

**OCTOBER 19, 2020**

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## Group Capital Calculation: New Insurance Holding Company System Regulatory Act Filing

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The NAIC's Group Capital Calculation (E) Working Group (the "GCC Working Group") has continued to develop a group capital calculation for use in solvency-monitoring by state insurance regulators. In furtherance of its activities, the GCC Working Group has proposed changes to the NAIC's Model Insurance Holding Company System Regulatory Act (Model #440) and Model Insurance Holding Company System Model Regulation (Model #450) (collectively, the "Holding Company Act and Regulation"), drafts of which have been released for public comment. These amendments would require the ultimate controlling persons of every insurer subject to holding company registration requirements (e.g., every stock insurer authorized to do business in a state which is a member of an insurance holding company system) to file an annual group capital calculation (the "Proposed Capital Reporting Amendments").

This filing would be made with the lead state commissioner of the insurer's holding company system (the "Lead State") and be prepared in accordance with the NAIC Group Capital Calculation Instructions (the "GCC Instructions"), drafts of which have also been released for public comment. The purpose of this additional layer of reporting is to provide more transparency to insurance regulators regarding insurance groups as a whole (and not only to the insurance company within the group) and to make risks within the group more readily identifiable and more easily quantifiable.

Insurance companies subject to holding company registration filings should review the final versions of the Proposed Capital Reporting Amendments (when completed) in their entirety to determine whether their ultimate controlling persons would have to file annual group capital calculations with their lead state regulators and/or whether they qualify for an exemption thereunder.

The Proposed Capital Reporting Amendments set forth a number of exemptions, including the following exemptions under Model #440:



- An insurance holding company system that does not conduct business outside of the U.S. and either: (a) has no more than one insurer classified as either a county mutual insurance company, a town mutual insurance company or a farmers' mutual insurance company; or (b) has direct premiums written less than \$1,000,000 in any calendar year;
- An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board.
- An insurance holding company system whose non-U.S. group-wide supervisor is located within a Reciprocal Jurisdiction (which includes certain qualified jurisdictions such as Bermuda, Japan and Switzerland and non-U.S. jurisdictions that are subject to a covered agreement with the U.S. such as the European Union and the United Kingdom) that recognizes the U.S. state regulatory approach to group supervision and group capital; and
- An insurance holding company system:
  - that provides information to the Lead State that meets the requirements for accreditation under the NAIC financial standards and accreditation program, and
  - whose non-U.S. group-wide supervisor that is not a Reciprocal Jurisdiction that “recognizes and accepts” the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

Further, a Lead State insurance commissioner has the discretion to (a) require the group capital calculation for U.S. operations of any non-U.S. based insurance holding company system if the non-U.S. insurance holding company's group-wide supervisor does not “recognize and accept” the group capital calculation required by the insurance commissioner for any U.S. based insurance group's operations in that non-U.S. jurisdiction and (b) exempt the ultimate controlling person, with respect to an insurance holding company system that has no insurers that are domiciled outside of the United States or one of its territories from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the commissioner in regulation. To the extent any of these exemptions no longer apply as determined by the Lead State commissioner, the insurance holding company system will be required to file the group capital calculation on the next annual filing date.

The Proposed Capital Reporting Amendments to Model #450 provide an additional exemption to an insurance holding company system that has filed the annual group capital calculation at least once and meets all of the following criteria:

- has annual direct written and unaffiliated assumed premium (including international direct and assumed premium) less than \$1,000,000,000;
- has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- the holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
- the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

The Proposed Capital Reporting Amendments stipulate that a non-U.S. jurisdiction that is not a Reciprocal Jurisdiction is considered to “recognize and accept” the group capital calculation as a world-wide capital assessment for U.S.



insurance groups who operate within the jurisdiction of the group-wide supervisor if it satisfies the following criteria for “recognize and accept”:

- the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation from a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose Lead State is accredited by the NAIC under the NAIC Accreditation Program will be subject only to worldwide prudential insurance group supervision (including worldwide group governance, solvency and capital, and reporting, as applicable) by the Lead State and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction;
- the non-U.S. jurisdiction does not apply its own group capital reporting measures to the operations of U.S. insurance groups within its jurisdiction;
- the non-U.S. jurisdiction where no U.S. insurance groups operate, indicates formally in writing to the Lead State with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard; and
- the non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Lead State commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction.

A list of non-U.S. jurisdiction that are Reciprocal Jurisdictions or “recognize and accept” the group capital calculation will be published through the NAIC committee process.

Despite the release of the GCC Instructions and the Proposed Capital Reporting Amendments for comment, discussions between members of the GCC Working Group with other interested parties (including industry groups and certain insurance companies) remain ongoing.

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