

# CIC-DC

## 10<sup>th</sup> Annual Conference

### RRG's: Impact of Regulatory Reform

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# RRG (E) Task Force

## Development of Captive RRG Accreditation Standards

- Accreditation Standards Effective for captive RRGs on January 1, 2011
  - Part A: Laws & Regulations
    - Part A standards were previously not applicable to captive RRGs
    - The only standard that does NOT now apply is Guaranty Funds
    - Many Part A accreditation standards were deemed applicable to captive RRGs without modification
    - Some Part A standards were deemed applicable to captive RRGs with modification
  - Part B: Regulatory Practices and Procedures & Part C: Organizational & Personnel Practices
    - These standards were previously applicable to captive RRGs. However, some modifications were made to the standards & were effective January 1, 2011.

# RRG (E) Task Force

## Development of Captive RRG Accreditation Standards

- Part A Standards Applicable Without Modification:
  - Receivership, Producer Controlled Insurers, Managing General Agents, Reinsurance Intermediaries – Regulatory Framework is required
  - Corrective Action, Investment Regulations, Actuarial Opinion, Filings with the NAIC – Substantially Similar Language is required
- Part A Standards Applicable With Modification:
  - Examination Authority, Capital & Surplus, NAIC Accounting Practices & Procedures, Valuation of Investments, Holding Company Systems, Risk Limitation, Liabilities & Reserves Reinsurance Ceded, CPA Audits – Substantially Similar Language is required

# RRG (E) Task Force

## Development of Captive RRG Accreditation Standards

- Part B: Regulatory Practices and Procedures Part C: Organizational & Personnel Practices
  - Standards applicable with no modification
    - Sufficient Qualified Staff and Resources, Appropriate Supervisory Review, Priority Based Analysis, Reporting of Material Adverse Findings, Action on Material Adverse Findings, Information Sharing for Troubled Companies, Procedures for Troubled Companies
  - Standards applicable with some modification
    - Communication of Relevant Information, Appropriate Depth of Review, Documented Analysis Procedures, Use of Specialists, Use of Appropriate Guidelines and Procedures, Scheduling of Exams, Exam Reports
- Part C: Organizational & Personnel Practices
  - Standards applicable with no modification
    - Professional Development, Minimum Education & Experience Requirements, Retention of Personnel

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## Development of Captive RRG Accreditation Standards

- New Part A Items for Risk Retention Groups: Effective January 1, 2011
- Insurance Holding Company Systems Act
  - RRGs previously exempt
  - Is the RRG “controlled” by another entity
    - “Control” is presumed to be 10% or more voting power
  - Additional reporting requirements to domicile
    - Form B
    - Form D
- Credit for Reinsurance
  - RRGs previously only had to comply with rules of domicile
  - NAIC Model Credit for Reinsurance Act now applies

# RRG (E) Task Force

## Development of Captive RRG Accreditation Standards

- Three ways for Reinsurance for RRGs to Comply
  1. Meets all NAIC Model Act Requirements
  2. A- or higher rating; minimum surplus acceptable to Commissioner; licensed and domiciled in jurisdiction acceptable to Commissioner
  3. Reinsurer files audited financial statements annually; 3:1 premium to surplus ratio; affiliated reinsurer cannot write third party business without Commissioner's consent; no cell arrangements (without consent); reinsurer must be domiciled in jurisdiction acceptable to Commissioner; reinsurer shall submit to exam by domicile of RRG
- Less than 100% cession to reinsurer required

## RRG (E) Task Force

### Capital Adequacy for RRGs (E) Technical Subgroup

- Capital and Surplus Standards effective January 1, 2011
  - States must require captive RRGs to maintain minimum capital and surplus; and
  - States must have the authority to require additional capital and surplus.
- NAIC Risk Based Capital for Insurers Model Act (Model #312) is not currently required for captive RRGs
- Subgroup formed in 2010 to review the applicability of the NAIC Risk Based Capital Standards (Model #312) for captive RRGs

# RRG (E) Task Force

## Capital Adequacy for RRGs (E) Technical Subgroup

- Subgroup Recommendation
  - Domestic Regulator Must Apply Model #312 to captive RRGs
    - RRGs must compute Risk Based Capital (RBC) and File RBC Reports
    - RBC is a detailed calculation which estimates the required capital of a company. The RRG's capital is compared to required capital.
    - Required capital is computed by assigning risk charges to major categories of risk (e.g., asset risk, credit risk, off-balance sheet risk, underwriting risk)
  - Proposed additions to the: 1) RBC instructions regarding unique items for the RBC report ; and 2) Annual Statement instructions regarding considerations for RRGs utilizing GAAP (Referred to other committees)
  - Domestic regulators should be allowed discretion for certain RRGs when applying the requirements of Model #312.
    - Referenced requirements include action required at Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC and Mandatory Control Level RBC

# RRG (E) Task Force

## Capital Adequacy for RRGs (E) Technical Subgroup

- Subgroup Recommendation (continued)
  - Domestic Regulator should be able to elect to not take regulatory action as otherwise required by model #312 if any of three conditions exist:
    - Domestic regulator establishes that the RRGs members and/or sponsoring organizations are well-capitalized entities whose financial condition and support for the RRG is adequately documented.
    - Each policyholder qualifies as an industrial insured in their state, or in the state of domicile, whichever has the greater requirements.
    - The Company's Certificate of Authority date is prior to January 1, 2011, and, based on a minimum five-year history of successful operations, is specifically exempted in writing from the requirements for mandatory RBC action by its domestic regulator.
  - The recommendation has been forwarded to F-Committee for consideration as an accreditation standard.

## RRG (E) Task Force Risk Focused Examinations (E) Subgroup

- Subgroup was formed to review referral regarding possible exemption of certain RRGs from the risk-focused exam approach or certain phases of the approach (effective 1/1/11)
- Subgroup Recommendation
  - Risk-focused process should be applicable to all multi-state RRGs (if not, the exam would not qualify as a full-scope exam and the state would be out of compliance with accreditation standards)
  - The risk-focused approach is flexible and allows examiners to tailor the examination to fit the unique characteristics of RRGs.
- NAIC staff has developed documents with helpful information on completing risk-focused exams for RRGs
- The Subgroup is working on Best-Practices

## RRG (C) Working Group

- Revisions to the Model Risk Retention Act to incorporate Corporate Governance Standards to be considered for adoption at next meeting
  - Board Must have a Majority of Independent Directors
    - No “material relationship” with the RRG
    - Being a policyholder member is OK
  - Service Provider Contracts
    - Not to exceed five years
    - Must be approved by a majority of the independent directors
  - Written Policy
  - Audit Committee
    - At least 3 independent board members
  - Governance Standards & Business Conduct and Ethics
  - Reporting Non-Compliance

## RRG (C) Working Group

- Risk Retention Handbook Update
  - Last revised early 90's (1986 Act)
  - Commentary/Guidance to Regulators/Industry/Attorneys
  - Clarification on the basis of 20 years of experience
  - The Working Group has compromised on all issues except non-domiciliary state power in the registration process
    - What does “registration” mean?
    - Notice to regulators or “acceptance” by them?

# RRG Problems with Non-Domiciliary States

- What does the LRRRA Allow?
  - No restrictions on domicile except re: guaranty funds
    - Non-Domiciliary states have limited, enumerated powers

## RRG Problems with Non-Domiciliary States

- Many Non-Domiciliary States Exceed Their Authority
  - Fees/taxes
  - Supplemental information
  - A “registration” is not a “license”
  - Discrimination
    - Prohibited by 3902(a)(4)
    - Financial responsibility (§ 3905(d))
    - ANI, RRG v. Barratt (and others)
  - Cease and Desist Orders
    - Injunction can only be issued by “court of competent jurisdiction” (§ 3902(f), § 3906)

## Federal Activity

- RRG Legislation (H.R. 2126)
  - Corporate Governance
  - Expansion to commercial property
  - Federal Dispute Resolution
- GAO Report
  - Follow up to 2005 Report
  - Focus on non-domiciliary states