



MEMORANDUM

TO: National Risk Retention Association

FROM: Robert H. Myers, Jr

RE: NAIC Capital Adequacy for RRGs Technical Subgroup Conference Call
July 7, 2010

DATE: July 12, 2010

The Subgroup conference call took place on July 7, 2010. Attached are the documents discussed during the call:

- Draft guidelines
- Applicability of Risk-Based-Capital to Captive Risk Retention Groups

The purpose of the call was to discuss the proposed changes by the NAIC Staff to these two documents. Most of the discussion concerned Section II regarding the discretion of the domestic regulator to exempt a domestic RRG from the RBC action levels.

These documents assume that those aspects of GAAP Accounting that are not included in Statutory Accounting have been added back in to provide a more accurate view of the financial solvency of an RRG that is filed on a GAAP Accounting basis.

Section II is designed to take into consideration those RRGs that have relatively few members and well capitalized sponsoring organizations, such as a hospital system RRG which would include both the hospital and related doctors. After a great deal of discussion, the Subgroup concluded that the language needed to be rewritten to fulfill its intended purpose. NAIC staff will prepare another draft for the next conference call (which should be in about three weeks).

A further discussion took place regarding the proposed addition of “solely” in line 4 of Section I.A. While this language is inconsistent regarding the use of RBC solely by the domestic regulator, non-domiciliary state regulators did not want to delete the “solely” added in regard to the ability of non-domiciliary to “take action” if an RRG fails the RBC standards and also has additional violations of the law. As a compromise, a new draft will be issued that will add “subject to the limitations of the Federal Liability Risk Retention Act.” The purpose of this addition will be to restrict non-domiciliary state regulators consistent with federal law.

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These discussions are intended to provide guidance to state regulators. Nonetheless, they are not binding law and are not being proposed by the NAIC as a Model Law or Model Regulation. They also will be subject to the restrictions of federal law, which, of course, preempts state law.

The next action by the Subgroup will be to consider the redrafted versions of these documents. We should see a draft within about three weeks, and then there will be a conference call prior to the NAIC meeting commencing August 12 in Seattle.