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Global Corporate Insurance and Regulatory Bulletin

INSURANCE & REINSURANCE INDUSTRY GROUP

August 2013

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GLOBAL

JOINT FORUM PUBLISHES ITS CONSULTATION ON THE LONGEVITY RISK TRANSFER MARKETS

On 15 August 2013, the Joint Forum (made up of the Basel Committee on Banking Supervision, the International Organization of Securities Commissions and the International Association of Insurance Supervisors) published a consultation on longevity risk transfer markets. Longevity risk is the risk of paying out on pensions and annuities longer than anticipated. This risk is becoming of increasing concern as people are living longer and there is also concern surrounding the sustainability of existing retirement saving products.

The Joint Forum's aim in publishing its forward-looking consultation is to provide a preliminary analysis of the longevity risk transfer markets and highlight the factors affecting its growth and development. The consultation also aims to highlight the potential risks and issues for all of those concerned in the market. The Joint Forum has emphasised the importance of ensuring that longevity risk transfer markets function safely. In the consultation, the Joint Forum states that whilst longevity risk markets are not presently sizeable enough to present an immediate systematic concern, its potential large size and growing interest from investment banks makes it a paramount goal to ensure that these markets operate effectively. In its press release, the Joint Forum announces that it is hoping that the timing of the consultation would help global policy makers remain ahead of the curve and for the longevity risk markets to continue to grow.

UK/EUROPE

EUROPE – INCREASED USE OF AGGREGATOR WEBSITES

Recent studies have revealed a trend towards an increased use of aggregator websites across mainland Europe, with Spain and Italy coming out on top as the countries with the fastest growth rates in this sector. Whilst the UK is still predominately the largest market for insurance aggregator websites, the gap is closing with other European countries. In light of this increase, the European Insurance and Occupational Pensions Authority ("EIOPA") has recently launched a consultation into aggregators which is due to close towards the end of September. EIOPA aims to provide a 'best practice guidance' for aggregator websites that compare insurance products by the end of the first quarter of 2014. EIOPA is concerned that customers rely too heavily on the information provided through the aggregator website, rather than scrutinising the terms and conditions of the policy being bought. Also, EIOPA has highlighted the potential for conflicts of interests to arise in this sphere between insurers and aggregator websites. Additionally, there is the concern that aggregator websites might not be the most suitable forum for certain types of insurance products.

Those working in the aggregator sphere are positive that this increased use of aggregator websites will continue across Europe. However, some industry commentators are more dubious and have raised the point that just because something works well in the UK, it does not necessarily mean that the same approach will work well in all European countries. Thus, if the trend of increased use of aggregator websites continues to keep rising across mainland Europe, aggregator websites will need to react to the differing demands of customers in the various European countries.

UK – UNCERTAINTY AMONGST MOTOR INSURERS OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT (LASPO)

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force on 1 April 2013 and has been welcomed by most motor insurers and consumers. Motor insurers see the new legislation as a potential reduction in their legal expenses and savings have been almost universally passed on to consumers by reducing the premiums charged. The AA have reported that the average price of car insurance in July 2013 is down by 9.8% from July 2012. However, not all insurers are as optimistic about the potential savings to be made.

The main features of LAPSO are as follows:

- the abolition of 'no-win, no-fee' success fees;
- the abolition of 'after-the-event' insurance premium recovery; and
- the abolition of referral fees for personal injury claims.

The act is particularly relevant to motor insurers who hope to benefit from a reduction in legal expenses as a consequence of the reduction in fighting frivolous law suits. Previously, claimants would use conditional-fee agreements (CFA) to bring a claim without assuming any financial responsibility, and, therefore, drastically increasing the number of claims lodged and pushing premiums higher. The changes introduced by LAPSO reduce this risk which in turn has lead to a decrease in premiums.

Some motor insurers have dropped their rates by somewhere in the region of 5 - 15% in anticipation of the savings to be made post the coming into force of LAPSO. However, this position has not been universally adopted. Some insurers have suggested that the savings to be made by LAPSO have been over-estimated and that they are not likely to be as prudent as the general market is anticipating. If such a prophesy proves correct, this could be challenging for those motor insurers who have already passed these expected savings onto consumers. However, the general consensus in the market has been a positive one and confidence in LAPSO has seen a noticeable fall in rates – in fact, the greatest drop in prices since 1994.

US/AMERICAS

US – STATES BEGIN TO ENACT NAIC'S ORSA MODEL ACT

As discussed in our prior bulletin (here), the National Association of Insurance Commissioners ("NAIC") adopted its Risk Management and Own Risk Solvency Assessment ("ORSA") Model Act in September 2012. Thus far in 2013, five states – Iowa, Maine, New Hampshire, Rhode Island and Vermont – have enacted the ORSA Model Act, and more are expected to follow. The ORSA Model Act requires insurance companies and insurance groups with annual premiums over $500 million and $1 billion, respectively, to file annual "high level" reports outlining their enterprise risk management processes, identifying risks the group could face going forward and addressing the adequacy of capital resources to meet those risks. Initial filings in states that adopt the ORSA Model Act will be due on January 1, 2015. It is expected that ORSA will become part of the NAIC's accreditation requirements for state insurance departments.

US - FINANCIAL STABILITY BOARD EXPANDS GUIDANCE FOR REGULATIONS FOR GLOBAL SYSTEMICALLY IMPORTANT INSURERS

As previously reported in our last month's bulletin (here), the Financial Stability Board ("FSB"), an international coordinating body of national financial authorities and international standard setting bodies, published on July 18, 2013 a list of nine global systemically important insurers to be targeted for greater regulatory scrutiny and supervision. The initial list included Allianz SE, American International Group, Inc., Assicurazioni Generali S.p.A., Aviva plc, Axa S.A., MetLife, Inc., Ping An Insurance (Group) Company of China, Ltd., Prudential Financial, Inc. and Prudential plc. On August 12, 2013, the FSB announced that it will extend its guidance on the resolution of systemically important banks to apply to non-bank financial institutions, such as the global systemically important insurers. The FSB is developing "annexes" to advise local regulators of financial institutions that are not lenders. The FSB has asked market participants for their comments to the annexes by October 15, 2013.

US - NEW YORK CONFORMS TO NAIC INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

On July 31, 2013, New York Governor Cuomo signed into law New York Assembly Bill 7807A, amending provisions of the New York Insurance Law ("NYIL"), particularly Articles 15, 16 and 17, to conform New York's insurance holding company provisions to the NAIC Insurance Holding Company System Regulatory Act. The passage of these amendments was necessary for the New York Department of Financial Services (the "NY DFS") to maintain its NAIC accreditation.

The majority of the provisions became effective immediately, although the enterprise risk management requirements will not become effective until October 29, 2013, and the amendments relating to affiliate transactions will only apply to transactions entered into on or after July 31, 2013.

- The amendment to NYIL Section 302 gives the Superintendent of Financial Services (the "Superintendent") authority to participate in supervisory colleges with new protections on the confidentiality and privilege of materials shared at such colleges.
- Under the amendments to NYIL Sections 1503, 1604 and 1717, insurance holding companies, New York-domiciled property/casualty insurers, and parent companies of New York-domiciled life insurers will be required to adopt a formal enterprise risk management function and file an annual enterprise risk report.
- NYIL Sections 1505, 1608 and 1712 have been amended to require that insurers provide written notice to the Superintendent prior to entering into certain affiliate transactions. For reinsurance transactions, notice must be provided 45 days before entering into the transaction, while other transactions require 30 days' written notice.
- NYIL Sections 1506, 1603 and 1710 have been amended to require insurance holding companies, New York-domiciled property/casualty insurers, and parent companies of New York-domiciled life insurers to provide written notice to the Superintendent 30 days prior to divesting control of a New York-domiciled insurer.
- NYIL Sections 1604, 1608, 1712 and 1717 have been amended to make New York-domiciled property/casualty insurers and their subsidiaries and parent companies of New York-domiciled life insurers subject to the reporting requirements that apply to insurers that are part of an insurance holding company system, such as annual registration statement filing requirements and prior notice requirements for certain affiliate transactions. Previously, New York was unusual among the states In exempting certain parent-subsidiary relationships from those requirements.
- Finally, the amendments also permit the Superintendent to assess penalties against companies that violate NYIL Section 1506 (which requires any person other than a New York-authorized insurer to comply with specific notice and approval requirements before acquiring control of a New York-domiciled insurer) in a manner that prevents the full understanding of the enterprise risk posed to the insurer by the holding company system. Potential penalties may include disapproval of dividend distributions and rehabilitation or liquidation of the insurer.

US - NY DFS APPROVES CERTAIN PRIVATE EQUITY FIRM ACQUISITIONS IN THE INSURANCE INDUSTRY

As reported in our prior bulletin (here), the NY DFS has recently raised concerns about the recent trend of acquisitions by private equity firms in the insurance industry. The NY DFS has identified "the troubling role private equity firms are playing in insurance markets," and has expressed concerns that these firms may not be the appropriate owners of insurance companies in the annuity business due to the short investments valued in private equity.

Nonetheless, the NY DFS has recently approved such transactions after negotiating with the acquirers to put in place certain "heightened" or "enhanced" policyholder protections. On July 31, 2013, the NY DFS announced that it has approved the

acquisition by Guggenheim Partners LLC of Sun Life Insurance and Annuity Company of New York after Guggenheim agreed to certain policyholder protections. As noted in the NY DFS press release (here), the protections include "heightened capital standards; the establishment of a separate, additional 'backstop' trust account dedicated to further safeguarding policyholder claims; enhanced regulatory scrutiny of investments, operations, dividends, and reinsurance; and other strengthened disclosure and transparency requirements." Similarly, on August 14, 2013, Athene Holding Ltd. announced that the NY DFS had approved the acquisition by Athene of Aviva Life & Annuity Company of New York ("ALACNY") after Athene also agreed to accept enhanced policyholder protections, including maintenance of risk-based capital levels for ALACNY at a minimum of 450% with a separate $35 million backstop trust account, additional reporting requirements and prior regulatory approval for any material changes to reinsurance transactions or investment policies. It is likely that the NY DFS will impose similar requirements in future acquisitions by private equity firms of insurance companies. For additional information, click here.

US - IOWA ADOPTS NAIC MODEL CREDIT FOR REINSURANCE PROVISIONS

The State of Iowa has adopted legislation based on the NAIC Model Credit for Reinsurance Act, which will be effective as of January 1, 2014. The NAIC Credit for Reinsurance Model Act is discussed in our prior bulletins (including here).

US - NAIC SUMMER 2013 NATIONAL MEETING - HIGHLIGHTS ON SELECTED ISSUES

The NAIC, which holds national meetings three times a year, held its Summer 2013 National Meeting on August 23-27, 2013 in Indianapolis, Indiana. Set forth below are highlights from the meetings of select NAIC committees, working groups and task forces.

NAIC Solvency Modernization Initiative (E) Task Force and its Working Groups

The NAIC's Solvency Modernization Initiative ("SMI") began in June 2008. The SMI is a critical self-examination of the US insurance solvency regulation framework and focuses on five key areas: capital requirements, corporate governance, international solvency and accounting standards, group solvency issues and reinsurance.

At the August meeting, the SMI Task Force took the following actions:

- Adopted a white paper entitled "The U.S. National State-Based System of Insurance Financial Regulation and the Solvency Modernization Initiative." The white paper explains the US solvency regulatory framework and discusses the SMI self-evaluation. It also highlights the importance of the national state-based system of insurance regulation.
- Discussed creating a "dashboard" to track states' adoption of SMI related model laws, such as the ORSA Model Act, Credit for Reinsurance Model Law and the Holding Company System Regulatory Act.

Corporate Governance (E) Working Group ("CG Working Group")

The CG Working Group has been charged with, among other things, outlining high-level corporate governance principles for use in US insurance regulation and developing regulatory guidance, including detailed best practices, for the corporate governance of insurers. As one of its initiatives, the CG Working Group has been drafting a new Corporate Governance Model Law, which would include a requirement for insurers to file with their domestic state regulators an annual confidential report on their corporate governance practices:

At the August meeting, the CG Working Group:

- Discussed a recommendation from the Market Regulation and Consumer Affairs (D) Committee to add market conduct to the list of topics that would need to be addressed in an insurer's confidential corporate governance report..
- Heard an update on the work of the International Association of Insurance Supervisors' ("IAIS") Governance and Compliance Subcommittee.
- Heard presentations from industry representatives on the draft Corporate Governance Model Law and annual corporate governance report to be filed with state insurance regulators.
- Formed an Internal Audit (E) Subgroup and a Drafting (E) Subgroup to facilitate the drafting of model laws. An initial draft for presentation to the CG Working Group is expected in about 4 to 6 weeks.

Group Solvency Issues (E) Working Group ("GS Working Group")

The GS Working Group is responsible for the group solvency and supervision aspect of the SMI. At the August meeting, the GS Working Group:

- Voted to refer its proposed changes to the NAIC *Financial Analysis Handbook* to the Financial Analysis Handbook (E) Working Group. The proposed changes relate to the roles and responsibilities of a newly created position of "Lead State" regulator or group-wide supervisor.
- Received an update on initiatives of the IAIS work stream related to *Insurance Core Principle 23: Group Wide Supervision* as well as an update on IAIS Joint Forum initiatives.
- Decided to defer action on a proposed letter to the Financial Examiners Coordination (E) Working Group until after the completion of the 2013 ORSA Pilot Project, which is expected to begin soon.

International Solvency and Accounting Standards (E) Working Group ("ISAS Working Group")

The ISAS Working Group is responsible for aspects of the SMI relating to international solvency and accounting standards. At the August meeting the ISAS Working Group:

- Heard presentations from the American Council of Life Insurers and the U.S. P&C Coalition on the International Accounting Standards Board ("IASB") 2013 Insurance Contracts exposure draft. Both presentations focused on some of the key differences between the IASB 2013 Insurance Contracts exposure draft and the Financial Accounting Standards Board ("FASB") Insurance Contracts exposure draft.Discussed a draft memorandum on "Key Issues for insurance

regulators relating to the IASB exposure draft on Insurance Contracts". A conference call will be scheduled in early September to finalize the key issues draft memorandum prior to the IAIS Accounting and Auditing Issues Subcommittee meeting on September 19-20, 2013.

- Discussed a draft memorandum on "Key Issues for insurance regulators relating to the IASB exposure draft on Insurance Contracts". A conference call will be scheduled in early September to finalize the key issues draft memorandum prior to the IAIS Accounting and Auditing Issues Subcommittee meeting on September 19-20, 2013.
- Received an update on the activities of the IAIS Field Testing Task Force.

Reinsurance (E) Task Force

During its meeting held on August 26, 2013, the Reinsurance (E) Task Force ("RTF") received several reports, including a status update regarding the implementation of the revised *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786). The revised models establish the new category of "certified reinsurer," which is a non-US reinsurer that is domiciled in a "qualified jurisdiction" and fulfils certain other requirements in order to become certified, after which it will be eligible to post less than 100% collateral to secure its reinsurance obligations.

To date, 18 states, which write approximately 53% of the primary insurance premium, have adopted the revised models. In addition, the Reinsurance Financial Analysis (E) Working Group reported that there are currently 29 reinsurers certified by Connecticut, Florida, and New York (the "lead filing states"). A conference call will be scheduled shortly to review the 29 certified reinsurers ("peer review") that have already been reviewed by the three lead states. If the peer review concurs with the lead filing states' review, other states may certify the 29 reinsurers based on the combined review. The peer review is expected to be completed by the year-end so that these companies may go live on January 1, 2014.

The RTF also discussed the next steps in implementing the "Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions," a document which was subsequently adopted by the NAIC Executive Committee/Plenary on August 27, 2013. Pennsylvania Insurance Commissioner Michael Consedine, who chairs the RTF, stated that a new Qualified Jurisdiction Working Group ("QJWG") will be established to implement and coordinate the review of non-US jurisdictions. Once established, the QJWG will issue a formal notification to Bermuda, Germany, Switzerland and the UK to implement the expedited review process of those jurisdictions.

Principle-Based Reserving Implementation (EX) Task Force

Principle-Based Reserving, or PBR, is a new approach to determining life insurance reserves that is intended to replace the current formulaic approach. In December 2012, a supermajority of the NAIC adopted a Valuation Manual which contains the details of PBR. In order for PBR to be implemented, the legislatures of at least 42 states representing 75% of total US premium need to enact revisions to the their Standard Valuation Law to conform it to the Valuation Manual. The NAIC established the Principle-Based Reserving Implementation (EX) Task Force (the "PBRI Task Force") to facilitate the PBR implementation process.

The PBRI Task Force met on August 24, 2013 to discuss principle-based reserving implementation activities, including policy data collection dissemination process. During the meeting, the PBRI Task Force appointed a new working group, the PBR Review (EX) Working Group, charged with coordinating financial analysis, examination and actuarial review procedures.

Other activities of the PBRI Task Force during the meeting included receiving a referral from the Financial Condition (E) Committee regarding insurers' use of captives and special purpose vehicles and discussing a proposal to change one of the Captives (EX) Working Group charges (although no changes to the charge were made).

Capital Adequacy (E) Task Force

Property and Casualty Risk-Based Capital (E) Working Group

The Property and Casualty Risk-Based Capital (E) Working Group (the "PCRBC Working Group") of the Capital Adequacy (E) Task Force held a meeting on August 24, 2013 to discuss asset risk and reinsurance credit risk. Also at the meeting, the Reinsurance Association of America ("RAA") gave a presentation regarding its proposal to revise the reinsurance credit risk charge. Scott Williamson of the RAA pointed out that the current 10% credit risk charge applicable to reinsurance recoverables (the R3 factor) has not been updated since 1994, and expressed the view that the 10% R3 factor is too high. The PCRBC Working Group voted to expose the RAA's discussion draft regarding its proposal for revising the P&C R3 RBC factors for reinsurance credit risk for a comment period ending on October 8, 2013.

Life Risk-Based Capital (E) Working Group

The Life Risk-Based Capital (E) Working Group (the "LRBC Working Group") of the Capital Adequacy (E) Task Force held a meeting on August 25, 2013. The LRBC Working Group voted to expose two draft proposals for a comment period ending October 9, 2013:

- A proposal from the New York Department of Financial Services that risk ceded to an unauthorized reinsurer may reduce RBC only to the extent collateral is established in the same proportion as collateral for reserves is required. For example, if risk is ceded to an unauthorized reinsurer which is also not certified, collateral equal to 100% of the reduction in RBC must be established.
- A proposal from RSM McGladrey to change the current practice of reclassifying the asset valuation reserve from a liability to total adjusted capital for RBC purposes.

Terrorism Insurance Implementation (C) Working Group

The Terrorism Insurance Implementation (C) Working Group ("TII Working Group") of the Property and Casualty Insurance (C) Committee met on August 25, 2013. The primary focus of the meeting was the impending expiration of the federal Terrorism Risk Insurance Act ("TRIA") on December 31, 2014. The TII Group took the following actions at the meeting:

- Endorsed a resolution (which was formally adopted on August 26, 2013 by the NAIC's Government Relations Leadership Council) strongly urging members of Congress to reauthorize TRIA and extend it for an additional period.
- Took note of a Federal Register notice from the President's Working Group on Financial Markets on the Long-Term Availability and Affordability of Insurance for Terrorism Risk, soliciting public comments (the deadline is September 16, 2013) to assist the President's Working Group in preparing the report that it is required to submit to Congress by September 30, 2013.
- Viewed a fascinating slide presentation by Dr. Gordon Woo, a Catastrophist at Risk Management Solutions in London, on "Terrorism Risk Modeling and the Case for TRIA."

Producer Licensing (EX) Working Group

The Producer Licensing (EX) Working Group ("PLWG") of the Producer Licensing (EX) Task Force met on August 25, 2013. Among other topics, the PLWG received a report on the status of its adjuster licensing initiatives. Unlike insurance producer licensing, where there is a high degree of uniformity among the states as a result of the widespread adoption of the NAIC Producer Licensing Model Act, there is a marked lack of uniformity when it comes to independent adjuster licensing. One of the key features of the Producer Licensing Model Act is that a producer who holds a resident license in his or her home state can obtain a non-resident license in other states on a reciprocal, fairly streamlined basis. In the realm of adjuster licensing, however, reciprocity across the various states is often lacking. To begin with, not all states even require the licensing of independent adjusters who adjust claims on behalf of insurers. In addition, some states require insurance company employees who adjust claims to be licensed or registered as "company adjusters" or "staff adjusters," but many states do not. In November 2011, the PLWG adopted a document entitled "NAIC Independent Adjuster Reciprocity Best Practices and Guidelines." Those guidelines encouraged states to allow independent adjusters whose state of residence does not license independent adjusters to obtain an independent adjuster license on a resident basis in another state (called a "designated home state") and use that designated home state license to obtain reciprocal non-resident licenses in other states. At the meeting on August 25, 2013, the PLWG received a report on some of the problems encountered in implementing the guidelines.

- Some states are not granting full reciprocity to nonresident applicants and are requiring them to meet additional requirements even though they are already licensed in their home state (or designated home state).

- Some regulators are worried that independent adjusters will select their "designated home state" opportunistically and seek out the state with the fewest requirements to designate as their home state.
- If a particular home state (or designated home state) does not require a prelicensing exam for independent adjusters, then other states are understandably reluctant to grant nonresident reciprocity to licensees from that state.

The PLWG did not take any action to remedy the above problems, and it may be that they are not remediable without legislative changes to the adjuster licensing laws in the various states. At present, there does not appear to be any impetus toward developing an Independent Adjuster Licensing Model Act that could facilitate uniformity among state laws on the subject.

Financial Condition (E) Committee

The Financial Condition (E) Committee met on August 26, 2013 to take action on the reports from its various task forces and working groups. Among other things, the Committee received a report on the receivership implications of the Federal Home Loan Banks' ("FHLBs") proposed receivership legislation that would exempt FHLBs from stay and voidable preference provisions. The Committee also adopted the SMI Task Force's white paper on "The U.S. National State-Based System of Insurance Financial Regulation and the Solvency Modernization Initiative."

International Insurance Relations (G) Committee

At the August 24, 2013 meeting of the International Insurance Relations (G) Committee, the members approved a position paper to articulate the views of US state insurance regulators toward the IAIS Common Framework ("ComFrame") for the Supervision of Internationally Active Insurance Groups ("IAIGs") and to help guide its development. The position paper is also intended to identify the characteristics of ComFrame that are necessary for U.S. state insurance regulators to support its implementation in our national system of state-based insurance regulation.

The Committee also heard comments from the industry recommending more transparency and opportunity to comment upon IAIS proposals.

The next IAIS meeting will occur at the NAIC's offices in Washington, D.C. on September 3-4, 2013. The meeting is open to public observation for two hours on September 4. Thereafter, the Field Testing Task Force of the IAIS will meet on September 5-7, 2013.

Market Conduct Examination Standards (D) Working Group

The Market Conduct Examination Standards (D) Working Group (the "MCES Working Group") met on August 24, 2013 to discuss the August 5th draft of the Affordable Care Act ("ACA") Preexisting Conditions Exclusion Examination Standard, which provides examination standards for the ACA mandate, including a summary of the relevant ACA provision, applicability and documents that must be reviewed to determine compliance. The MCES Working Group requested additional comments on the draft by September 5, 2013. The MCES Working Group also discussed an ACA-only draft NAIC Standards Complaint Data Form (version 1.0) and

draft ACA complaint code definitions (version 4.9). Any comments on these drafts must be submitted by September 20, 2013.

Health Care Reform Regulatory Alternatives (B) Working Group

The Health Care Reform Regulatory Alternatives (B) Working Group met on August 25, 2013 and received reports from states on their efforts to provide outreach regarding the ACA and qualification for the health insurance exchanges. While Missouri, Pennsylvania and Wisconsin all reported efforts for outreach, they also noted that they lacked federal funding to create an effective ACA website. Kansas displayed a website narrated by Alec, which interactively leads the consumer through a series of questions, choices, and educational information about the health insurance exchanges, including the likely subsidy to be provided to the consumer. The website will be rolled out online as well as during consumer informational meetings throughout Kansas. The presentation may be viewed at www.insureKS.org.

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