



January 26, 2024

VIA ELECTRONIC SUBMISSION

Valuation of Securities (E) Task Force  
National Association of Insurance Commissioners  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

**Re: Amendment to the NAIC IAO P&P Manual Authorizing Procedures for SVO Discretion over NAIC Designations Assigned Through the Filing Exemption Process**

Dear Members of the Valuation of Securities (E) Task Force (“Task Force”):

The American Investment Council (“AIC”)<sup>1</sup> appreciates the opportunity to comment on the proposed *Amendment to the Purposes and Procedures Manual (“P&P Manual”) of the National Association of Insurance Commissioners (“NAIC”) Investment Analysis Office (“IAO”) Authorizing the Procedures for the NAIC Securities Valuation Office’s (“SVO”) Discretion Over NAIC Designations Assigned Through the Filing Exemption (“FE”) Process* (“Proposed Amendment”)<sup>2</sup> that was released for public comment during the Task Force’s December 2, 2023 meeting. As noted in our October 9, 2023 letter<sup>3</sup> to the Financial Condition (E) Committee regarding its draft *Framework for Regulation of Insurer Investments – A Holistic Review* (“Framework Memo”),<sup>4</sup> we support a comprehensive, methodological and holistic review of the myriad of recent investment-related initiatives undertaken by various NAIC working groups and

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<sup>1</sup> The American Investment Council, based in Washington, D.C., is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, the AIC develops, analyzes, and distributes information about private equity and private credit industries and their contributions to the US and global economy. Established in 2007 and formerly known as the Private Equity Growth Capital Council, the AIC’s members include the world’s leading private equity and private credit firms which have experience with the investment needs of insurance companies. As such, our members are committed to growing and strengthening the companies in which, or on whose behalf, they invest, to helping secure the retirement of millions of pension holders and to helping ensure the protection of insurance policyholders by investing insurance company general accounts in appropriate, risk-adjusted investment strategies. For further information about the AIC and its members, please visit our website at <http://www.investmentcouncil.org>.

<sup>2</sup> The Proposed Amendment is available at: <https://content.naic.org/sites/default/files/inline-files/2023-005.15%20P%26P%20SVO%20Discretion%20-%20Revised%20v4.pdf>.

<sup>3</sup> Our October 9, 2023 letter is available at: <https://www.investmentcouncil.org/aic-comment-letter-to-e-committee-re-holistic-framework/>.

<sup>4</sup> The Framework Memo is available at: [https://content.naic.org/sites/default/files/inline-files/Framework%20for%20Investments%20Exposed%20by%20E%20Committee\\_0.pdf](https://content.naic.org/sites/default/files/inline-files/Framework%20for%20Investments%20Exposed%20by%20E%20Committee_0.pdf).

task forces (including this Task Force), and commend state insurance regulators for recognizing the need to conduct a holistic review of those initiatives.

As you are aware, the Framework Memo includes a recommendation that the NAIC “retain overall utilization of [Credit Rating Providers (“CRPs”)] with the implementation of a strong due diligence framework” as a “primary focus of the NAIC.” While the Framework Memo also notes that the SVO should retain the ability to perform individualized credit assessments and utilize regulatory discretion, that function is referred to as a “backstop” that should only be utilized “rarely” and “under well-documented and governed parameters.” To that end, we respectfully ask that the Task Force reconsider (i) whether implementing the current iteration of the Proposed Amendment before establishing a CRP due diligence framework or determining whether CRP ratings are fit for purpose is consistent with the principles set out in the Framework Memo, and (ii) whether adopting the current iteration of the Proposed Amendment would satisfy the E Committee’s underlying charge to establish criteria in the foregoing context that “ensure greater consistency, uniformity, and appropriateness to achieve the NAIC’s financial solvency objectives.”

**I. A Strong CRP Due Diligence Framework Should be the Task Force’s Initial Focus**

We agree with the E Committee’s recommendation, as set out in the Framework Memo, that the “primary focus” of any NAIC initiative related to CRP ratings should be the establishment and maintenance of a CRP due diligence framework. Further, in light of the resource constraints noted in the Framework Memo, we recommend that this due diligence framework be prioritized over the expansion of the SVO’s individualized credit assessment function contemplated by the Proposed Amendment. We also propose that individualized credit assessments only be utilized where the CRP due diligence process indicates that CRP rating for one or more investments is not fit for purpose.

Prioritizing a CRP due diligence framework is consistent with the Framework Memo’s objective of deploying the “most effective use of regulatory resources in the modern environment of insurance regulation for investments.” As the Task Force is aware, and noted in public meetings, it would be inefficient and costly to replicate CRP functions such as the maintenance of robust, public methodologies, considerable expertise and resources, and other compliance-related functions associated with U.S. Securities and Exchange Commission (“SEC”) oversight and reporting obligations.<sup>5</sup> As a result of these highly-regulated functions, CRP ratings also provide certainty and, in many cases, liquidity for investments. The current FE system promotes competition among CRPs and facilitates investor access to a variety of opinions on individual credits and methodologies. As drafted, the Proposed Amendment would, in many instances, serve to replace those existing checks and balances with the SVO’s own judgment, creating market uncertainty and potential illiquidity.

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<sup>5</sup> For example, CRPs are required to certify and disclose rating methodologies, conflicts of interest and internal controls.

## **II. A Transparent Analysis of the Need for the Proposed Amendment Should Precede Consideration of the Proposed Amendment**

Given that the NAIC has not identified specific gaps or flaws in CRP methodologies or widespread ratings failures that render CRP ratings unfit for purpose, we respectfully suggest the Proposed Amendment would create more problems than it solves. It is incumbent upon the NAIC to provide additional insight into the specific concerns that necessitate the Proposed Amendment in the first instance. This additional insight should include anonymized examples where ratings have been found to be unfit for purpose, the rationale supporting such analysis and the best path forward to address such issues in a targeted way that does not create market uncertainty. If such an analysis ultimately concluded that one or more CRP ratings are not fit for purpose, regulators should first explore whether other, less intensive, more transparent, and more standardized adjustments to the pre-existing FE and designation processes could cure the defect.

To date, we are not aware of any public initiative to determine whether CRP ratings are fit for purpose (either broadly or specific to certain assets) nor are we aware of any initiative to establish the underlying criteria to make such a determination. Further, as suggested by the Framework Memo, regulatory concerns related to CRP reliance can be addressed through the CRP due diligence analysis already underway, as well as through other tools that are already available to regulators. We do not believe there is a need for the SVO to challenge individual security designations.

## **III. The Proposed Amendment May Not Satisfy the Underlying E Committee Charge**

The Task Force's charge with respect to the present workstream is to "establish criteria to permit staff's discretion over the assignment of NAIC designations for securities subject to the FE process to ensure greater consistency, uniformity, and appropriateness to achieve the NAIC's financial solvency objectives." It is not clear, however, how the Proposed Amendment would satisfy that charge. On its face, the current proposal would appear to ensure *less* consistency and uniformity, and we are not aware of any public study or analysis that outlines how the proposal ensures greater appropriateness than the current CRP-rating-based FE process. Further, the Proposed Amendment does not include any language indicating that the SVO would only use discretion as a "backstop", nor does the Proposed Amendment contain "well-documented" parameters for how the SVO will utilize this discretion.

Rather, the Proposed Amendment appears to insert an opaque decision-making process into an otherwise relatively consistent, uniform, and appropriate process. Specifically, rather than a set of pre-established criteria, the Proposed Amendment's process for placing an FE security under review relies heavily on the opinions of SVO staff and those of an undefined Senior Credit Committee ("SCC")<sup>6</sup>, as to whether the NAIC Designation Category assigned pursuant to the FE process is a "reasonable assessment of risk of a security for regulatory purposes" (Proposed Amendment at ¶¶ 165, 166). To that end, as part of the NAIC's financial solvency objectives, we believe that the Task Force should be more integrally involved in making a decision about whether

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<sup>6</sup> Per an SVO report to the Task Force during the 2023 Fall National Meeting, it appears that the SCC is expected to be comprised entirely of SVO staff, however the composition of the SCC is not defined in the Proposed Amendment itself.

a CRP rating represents a reasonable assessment of risk of a security under review and, in any event, the Proposed Amendment should specify the composition of the SCC.

**IV. Conclusion**

Implementing fundamental changes to the investment regulatory framework without first addressing these critical considerations could have serious consequences and unnecessarily deprive insurers of vital investment options. ***In light of these considerations, we ask the Task Force to first consider whether CRP ratings are fit for purpose and urge you to assess whether additional, more foundational, work is required prior to considering the Proposed Amendment.*** Should the NAIC decide to proceed with this Proposed Amendment, we urge regulators to alter the proposal to facilitate an immediate appeal to a domestic regulator, and permit appeal to a mutually agreed upon third party funded by the NAIC. We also urge regulators to engage an independent third party to audit the implementation of any final proposal, and to audit the SVO, including their investment review policies, procedures, methodologies (including any reliance on outside vendors), and surveillance of securities assigned an NAIC designation. This independent third party should also identify and assist regulators in eliminating any conflicts of interest with respect to the SVO's review of insurance company investments. Thank you for your consideration of these comments. We look forward to continuing to work with you on these important issues.

Sincerely,

/s/ Rebekah Goshorn Jurata  
General Counsel  
American Investment Council