

PROJECT HISTORICAL

INSURANCE HOLDING COMPANY SYSTEM MODEL ACT (#440)

INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH REPORTING
FORMS AND INSTRUCTIONS (#450)
(Receivership)

1. Description of the Project, Issues Addressed etc.

In 2020, the NAIC Plenary adopted a new charge for the Receivership Law (E) Working Group. The charge is still active and reads as follows:

“Review and provide recommendations for remedies to ensure the continuity of essential services and functions to an insurer in receivership by affiliated entities, including nonregulated entities. Among other solutions, this will encompass a review of the Insurance Holding Company System Regulatory Act (#440) and the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450) to provide proposed revisions to address the continuation of essential services through affiliated intercompany agreements in a receivership.”

Prior to, and prompting the need for, the adoption of this charge, the Receivership and Insolvency (E) Task Force performed a macroprudential analysis of the U.S. system of insurance regulation with respect to receivership laws compared to international standards under the Financial Stability Board (FSB) and under the Common Framework for the Supervision of Internationally Active Insurance Groups (IAIG) (i) 7.6 (i) (i) C (r) 1.3 (n) -0. mica Gii S (c) 52.8 (p) -0. mi lai (n) -0. oalri (n) -0. n 5. (i) ip] 50. etoe la] (i) h (p) -0. i

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2. Name of Group Responsible for Drafting the Model and States Participating.

All exposures were distributed by email to members, interested state insurance regulators and interested parties of both the Receivership Law (E) Working Group and the Receivership and Insolvency (E) Task Force and posted to the NAIC website.

All issues raised by members, interested state insurance regulators and interested parties were explained or addressed in the revisions to the original amendments.

The amendments were adopted by the Receivership Law (E) Working Group on May 4, 2021.

The amendments were adopted by the Receivership and Insolvency (E) Task Force on May 20, 2021.

The amendments were adopted by the Financial Condition (E) Committee on July 8, 2021.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response).

There were no unresolved issues of real significance raised during the exposure periods. However, the following issue was considered and addressed by the Receivership Law (E) Working Group. Interested parties requested and provided draft revisions to the amendments in Section 5.A.(1)(g) regarding the requirement for a bond or deposit that limits the provision to insurers found to be in a condition of hazardous financial condition or a condition that would be grounds for supervision, conservation or a delinquency proceeding. Interested parties also provided revisions to the subsection and the accompanying drafting note that would further define and clarify the circumstances and the agreements to which the subsection could be applied. The Working Group was agreeable to these changes and accepted interested parties' revisions.

7. List the key provisions of the model (sections considered most essential to state adoption).

The amendments to Model #440 within Section 5, Standards and Management of an Insurer Within an Insurance Holding Company System, and within Model #450 Section 19, Transactions Subject to Prior Notice.

- Section 5A(1) of Model #440
 - Books and records of the insurer are updated to specifically include data of the insurer, being the property of the insurer. The data and records should be identifiable and capable of segregation. Essentially the data and records should be available to the receiver in the event of insolvency, including the systems necessary to access them.
 - If the commissioner deems the insurer to be in a statutorily defined hazardous financial condition, the commissioner may require a bond or deposit, limited in amount, after consideration of whether there are concerns about the affiliated party's ability to fulfill the contract in the event of a liquidation.
 - Premiums are the property of the insurer, with any right of offset subject to receivership law.
- Section 5A(6) of Model #440
 - The affiliated entity is subject to jurisdiction of receivership court, and in certain circumstances the commissioner may require the affiliate to agree to this in writing.
- Section 19 of Model #450
 - Books and records of the insurer are updated to specifically include data of the insurer, being the property of the insurer. The data and records should be identifiable and capable of segregation. Essentially the data and records should be available to the receiver in the event of insolvency, including the systems necessary to access them. The data is specifically defined in Model #450.
 - Model #450 includes a provision relating to indemnification of the

- o In the event of receivership (now including supervisor and conservatorship):
 - The rights of the insurer extend to the receiver or guaranty fund.
 - The affiliate will make available essential personnel.
 - The affiliate will continue the services for a minimum period of time as specified in the agreement with timely payment for post-receivership work.
 - The affiliate will maintain necessary systems, programs or infrastructure and make them available to the receiver or commissioner for as long as the affiliate receives timely post-receivership payment unless 2-1.9 (e) (3) (h) T.J. 0 T.c. 3.4 (o) (3) (ty) 6. (o) (6.6) (h) 2.

PROJECT HISTORY 2020

INSURANCE HOLDING COMPANY SYSTEM MODEL ACT (#440)
(Liquidity Stress Testing)

1. Description of the Project, Issues Addressed, etc.

In April 2017, the Executive (EX) Committee adopted a new charge for the Financial Stability (EX) Task Force at the Spring National Meeting. The charge is still active and reads as follows:

“Analyze existing post-financial crisis regulatory reforms for their application in identifying macroeconomic trends, including identifying possible areas of improvement or gaps, and propose to the Financial Condition (E) Committee or other relevant committee enhancements and/or additions to further improve the ability of state insurance regulators and the industry to address macroprudential impacts; consult with such committees on implementation, as needed.”

Prior to, and prompting the need for, the adoption of this charge, the Financial Stability (EX) Task Force

3. Project Authorized by What Charge and Date First Given to the Group.

As described in paragraph 1 above, the initial charge prompting a review of the U.S. system of insurance regulation to assess its ability to address macroprudential monitoring was assigned to the Financial Stability (EX) Task Force during the 2017 Spring National Meeting. However, the specific charge to create an LS framework—which includes the need to address regulatory authority for requiring the filing of LS reports and confidentiality protection of those filings—was assigned to the Liquidity Assessment (EX) Subgroup during the 2017 Summer National Meeting and reads as follows:

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5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited).

On June 23, 2020, Justin Schrader (NE), chair of the Liquidity Assessment (EX) Subgroup, exposed proposed revisions to Model #440 for a public comment period ending July 29, 2020. Comments were received from the Texas Department of Insurance (TDI)

7. List the key provisions of the model (sections considered most essential to state adoption).

The changes to Section 4L(3) of Model 410 are the most important provisions in the proposed changes, as

PROJECT HISTORY 2020

INSURANCE HOLDING COMPANY SYSTEM MODEL ACT (#440)

INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH
REPORTING FORMS AND INSTRUCTIONS (#450)
(Group Capital Calculation (GCC))

1. Description of the Project, Issues Addressed etc.

In 2015, the NAIC plenary adopted a charge to the Financial Condition (E)

2. Name of Group Responsible for Drafting the Model and States Participating.

The Group Capital Calculation (E) Working Group of the Financial Condition (E) Committee drafted the revisions to Model #440 and Model #450. The 2020 members of the Working Group were: Florida (Chair); Connecticut (Vice Chair); California; District of Columbia;

7. List the key provisions of the model (sections considered most essential to state adoption).

The changes to Section 4L(2) of Model #440 are the most important provisions in the proposed changes, as they require the ultimate controlling person of every insurer subject to registration to concurrently file an annual GCC as directed by the lead state commissioner with the registration statement. Immediately following this provision in Section 4L(2)(a) through Section 4L(2)(d) are four types of holding company systems that are exempt from filing, which are also important to many parties. As previously discussed, Section 4L(2)(e) would permit, under certain circumstances, a subgroup capital calculation. Section (f) is also important, as it provides the commissioner the discretion to exempt other groups from filing that meet the criteria in Model #450. Finally, Section 8(A)(1) of Model #440 provides key statutory authority to hold the GCC confidential and actually prevents the group itself from sharing the GCC publicly. Model #450 provides more detailed aspects of the exemptions, including additional discretionary authority for exempting certain groups, as well as additional details of the NAIC process for maintaining a list of jurisdictions whose groups recognize and accept the GCC and are, therefore, exempt from filing the GCC.

8. Any Other Important Information (e.g., amending an accreditation standard).

a. Covered Agreement

Under Title V of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Treasury Department and the USTR are authorized to jointly negotiate covered agreements defined under the Dodd-Frank Act as written bilateral or multilateral agreements between the U.S. and one or more foreign governments, authorities or regulators regarding prudential measures with respect to insurance or reinsurance on the condition that the prudential measures subject to a covered agreement achieve a level of protection for insurance or reinsurance consumers that is “substantially equivalent” to the level of protection achieved under U.S. state insurance laws. On Sept. 22, 2017, the Treasury Department and the USTR signed the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Reg 8 (r) 11 (e)-3 (s)-5 (s)-1 (e) 0.9 7n.3 (S) 4.4 (ep) 5.2 (t.) 32 (i) 2.7 (t) 11 (ed). 1 ()] T 75 Tw 0 -1.2 ()] T (e

provisional application of the Covered Agreement; i.e., Nov. 7, 2022. The GCC is intended to serve as an analytical tool for evaluating an insurer's capital position at the group level but is not intended to be applied as a group-level capital requirement or standard. The Statement of the United States on the Covered Agreement with the European Union provides further clarification with respect to this group capital assessment.

The Covered Agreement limits the worldwide application of EU prudential group insurance measures on U.S. insurers operating in the EU. The Covered Agreement also provides that U.S. insurers and reinsurers can operate in the EU without the

PROJECT HISTORY 2014

INSURANCE HOLDING COMPANY SYSTEM MODEL ACT (#440)

1. Description of the Project, Issues Addressed,

was determined that no changes to Model #440 or Model #450 were necessary to address this issue.

Since the 2014 Summer National Meeting, the Group Solvency Issues (E) Working Group has been developing model statutory language to address the issue of clear legal authority and powers to act as a group supervisor. The Working Group used statutory language enacted in Pennsylvania as a starting point, and subsequently met six times via conference call and once at a national meeting to consider changes proposed by the industry. On a Dec. 3, 2014, conference call, the Working Group adopted proposed changes to Model #440, which were subsequently adopted by the Financial Condition (E) Committee on a Dec. 4, 2014, conference call. The Working Group did not believe any changes were needed to Model #450 to address this issue. All of the changes included in the proposed revised Model #440 were intended to address this issue.

The Group Solvency Issues (E) Working Group did not discuss the issue of direct legal authority over the insurance holding company at any length during this project. It did, however, receive comments from the industry on this issue, along with comments on the other issues assigned to it during the spring and summer of 2014. The industry comments were focused on how such a proposal was premature, given the International Association of Insurance Supervisors (IAIS) had yet to develop certain wide supervision standards and that significant uncertainty internationally related to 1) the level at which the insurance group should be subject to groupwide supervisory requirements; 2) the legal means to achieve authority over entities not domiciled in the jurisdiction of the groupwide supervisor; 3) the legal means to achieve authority over non insurance entities by an "insurance" supervisor; 4) the appropriate wide supervisor; and 5) other related issues. Additionally, as the Working Group was finalizing language related to clear legal authority and power to act as a groupwide supervisor, it concluded that the authority contained within the updated Model #440 to

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4. A General Description of the Drafting Process and Due Process

Shortly after the 2014 Spring National Meeting, the chair of the Financial Condition (E) Committee distributed a memorandum to the Group Solvency Issues (E) Working Group that gave it broad direction on issues to be considered in addressing its charge. As it pertains to the specific changes to Model #440, the memorandum suggested the Working Group start the discussions dealing with the authority to act as the group supervisor by first considering language included in the Pennsylvania statute that provides such authority. On Aug. 22, 2014, the Working Group exposed for a public comment period changes to Model #440 that incorporated language from the Pennsylvania statute. The Working Group received comments from the industry and discussed the comments during public conference calls held Oct. 3, Oct. 10, Oct. 16, and Oct. 24, 2014. The Oct. 3 and Oct. 10 conference calls were dedicated to allowing the industry to expand on their comments. The Oct. 16 and Oct. 24 conference calls were dedicated to making decisions to address the concerns of the industry. Subsequent to the Oct. 24 conference call, a revised Model #440 was drafted and then discussed on a Nov. 7 conference call. The Working Group received two comments letters regarding the Nov. 7, 2014, version of Model #440 and discussed those comments during its meeting at the 2014 Fall National Meeting. The Working Group received one additional comment letter discussed on a Dec. 3, 2014, conference call. On that conference call, the Working Group adopted a revised Model #440. In total, eight comment letters were received from interested parties.

5. A Discussion of the Significant Issues

The following topics were generally considered to be the most significant:

- a. Section 1—Replaced definition of “international insurance group” with “internationally active insurance group.”
 - o The Group Solvency Issues (E) Working Group originally proposed that the new section of Model #440 would apply to all international insurance groups, as contained within the Pennsylvania statute.
 - o Numerous industry trade associations suggested the new section only apply to groups that would be subject to the IAIS’ Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame). The Working Group originally decided that the language should remain broad enough to encompass all international insurance groups, but later sought and received direction from certain regulators active in international work streams, who advised that the scope should encompass IAIGs only.
 - o Technical Review Group (TRG) Comment Letter dated October 1, 2014, regarding the proposed changes to Model #440.

6. Any Other Important Information

Because the scope of the proposed changes to Model #440 limit its applicability to groups with a) premiums written in at least three countries; b) the percentage of gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums; and c) groups with total assets of the insurance holding company system are at least \$50 billion or total gross written premiums of the insurance holding company of at least \$10 billion, there may be some question whether this language is necessary for the states that would not be considered the lead state for such a group. However, because the groups that do meet the above criteria tend to operate in the vast majority of the states, and the proposed changes to Model #440 discuss the authority of domestic regulators to

PROJECT HISTORY 2011

INSURANCE HOLDING COMPANY SYSTEM MODEL ACT (#440)

INSURANCE HOLDING COMPANY SYSTEM MODEL REGULATION WITH
REPORTING FORMS AND INSTRUCTIONS (#450)

- Study the need to modify the Holding Company Model Act by gathering input from all states regarding the use of the existing model and its effectiveness in addressing the issues that exist within insurer groups, particularly considering issues identified during this most recent economic downturn. At the conclusion of such study, provide a recommendation to the Financial Condition (E) Committee.
- Study the international solvency issues related to groups and the need to modify the Holding Company Model Act for any proposed changes in this area. This study should

5. A Discussion of the Significant Issues

The following topics for revisions within the Models were discussed extensively with regulators and interested

- e. Revisions as they relate to corporate governance including 1) Model #440 section 917~~917~~ Statements of the Board of Directors; and 2) Model #440 Section 5C~~5C~~

- The GSIWG addressed the topic on multiple conference calls including allowing interested parties to provide optional language. Interested parties expressed concerns about the potential for penalties and that the ability to examine an affiliate was overly broad and exceeded state jurisdictions. Proposed optional language was not accepted by GSIWG.
- j. Model #440 Section 7—Supervisory Colleges.
- As there is a worldwide push for more groupwide supervision of insurance holding company systems with international operations, this new section provides the regulators the authority to recoup expenses incurred for attending or conducting supervisory colleges from domestic insurers whose group is engaging in international activities.
 - The Supervisory Colleges and Methods of Cross-Border Communication (EX) Subgroup met in open session and drafted the language for this new section of Model #440.
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