

CLIENT UPDATE

NAIC E COMMITTEE APPROVES NEW CAPTIVE TRANSACTION PEER REVIEW ROLE FOR ITS FINANCIAL ANALYSIS WORKING GROUP

NEW YORK

Eric R. Dinallo
edinallo@debevoise.com

Thomas M. Kelly
tmkelly@debevoise.com

Ethan T. James
etjames@debevoise.com

Marilyn A. Lion
malion@debevoise.com

Nicholas F. Potter
nfpotter@debevoise.com

John Dembeck
jdembeck@debevoise.com

Amanda Greenwold Wise
agwise@debevoise.com

Alexander R. Cochran
arcochra@debevoise.com

Sean P. Neenan
spneenan@debevoise.com

On July 17, 2013, the Financial Condition (E) Committee of the National Association of Insurance Commissioners (NAIC) met by conference call and adopted the *White Paper on Captives and Special Purpose Vehicles*, which had previously been adopted by the Captive and Special Purpose Vehicle (SPV) Use (E) Subgroup on June 6, 2013. The white paper makes certain recommendations regarding the use of captive insurers, including enhanced disclosure.

The use of captive insurers remains of great interest to insurance regulators, and the Financial Condition (E) Committee assigned the task of determining how to implement many of the recommendations of the white paper, including enhanced disclosure, to a newly-formed Captive Working Group that will report to the Principle-Based Reserving Implementation (EX) Task Force. Additionally, the implementation of some of the recommendations was assigned to the Reinsurance (E) Task Force.

In connection with the adoption of the white paper, the Committee also approved the following new charges for the Financial Analysis (E) Working Group (FAWG) related to the life insurance industry's use of captives in connection with insurance reserve financing transactions:

- Perform analytical reviews of transactions (occurring on or after a date as determined by the NAIC membership) by nationally significant US life insurers to reinsure XXX and/or AXXX reserves

with affiliated captives, special purpose vehicles (SPVs), or any other US entities that are subject to different solvency regulatory requirements than the ceding life insurers, to preserve the effectiveness and uniformity of the solvency regulatory system.

- For such transactions entered into and approved prior to this date and still in place, collect specified data in order to provide regulatory insight into the prevalence and significance of these transactions throughout the industry.
- Provide recommendations to the domiciliary state regulator to address company-specific concerns and to the PBR Implementation (EX) Task Force to address issues and concerns regarding the solvency regulatory system.

FAWG is an NAIC working group tasked with analyzing financially troubled nationally significant insurers and addressing various matters related to solvency. The Committee noted during the conference call that peer review of proposed and pending XXX and AXXX transactions by FAWG would be voluntary on the part of the domestic state insurance regulators of the life insurers engaging in captive transactions. The Committee did not discuss when FAWG would begin reviewing pending transactions, did not specify the precise scope or anticipated timing of the peer review process and did not address the criteria for an insurer being considered a “nationally significant US life insurer.”

The Committee action must be approved by the NAIC Executive (EX) Committee and Plenary, which will meet at the August NAIC National Meeting in Indianapolis, Indiana, if not sooner.

We will continue to monitor these developments and provide updates as appropriate.

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Please contact us with any questions.

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