

# Florida Insurance Holding Company Regulatory Review

*What You Need to Know Right Now About Florida's Latest Request for Information On Property & Casualty Companies and the NAIC Insurance Holding Company Model Act*



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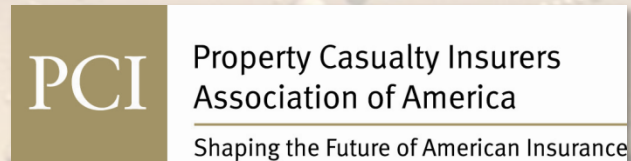
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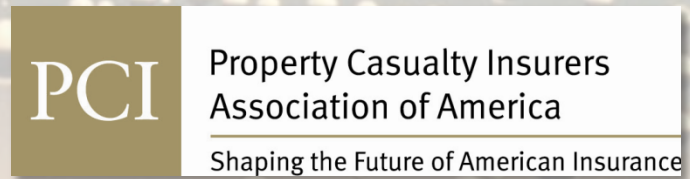
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The materials in this presentation are intended to provide a general overview of the issues and are not intended, nor should they be construed, to provide specific legal or regulatory guidance or advice or to represent the opinions or positions of any person or entity, **including, without limitation, the Property Casualty Insurers Association of America and its members, and Colodny Fass Talenfeld Karlinsky & Abate, P.A. and its clients.** If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.



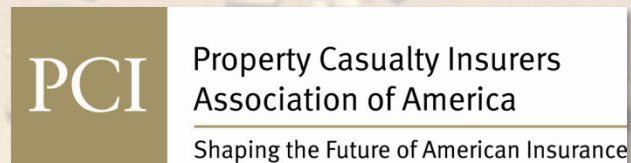


# Anti-Trust Admonition



# Agenda

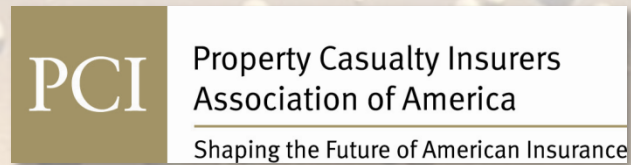
- **Holding Company Information Requested**
  - **Authority to Request Information**
  - **Recent Amendments of NAIC Models**
- **Key Elements of NAIC Model Amendments**
- **Implementation of NAIC Model by States**
  - **History of Florida Legislation**
  - **Possibility for Future Legislation**
- **Florida's Broad Public Records Laws**





# Holding Company Information Requested

The Florida Office of Insurance Regulation (“OIR”) has requested certain information from some insurance companies relating to their holding company structures, operations and finances.



# Holding Company Information Requested

*Florida domiciled property and casualty insurers are requested to provide information, including:*

- Ultimate controlling party(s) or person(s)
- Nature and level of complexity of structure
- Business segments and dollar amount/percentage of overall revenue per segment
- A statement discussing the level of international insurance activities
- A list of the number of insurers within the holding company system and their respective jurisdictions
  - The nature and function of all non-insurance legal entities within the holding company system
- Potential risks as a result of the aforementioned considerations



# Holding Company Information Requested

*Florida domiciled property and casualty insurers are requested to provide the following information:*

- **A high-level summary of the holding company's overall financial position, including profitability, leverage and liquidity. In addition, specifically address the holding company's ability to provide surplus infusions to insurance subsidiaries as needed.**
  - **2011 annual financial statement for the ultimate controlling entity (audited, if applicable) and all related documents, such as management's assessment of internal controls (this question only applies to companies that do not file with the U.S. Securities and Exchange Commission).**
- **Identify any other regulated entity within the holding company system and the respective involved regulator/supervisor responsible for its regulatory oversight.**
- **The number of employees of the insurance company with dual roles with other entities within the holding company system. Include a description of how time and costs are allocated.**

# Holding Company Information Requested

In the past, the OIR has examined insurer affiliate agreements with managing general agencies (“MGAs”) and related financial and performance data.

This appears to remain an ongoing concern of the OIR.

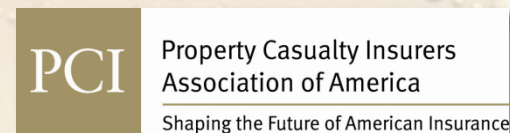




# Authority to Request Holding Company Information

**All domestic and commercially domiciled insurers that are members of an insurance holding company system are subject to holding company regulation.**

**These insurers are required to file holding company registration statements, including insurer/affiliate agreements and certain capital and financial information.**



# **Authority to Request Holding Company Information**

**Florida's holding company regulation governs material transactions by insurers with their affiliates and requires that they meet defined standards for fairness, reasonableness and arm's-length accountability.**

**Any person in the insurance holding company system must provide complete and accurate information to the insurer—where reasonably necessary—to enable the insurer to comply with applicable disclosures and regulations.**

**NAIC Annual and Quarterly Financial Statement Blanks and Instructions now provide for enhanced holding company reporting.**



# **Authority to Request Holding Company Information**

**The OIR may conduct investigations to determine Florida Insurance Code violations and collect information.**

**The OIR can conduct examinations of an insurer's affairs and the assets of the insurer's managing general agents and controlling or controlled persons.**

**The Florida Department of Financial Services and OIR have specific authority for access to all books, bank accounts and records of managing general agents.**

**The NAIC Financial Condition Examiners Handbook provides for the review of insurer risk analysis related to parent or holding company insolvency and liquidity issues.**

# Recent Amendments of NAIC Models

## Context

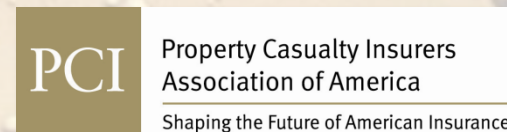
Recent financial crisis and group supervision discussions  
in the international regulatory community

## Purpose

To enhance prudential benefits of group supervision, including  
disclosure of non-insurance activity posing enterprise risk

## Result

Broad amendments to the NAIC  
Model Holding Company Law and Regulation



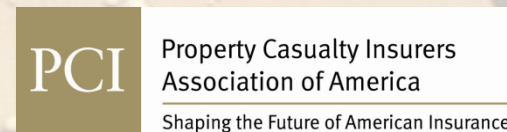


# Recent Amendments of NAIC Models

**In February 2009, the NAIC's Financial Condition Committee authorized the NAIC's Group Solvency Issues Working Group to draft revisions to the Insurance Holding Company System Model Act and Regulation.**

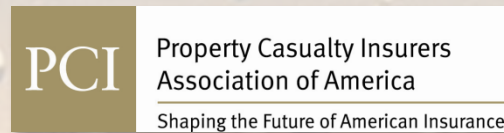
**Between May 2009 and June 2010, the NAIC held 16 public conference calls, five public meetings and one public hearing on the issue.**

**The NAIC's Executive Committee and Plenary amended and adopted the Financial Condition Committee's proposed revisions on December 16, 2010.**



# Recent Amendments of NAIC Models

The NAIC's Model Law and Regulation are part of its larger Solvency Modernization Initiative, which seeks to better identify potential solvency risks that could affect insurers and takes a more “group-focused” view of solvency.



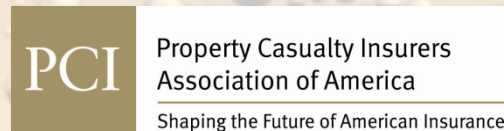


# Key Elements of NAIC Model Amendments

- Provides for disclosure of enterprise risk within an insurance holding company system
- Modifies the requirements for affiliate transactions within an insurance holding company system
- Broadens insurance commissioners' authority for access to books and records and subpoena power
  - Provides for insurance commissioners' authority to examine non-insurer affiliates
- Enhances the requirements for changes in control, divestiture and disclaimers of control
- Provides for reimbursement for participation in supervisory colleges

# Definition of “Enterprise Risk”

**Enterprise Risk: Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that would cause the insurer’s Risk-Based Capital to fall into company action level, or would cause the insurer to be in hazardous financial condition.**





# Recent Developments

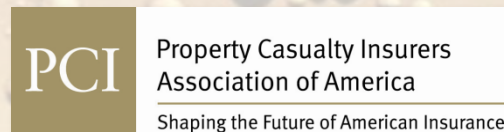
- **The NAIC's Financial Condition Committee adopted significant elements for accreditation purposes on September 19, 2011, including:**
  - **Authority to examine insurer and affiliates**
  - **Enterprise Risk Report (Form F)**
  - **Confidentiality provisions**
  - **Numerous other provisions**
- **The NAIC's Financial Regulation Standards and Accreditation Committee released an accreditation proposal for public comment to be discussed at NAIC's 2013 Spring National Meeting.**

# Implementation of the NAIC Model Law by States

**Rhode Island, Texas and West Virginia adopted amendments to the NAIC Model Law in 2011.**

**Connecticut, Indiana, Kentucky, Louisiana and Nebraska adopted amendments in 2012.**

**West Virginia adopted regulations in 2012 to implement laws enacted in 2011.**





# History of Florida Legislation Relating to MGAs and Affiliates

- During the 2010 Legislative Session, language was included in CS/CS/SB 2044 that would have authorized the OIR to examine MGAs that represent a single domestic insurer.
- Additional provisions in the bill would have authorized the OIR to request certain information from residential property insurers if an insurer reports a loss of surplus of 15 percent or more on any quarterly or annual financial report.
- The changes would have given the OIR authority to request certain financial information on affiliates, including:
  - Assets
  - Liabilities
  - Surplus or shareholder equity
  - Total amounts received or receivable from affiliated companies
  - Dividends paid to shareholders
  - Amounts paid to affiliated companies

# History of Florida Legislation Relating to MGAs and Affiliates

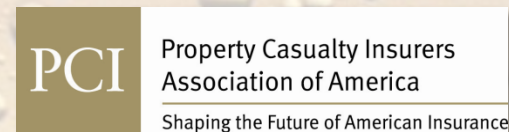
- The changes also would have required an insurer to submit a corrective action plan to the OIR that would eliminate additional surplus losses.
- CS/CS/SB 2044 passed the Florida Legislature, but was ultimately vetoed by then-Governor Charlie Crist.
- HB 1167 was filed during the 2011 Session, and HB 311 was filed during the 2012 Session. Both bills would have adopted a version of the NAIC Model Amendments. However, both died without receiving a committee hearing.





# Possibility of Future Florida Legislation

- Florida may have to enact the NAIC Model amendments or an enabling statute authorizing the OIR to promulgate rules to satisfy NAIC accreditation requirements.
- OIR representatives have indicated they will work with the insurance industry on a Florida bill addressing the NAIC Model amendments.
- The OIR likely will move to adopt the NAIC Model amendments during Florida's 2013 Legislative Session.



# Florida's Broad Public Records Law

Section 119.011 (12), F.S. broadly defines “public records” to include:

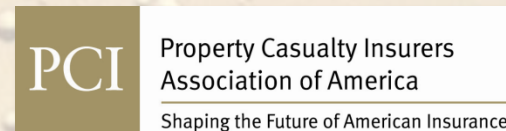
*“ . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”*

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron*, 379 So. 2d 633, 640 (Fla. 1980).



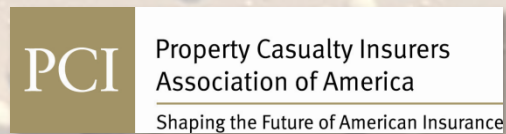
# Florida's Broad Public Records Law

- The OIR holding company information request raises important confidentiality and privacy issues.
- Important to consider all options to keep private information confidential.
- One option: Florida law provides a specific procedure to obtain “trade secret” protection for materials submitted in good faith to OIR. Has litigation implications.
- Each insurer must carefully evaluate all options on confidentiality and otherwise.



# Questions?

*(Type your questions into the available window provided through the Webinar and will be answered at this time, or via email after the presentation.)*





# For More Information . . .

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