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The Dodd-Frank Act and Beyond – How Insurers are Being Impacted

*December 8, 2011*

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Washington, DC

# Key Elements of the Dodd-Frank Act (July 21, 2010)

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- **Systemic regulator** – new Financial Stability Oversight Council (FSOC) and systemic supervision and regulation entrusted to Federal Reserve for banks and non-banks
- **Living wills** – systemically important companies need resolution plans
- **Proprietary trading and private equity/hedge fund investing** – bans and restrictions, i.e., so-called Volcker Rule
- **Compensation** – risk adjustment; heightened governance, control and monitoring standards and disclosures
- **OTC derivatives** – CFTC/SEC oversight, central clearing and exchange trading, separation of certain swap activities from banking
- **Corporate governance, IT/data, reporting** – permeate all major reforms
- **Transfer of authority** – OTS abolished and responsibilities given to Federal Reserve, OCC and FDIC
- **Private fund advisor registration** – with certain exemptions, includes most hedge funds and private equity funds with more than \$100 million in total assets
- **Securitization** – Risk retention or “skin in the game,” and disclosure/reporting standards
- **Corporate governance** – new committee requirements, demands on boards, greater disclosure
- **Capital and liquidity planning** – higher capital and liquidity, particularly for systemically important companies, with “Collins amendment” establishing minimum capital requirements for BHCs and some non-BHC financial companies
- **Consumer/investor protection** – new consumer bureau with rule-making, examination and enforcement authority; SEC can set standards of care for investment advisors and broker-dealers
- **Insurance** – new Federal Insurance Office as coordinating and advisory authority

# How Are or Might Insurers Be Affected by Dodd-Frank?

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- **All Insurers:**

- Federal Insurance Office – “International Agreements on Prudential Matters”
- Reinsurance reform

- **Some Larger Insurers:**

- Regulation of companies deemed systemically significant
- Assessments for “orderly liquidation” of systemically significant financial company
- New Federal Reserve oversight for BHCs and SLHCs and their insurer subsidiaries

- **Non-Life (P&C) Insurers**

- Surplus lines reform

- **Life (Mostly) Insurers**

- Derivatives provisions and rules
- Broker-dealer standard of care
- Volcker Rule – i.e., potential ban or restriction on proprietary trading and private equity/hedge fund investing

# Federal Insurance Office –Structure and Functions

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- FIO established by Title V of Dodd-Frank
  - Office in Treasury Department
  - FIO Director appointed by Treasury Secretary
  - FIO Director to serve as FSOC non-voting member
- Principal functions
  - Authority to gather information
  - Recommend designation of insurer as SSFC
  - No supervisory authority over insurers
  - Treasury Secretary and U.S. Trade Representative have joint authority to negotiate and enter into international “covered agreements”
- FIO authority excludes health, certain LTC and crop insurance

# FIO Preemption of State Insurance Measures

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- A state insurance measure will be preempted to the extent that the FIO Director determines that the measure
  - is inconsistent with a covered agreement
  - results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed or admitted in that state, and
- No preemption of
  - measures governing any insurer's rates, premiums, underwriting or sales practices
  - coverage requirements for insurance
  - state antitrust laws
  - measures governing capital or solvency (except to the extent they result in less favorable treatment of a non-U.S. insurer)

# Potential Uses of International “Prudential Agreements” Authority

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- Address States’ Reinsurance Collateral Rules for Non-US Insurers
  - Legislative history of the provision, including the Joint Statement of Managers, mentions “reinsurance collateral” as potential matter to be so addressed
- Address U.S. “Equivalence” under Solvency II
- Potential Issues in Such Negotiations:
  - Multilateral or bilateral
  - EU Commission vs member state competence
  - Limitation of the U.S. “tool” – preemption only, not affirmative reform

## FIO Director – Study and Report

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- **Study Required.** FIO Director must conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the U.S. not later than 21 January 2012
- **Study Guidance.** Study and report to be based on and guided by, among other things, the degree of national uniformity of state insurance regulation
- **Study Factors.** Study and report must examine factors, including
  - the costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance); and
  - the feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level

# Reinsurance Reform -- Ceding Insurer Domestic State Deference

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- **Credit.** Non-domestic reinsurance credit rules will be preempted if
  - the ceding insurer’s domestic state is NAIC-accredited; and
  - the ceding insurer’s domestic state allows credit for the ceded reinsurance
- **Other.** Laws and regulations of a non-domestic state of a ceding insurer are preempted (taxes and assessments excluded) to the extent they “otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State”

# Regulation of Reinsurer Solvency by Domestic State

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- If a reinsurer's domestic state is NAIC-accredited, then
  - the domestic state will be solely responsible for regulating the financial solvency of the reinsurer; and
  - no non-domestic state may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domestic state
- A “reinsurer” is an insurer that (i) is principally engaged in the business of reinsurance; (ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and (iii) is not engaged in an ongoing basis in the business of soliciting direct insurance

# Surplus Lines Reform in the Dodd-Frank Act

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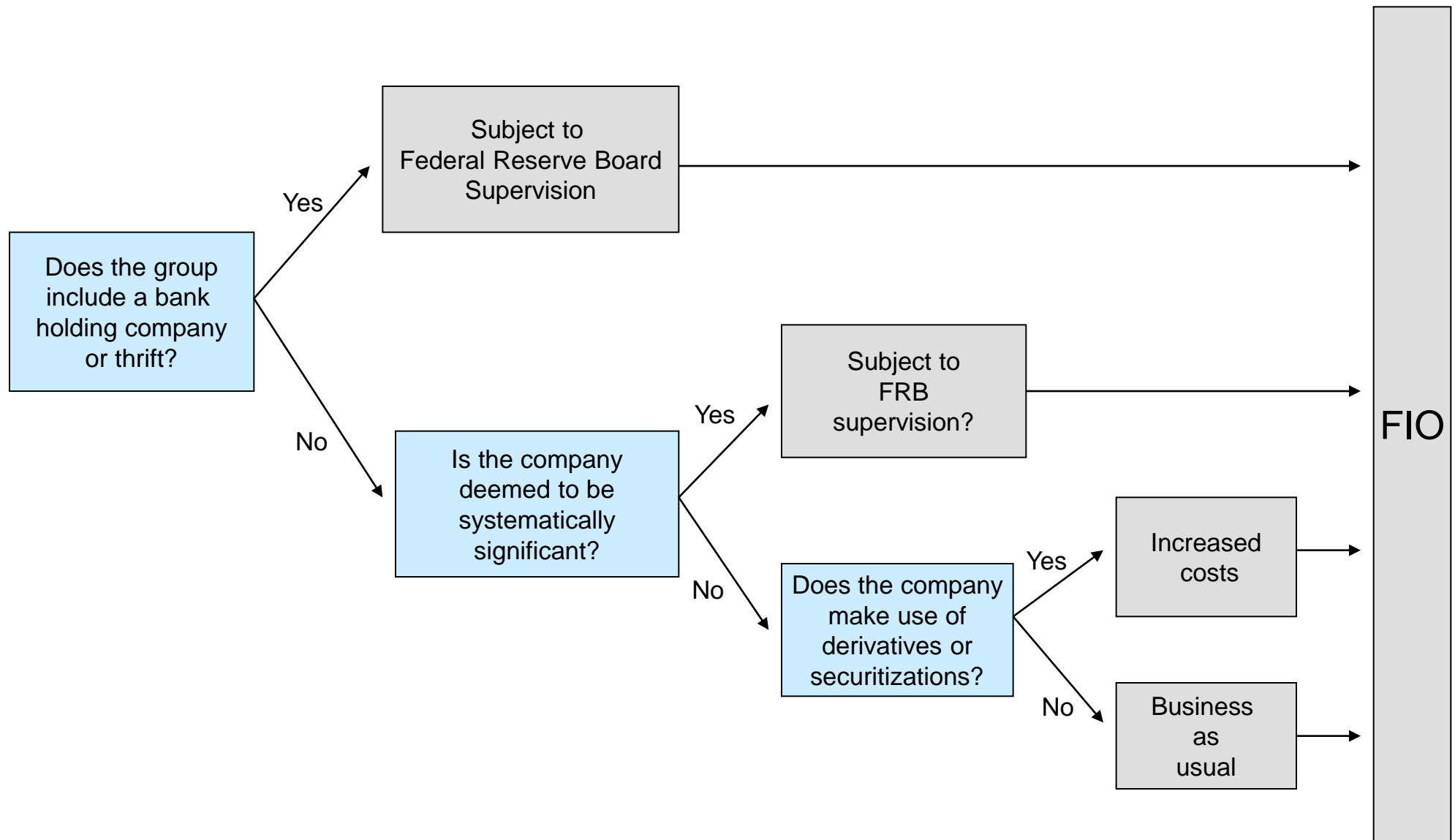
- Home state of insured –
  - exclusive authority to regulate placement of non-admitted insurance, even for multi-state risk
  - exclusive authority to collect premium taxes on nonadmitted insurance
  - authorizes interstate compact, and other procedures established by the states, for a uniform system for allocation of premium tax obligations
- Uniform standards for surplus lines eligibility –
  - capital and surplus requirements for U.S.-domiciled insurers must conform to those in the NAIC Nonadmitted Insurance Model Act.
  - States may not prohibit surplus lines brokers from doing business with nonadmitted insurers listed on IID Quarterly Listing of Alien Insurers maintained by the NAIC’s International Insurance Division (“IID”); i.e., any IID-listed insurer will have trading privileges throughout the US without having to be separately listed by any state.
- Preempts state “diligent search” requirements for certain sophisticated commercial purchasers, provided the surplus lines broker has disclosed to the purchaser that such insurance may be available on the admitted market, and the purchaser has requested nonadmitted placement in writing.

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# Dodd-Frank Provisions Affecting Some, Mostly Larger, Insurers

# Impact on insurers -- not just about the FIO. The possibilities are more complicated, especially for domestic insurers or insurers with large US operations

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# Systemic Risk Regulation

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- Title I of Dodd-Frank establishes Financial Stability Oversight Council (“FSOC”)
- 1 voting and 2 non-voting “insurance” members on FSOC
- FSOC duties include
  - designating nonbank financial companies that are systemically significant and must be supervised by the Federal Reserve Board (“FRB”)
  - identifying financial practices and activities that merit heightened prudential standards
  - directing the Office of Financial Research (“OFR”) to collect data from financial companies including insurance companies
- Further empowers FRB to regulate and supervise systemically significant financial companies (“SSFCs”)

# Designation of Nonbank SIFIs

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## **Financial Stability Oversight Council (“FSOC”) designation of nonbank systemically important financial institutions (“ Nonbank SIFIs”)**

- Statutory factors (e.g., size, interconnectedness)
- Proposed rule on nonbank SIFI designation – Second Notice
- A BHC will generally be treated as a SIFI if it has \$50 billion or more in total consolidated assets; an SLHC will only be treated as a SIFI if so designated by the FSOC

## **Financial Stability Board designation process for Global SIFIs**

## **International Association of Insurance Supervisors ComFrame for internationally active insurance groups (“IAIGs”)**

# Consequences of SIFI Designation: Federal Reserve Regulation and Supervision

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- FRB regulation and supervision of SIFIs
- Statutory requirement for more stringent prudential standards
- Final rulemaking: resolution plans
- Proposed rulemaking:
  - – Credit exposure reports
  - – Stress tests
  - – Capital plans
- Proposed rulemaking expected shortly:
  - – Capital
  - – Liquidity
  - – Risk management

# Consequences of SIFI Designation: Required Resolution Plans

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- 9/13/2011: Final rule on resolution plans approved
- Coverage
- Timing – annual plans, with initial deadlines staggered
- Content
  - Resolution plans to be based on U.S. Bankruptcy Code
  - Tailored plan allowed for some banking-centric companies
  - Strategic analysis required for the failure of a subsidiary conducting core business lines or critical operations
    - Exception for regulated insurance company subsidiaries <\$50 billion in total assets that do not conduct critical operations
- Public and confidential components
- Compliance is likely to be costly and time-consuming

## Resolution Authority -- Financial Companies (In General)

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- Under Title II of Dodd-Frank, “financial company” (a company eligible for resolution) means any U.S. company that is:
  - a BHC
  - a nonbank SSFC
  - a company “predominantly engaged” in financial activities ( $\geq 85\%$  of consolidated revenues are financial in nature)
  - a subsidiary of the above that is predominantly engaged in financial activities
    - ◆ except insurance companies or insured depository institutions
- Selection of an eligible company for resolution requires a determination by the Treasury Secretary

# Liquidation Procedure -- General Principles and FDIC Powers

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- Bankruptcy Code does NOT apply; orderly liquidation procedures of Title II apply
- General Principles
  - Creditors and shareholders bear financial losses
  - Management to be removed
  - All parties bear losses consistent with responsibility
- Covered financial company must be liquidated; no use of taxpayer funds
- Generally under FDIC direction; but FDIC consults with primary regulators/foreign authorities, as appropriate

# Heightened Regulation of Savings and Loan Holding Companies

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- Transfer Date – 21 July 2011 (extendable to 21 January 2012)
- OTS abolished
  - 90 days after the Transfer Date
  - OCC to have new Deputy Comptroller responsible for supervision and regulation of thrifts
- Transfer of OTS powers and duties
  - Federal Reserve. Supervision and rulemaking over savings and loan holding companies (“SLHCs”)
  - OCC. Supervision over federal thrifts; rulemaking (with certain exceptions) over all thrifts
  - FDIC. Supervision over state thrifts

## Volcker Rule – In Brief

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New Section 13 added to Bank Holding Company Act (BHCA):

“Unless otherwise provided in this section, a banking entity shall not –

(A) engage in proprietary trading; or

(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.”

# Volcker Rule – Scope and Timing

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- Scope – “Banking Entities”
  - Virtually all FDIC-insured banks or thrifts
  - The companies that control them
  - Non U.S. banks with U.S. banking presence
  - Their affiliates and subsidiaries
- Timing
  - Effective Date. Earlier of 12 months after issuance of final rules, and 2 years after 21 July 2010
  - Transition Period. “Banking entities” must comply within 2 years after effective date (*i.e.*, not until 2014)
  - Extensions. Available at discretion of Federal Reserve Board

## Derivatives -- Regulation of Major Swap Participants

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- Defined as a person that is not a swap dealer and:
  - maintains a “substantial position” in swaps other than:
    - ◆ “positions held for hedging or mitigating commercial risk”, and
    - ◆ positions maintained by ERISA plans;
  - whose swaps create “substantial counterparty exposure” that could have “serious adverse effects” on the “financial stability of the United States banking system or financial markets”; or
  - is a financial institution that is highly leveraged and maintains a substantial position in swaps
- “Substantial position” to be defined by the CFTC/SEC

## Regulation of Major Swap Participants

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- Registration required with the CFTC and/or SEC
- Capital and margin requirements
- Ongoing reporting and recordkeeping requirements
- Business conduct standards

# Insurance Industry Concerns

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- Definition of “positions held for hedging or mitigating commercial risk” – a potential exclusion for insurers from the definition of “major swap participant”
- Definition of “substantial position” – a narrow definition by the CFTC/SEC might result in an insurer being defined as a “major swap participant”
- Definition of “swap” – may seek clarification that insurance, endowment and annuity contracts are outside the definition of a “swap”

## Broker-Dealer Standard of Conduct --Study and Rulemaking

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- SEC study, to be completed and reported to Congress by 21 Jan 2011, to evaluate the legal or regulatory gaps in the protection of retail customers relating to the standards of care for brokers, dealers and investment advisers that should be addressed by rule or statute
  - SEC may, but is not required to, commence rulemaking
- SEC provided with the authority to establish a standard of conduct applicable to brokers and dealers
  - to act in the best interest of the customer without regard to the financial or other interest of the broker or dealer
  - standard of conduct is to be no less stringent than that applicable to investment advisers

# Potential Impact on Life Insurers Doing Business with U.S. Customers

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- Current broker-dealer standard of conduct: whether the security is suitable for the investor
- Concern: the possible imposition of the *investment adviser fiduciary duty* standard on broker-dealers
- Impact: the variable universal life and variable annuity and mutual fund businesses of life insurers could be affected

# Key Implementation Milestones

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- Regulatory appointments
  - FSOC voting member with insurance expertise (Roy Woodall) and non-voting state regulator appointee (MO's John Huff)
  - FIO Director (ex-ILL Dir. Mike McRaith)
  - Consumer Financial Protection Bureau Director
- Rules and Studies (over 140 mandated or directed by Dodd-Frank)
  - CFTC / SEC activities on derivatives and standard of care in progress
  - FDIC “orderly liquidation” rules
  - Others include Volcker rule study, FSOC rules for identifying / overseeing systemically significant companies and FIO study on status of U.S. insurance regulation

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# State Insurance: Regulatory and Legislative Developments

# **Top Five Items to Watch from an Outside Counsel Perspective(in no particular order)**

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- 1. Enterprise Risk Management Frameworks, including the NAIC Own Risk Solvency Assessment and the New York Draft Circular Letter**
- 2. Insurance Holding Company Regulation**
- 3. Interplay between U.S. and International Insurance Regulation**
- 4. Unclaimed Property**
- 5. Reinsurance Reform**

# 1. NAIC Own Risk Solvency Assessment ("ORSA") and New York Enterprise Risk Management ("ERM") Framework

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## **NAIC Activities**

- The NAIC is moving rapidly on requirements for insurers to establish and maintain an ERM framework
  - The NAIC's initiative is driven in large part by international expectations as expressed in the International Association of Insurance Supervisors' Insurance Core Principles No. 16 ("ICP-16")
- The NAIC Group Solvency Issues (EX) Working Group is working on a Guidance Manual for insurers meeting certain size thresholds to conduct an annual ORSA and provide reports to their domiciliary regulators, possibly on an annual basis
  - The Working Group is moving rapidly in order to meet the NAIC's stated goal of complying with the ICP-16 prior to the next assessment of the U.S. regulatory system under the International Monetary Fund's Financial Sector Assessment Program (FSAP)
- While the ORSA is to be completed entirely by the insurer, the Guidance Manual will provide insurers and state regulators with guidance as to what an ORSA may entail and what any possible filing should address

# 1. ORSA and ERM Framework – ORSA Guidance Manual

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- The current draft of the ORSA Guidance Manual recommends that an insurer's ERM framework consider, at a minimum, the following key principles:
  - A governance structure that clearly defines and articulates roles, responsibilities and accountabilities; and a risk culture that supports accountability in risk-based decision-making
  - A risk identification and prioritization process that is key to the organization; clear ownership of this activity; and a risk management function that is responsible for ensuring that the process is appropriate and functioning properly at all organizational levels
  - A formal risk appetite statement, and associated risk tolerances and limits that are foundational elements of the insurer's risk management, and Board understanding of the risk appetite statement, which ensures alignment with risk strategy
  - Risk management and controls that are an ongoing enterprise risk management activity, operating at many levels within the organization
  - Risk reporting that provides key constituents with transparency into the risk management processes and facilitates active, informal decisions on risk taking and management

# 1. ORSA and ERM Framework – ORSA Guidance Manual

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## **Current Status of the ORSA Manual**

- The Working Group is still considering comments to the ORSA Guidance Manual during routine conference calls and hopes to finalize the ORSA Guidance Manual by year-end
  - In response to comments from interested parties, the Working Group is aiming to make the Guidance Manual less prescriptive since every company's risk management process is unique

## **Establishing ORSA as a Legal Requirement**

- The Working Group has contemplated a mechanism by which it can make an ORSA a legal requirement, as opposed to merely an examination standard, due to the pressure from the international community to have express authority granting the commissioner the ability to require an ORSA
- The Working Group has decided not to make further amendments to the Model Insurance Holding Company Act at this time to incorporate an ORSA requirement, but it will revisit whether changes to the Model Insurance Holding Company Regulation would be appropriate following finalization of the ORSA Guidance Manual

# 1. ORSA and ERM Framework – New York Draft ERM Circular Letter

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## **New York Activities**

- The New York Insurance Department has a draft circular letter regarding an ERM function for New York domestic insurers
  - Encourages every domestic insurer to adopt a formal ERM function and notes that the Department has established evaluation criteria to assess an insurer's ERM practices
- The Department expects to perform the evaluation in conjunction with the statutory examination of insurers, but the proposed circular letter notes that it may conduct such an evaluation on a stand-alone basis

## **Current Status of the Circular Letter**

- The Department is making minor revisions to the circular letter based on comments from interested parties. It will then recirculate the revised circular letter for a 10-day comment period and finalize it shortly thereafter.

## 2. Insurance Holding Company Regulation – Background

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### NAIC's Adoption of Amendments

- In December 2010, the NAIC adopted significant changes to the Model Insurance Holding Company Systems Act and Regulation (the "Model Act" and "Model Regulation")
- The changes were largely a response to the 2008 financial crisis and primarily increase certain disclosure requirements related to the insurance group with state insurance departments

### Adoption of Amendments by the States

- To date, West Virginia, Rhode Island and Texas are the only states that have enacted in some form the amendments to the Model Act
  - **West Virginia:** Effective July 1, 2012; the amendments to the Model Regulation are pending in West Virginia
  - **Rhode Island:** Effective May 27, 2011, except for the requirement to file an enterprise risk report, which will take effect on July 1, 2013
  - **Texas:** Effective September 1, 2011, except an ultimate controlling person will not be obligated to file its first enterprise risk report until, at the earliest, after July 1, 2013
- No bills incorporating the amendments were introduced in New York during the 2011 legislative session

## 2. Insurance Holding Company Regulation – Key Amendments

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### Enterprise Risk

- Ultimate controlling person(s) of a domestic insurer must annually file an enterprise risk report (Form F) with the insurer's lead insurance regulator
  - "Enterprise risk" is defined in the Model Act amendments as "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 . . ."
  - If an acquiring party has completed an acquisition of control of a domestic insurer by obtaining Form A approval, the Form F is to be filed 15 days after the end of the month in which the acquisition occurs
- The commissioner's examination powers now grant him/her the authority to examine not only insurers, but also their affiliates in order to ascertain the enterprise risk to the insurer by the ultimate controlling person or other affiliates

## 2. Insurance Holding Company Regulation – Key Amendments

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### **Divestiture of a Controlling Interest**

- Any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer must file with the commissioner a confidential notice of the proposed divestiture at least 30 days prior to the cessation of control
  - After receipt of the notice, the commissioner shall determine those instances in which the parties seeking to divest or to acquire a controlling interest will be required to file for or obtain approval of the transaction

## 2. Insurance Holding Company Regulation – Key Amendments

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### **Expansion of Affiliate Agreement Review**

- Prior notice to the commissioner is now also required for:
  - Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds 5% of the insurer's surplus as regards policyholders
  - All reinsurance pooling agreements including modifications thereto
  - All tax allocation agreements
  - Amendments or modifications of previously filed affiliate agreements

## 2. Insurance Holding Company Regulation – Key Amendments

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### **Other Amendments**

- Establishment of supervisory colleges designed to promote cooperation between state insurance regulators and non-U.S. regulators on multinational holding companies
- Form A hearings held on a consolidated basis upon request of the person filing the Form A statement if the proposed acquisition of control will require the approval of more than one commissioner
- Commissioners must enter into written agreements with the NAIC that contain certain protections regarding the sharing and use of information provided under the Model Act

# 3. Interplay between U.S. and International Insurance Regulation

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## Background

- A substantial portion of all capital in the U.S. insurance market is provided by companies domiciled outside of the U.S.
- It is no longer prudent, or even possible, for insurance regulation to be conducted in the U.S. without taking into account the systems of regulations in the international context

## U.S. Efforts

- As discussed, NAIC's ORSA initiative is driven in large part by international expectations as expressed in the International Association of Insurance Supervisors' Insurance Core Principles No. 16
- The Model Insurance Holding Company Act amendments are driven by the desire to increase group supervision
  - Although the U.S. insurance regulatory system still takes a "solo" or "legal" entity approach, the goal is to take more of a consolidated approach found in other jurisdictions
- The new divestiture notice requirement has been an established concept in the EU

### 3. Interplay between U.S. and International Insurance Regulation

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#### **The International Association of Insurance Supervisors ("IAIS")**

- The IAIS is pursuing a number of initiatives to promote effective and globally consistent supervision of the insurance industry
- U.S. state regulators are currently engaged in IAIS matters, such as helping to revise the Insurance Core Principles, which are utilized within the Financial Sector Assessment Program (FSAP) by the World Bank and the International Monetary Fund
- IAIS Common Framework for the Supervision of internationally active insurers ("ComFrame")
  - Aims at providing supervisors with the means to assess and compare internationally active insurance groups around the world through better aligned and more consistent supervision undertaken on a multilateral basis

### 3. Interplay between U.S. and International Insurance Regulation

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#### **EU's Solvency II directive**

- Introduces a new risk-based system of regulation whereby the risk profile of an insurer or reinsurer (or group thereof) will drive its capital requirements
- Expected to come into force in January 2013
- Provides for a college of supervisors, which U.S. regulators are being encouraged to join

## 4. Unclaimed Property – Claim Settlement Practices in the Life Insurance Industry

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### **Multistate Investigation**

- A three-year, multistate investigation by state budget and unclaimed property administrators (*i.e.*, Treasurers, Controllers) is currently taking place with respect to the practices used by life insurers to pay death benefits
- To date, the investigation has found, among other things, that there is no single standard for handling death benefit payments when no beneficiary comes forward
  - State insurance departments (*e.g.*, California and Florida) have asserted that insurers can do more, including refer to government databases such as the Social Security Administration's Death Master File, to determine if any of their policyholders had died
  - Insurers have maintained that they are not required to do any more than pay a claim when they receive notification from a beneficiary or heir

## 4. Unclaimed Property – Claim Settlement Practices in the Life Insurance Industry

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### New York Insurance Department Action

- Section 308 Letter issued to all **licensed** New York life insurers on July 5, 2011, supplemented by a Guidance Note issued August 8, 2011:
  - Each insurer must report the results of using the Social Security Administration's Death Master File to identify any death benefit payments that may be due under life insurance policies, annuity contracts, or retained asset accounts as a result of the death of an insured or contract or account holder. Additionally, the insurers must report on their success in finding and making payments to beneficiaries.
  - The August 8 Guidance Note excludes certain policies and contracts from the initial cross-check; the initial cross-check report is due October 31, 2011, and the final report is due March 31, 2012.
- The New York Insurance Department is working on a regulation to permanently require insurers to immediately begin using reliable available data to identify when policyholders have died and death benefits are due but unpaid

## 4. Unclaimed Property – Claim Settlement Practices in the Life Insurance Industry

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### **New York Attorney General Probe**

- In July 2011, New York Attorney General Eric Schneiderman issued subpoenas to at least nine leading life insurers seeking information to assess consumer protection issues, escheat issues and related financial disclosure issues that could be relevant to stock or bond holders of the insurers

## 5. Reinsurance Reform – The NRRA

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- The Nonadmitted and Reinsurance Reform Act (NRRA), which became effective on July 21, 2011 as part of the Dodd–Frank Wall Street Reform and Consumer Protection Act, includes important reinsurance regulatory reforms that:
  - eliminate extraterritorial application of reinsurance laws to non-domestic insurers;
  - establish that the ceding company's domiciliary regulator will determine credit for reinsurance; and
  - establish that the reinsurer's domiciliary state shall be the sole regulator of the reinsurer's financial solvency. As a result of these federal law provisions, the states will need to revise their laws, as applicable, to comply and avoid preemption.

## 5. Reinsurance Reform – Amendment of State Insurance Laws and Regulations

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- As a result of these federal law provisions, a number of states have revised their laws, as applicable, to comply and avoid preemption
- For instance, California has made several modifications to its laws
  - California's bulk reinsurance prior approval statute, California Insurance Code Section 1011(c), which has long given the California Department of Insurance extraterritorial prior approval jurisdiction over the reinsurance transactions of licensed foreign insurers, now applies only to California-domiciled insurers
  - California retains its concept of "commercial domicile"; however, affiliate reinsurance agreements are specifically carved out from the obligation to obtain California's approval for material affiliate transactions
  - California will not deny financial statement credit for reinsurance that has been recognized by a foreign insurer's domestic regulator, or reject reinsurance contract language that has been accepted by a foreign insurer's domestic regulator
- Similarly, the New York Insurance Department amended New York Regulation 20 to acknowledge the preemption effect of the NRRA on its credit for reinsurance rules

## Other Items that Could Have Been on the List

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- **NAIC Draft White Paper on Use of Social Media in Insurance**

- The NAIC recently released a draft white paper on the Use of Social Media in Insurance, which provides guidance to navigate largely uncharted territory and may be read as a forecast of regulations to come. The white paper calls upon insurers to adopt a comprehensive program of procedures, policies and controls for use of social media

- **NAIC REACAP Program**

- The NAIC developed a pilot program a few years ago for expedited insurance company licensing (now formalized by the NAIC as the "REACAP" program) in order to improve the efficiency of company licensing and corporate amendment applications
- Companies must apply to the NAIC in order to participate. In evaluating a company's application, the NAIC will consider a number of factors, most significant of which is whether the application will serve a "national or regional market need and quantification of that need"

# Offices Worldwide

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Questions?