

## **NAIC Working Group Proposes Controversial Plan for Implementing ORSA Reporting Requirement**

November 3, 2011 by [Dennis Quinn](#)

On November 2nd, the [Group Solvency Issues Working Group](#) (“GSIWG”) met at the [National Association of Insurance Commissioners’](#) (NAIC) Fall National Meeting to discuss the latest exposure draft of the [NAIC Own Risk and Solvency Assessment \(“ORSA”\) Guidance Manual](#) (the “Manual”), and regulators’ controversial plan to implement the ORSA requirement by incorporating it into the Form B Insurance Holding Company System Annual Registration Statement (“[Form B](#)”) that each insurer is required to file annually with its domiciliary regulator.

Once implemented, ORSA would require each non-exempt insurer (or insurance group on behalf of a subsidiary insurer) to assess the adequacy of its risk management and current, and likely future, solvency position, internally document the process and results, and provide a high level summary report annually to the domiciliary regulator, if requested.” See [Manual](#), Exposure Draft, dated October 14, 2011.

An insurer would be exempt from the ORSA requirement if:

1. it has less than \$500 million in annual direct written premium and
2. it is not a member of a group of affiliated insurers that has \$1 billion or more in annual direct written premium.

One of the primary objectives of ORSA is to provide state regulators with a means of assessing on a group wide – instead of merely on a legal entity – basis the enterprise risk management framework and capital adequacy of an insurance group.

In effect, regulators are seeking various tools (ORSA among them) that will assist them in preventing another AIG-type scenario where risks generated by non-insurers in the group potentially pose an existential threat to the insurer legal entity.

At the meeting, the GSIWG accepted proposed revisions to the Manual that were generally non-substantive in nature and then voted to adopt the Manual (as revised) for the [Financial Condition \(E\) Committee](#) to implement as part of the [U.S. Solvency Framework](#).

However, the GSIWG’s proposal to utilize the Form B requirement as the legal vehicle for imposing the ORSA requirement was met with firm opposition by the industry.

In terms of the process, insurers objected to the fact that the GSIWG first circulated its proposed amendments to the Insurance Holding Company System Regulation (“[Model Regulation](#)”) (that would include the ORSA requirement at Item 9 of a revised Form B) on October 24, 2011, with an October 28, 2011, deadline for interested parties to submit comments.

Despite the short time frame, a number of insurer trade associations managed to submit written objections to the GSIWG's proposal and then took the opportunity to reiterate those objections in comments they delivered at the meeting.

Chief among their concerns were the following:

1. confidentiality – trade association representatives noted that the information comprising the ORSA report would be proprietary and would contain trade secrets, yet not all jurisdictions have the authority to maintain the confidentiality of a Form B that is filed with the state; and
2. Form B is a requirement that is imposed upon each insurer legal entity – throughout the process of developing the Manual it was understood that insurance groups would be permitted to file one ORSA report on behalf of the group with one lead insurance regulator. Insurers fear, however, that including ORSA as part of Form B will result in each insurer legal entity within the group being required to file its own ORSA report with its respective domiciliary insurance regulatory authority, thus leading to much duplication of effort.

Certain state regulatory officials, who are members of the GSIWG, responded that none of the concerns voiced by the industry representatives were valid, in their estimation, and they indicated that they intend to press forward with their plan to use Form B as the mechanism for imposing the ORSA requirement. (It is clear that the GSIWG is not open to any proposed solution regarding implementation of ORSA that would require a statutory enactment).

Nevertheless, the GSIWG elected not to forward the October 24<sup>th</sup> proposed amendments to the Model Regulation to the Financial Condition (E) Committee at this time. Accordingly, the GSIWG is still accepting comments from interested parties respecting its proposal to implement ORSA using the annual Form B filing requirement.

If you would like additional information regarding these developments, please contact Dennis Quinn at (212) 655-3878 or (213) 553-8121 or your Barger & Wolen relationship partner.