups and Subgroup, noting that regulators are proposing significant inter-related changes in the SMI, making coordination of work amongst numerous NAIC groups imperative.

Speed to Market (EX) Task Force—During the Summer National Meeting the Task Force will:

1. Discuss and consider adoption of the current draft of the Rate Filing Disclosure Form, addressing comments submitted by regulators and interested parties during the recent comment period.
2. Consider adoption of 2011 charges.
3. Receive reports from Task Force working groups.
4. Receive a report on health reform-related initiatives.
5. Receive reports from the IIPRC and the SERFF Board, as well as hear a report from NAIC staff on SERFF development activity.

Surplus Lines Implementation (EX) Task Force–This Task Force was formed during the Summer National Meeting for the purpose of developing state-based solutions for implementing the surplus lines provisions of the Nonadmitted and Reinsurance Reform Act of 2010. The Task Force is considering a draft Nonadmitted Insurance Compact for this purpose and will be meeting during the Fall National Meeting.

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