Statutory Accounting Principles (E) Working Group

**Maintenance Agenda Submission Form**

**Form A**

## **Issue:** Wash Sale Disclosure

**Check (applicable entity):**

 P/C Life Health

Modification of existing SSAP [x]  [x]  [x]

New Issue or SSAP [ ]  [ ]  [ ]

Interpretation [ ]  [ ]  [ ]

Description of Issue: This agenda item has been drafted to consider revisions to the wash sale disclosure captured in *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. The wash sale guidance was revised in 2017 to 1) clarify what types of investment are subject to the wash sale disclosure, 2) respond to several comments from interested parties, and 3) clarify what investments are subject to and what investments were exempt from this disclosure.

NAIC staff have been informed by industry that the tracking of wash sales can be very time-consuming and uses a large amount of resources while not necessarily responding to the main risks associated with these transactions. Investments sold and repurchased during the same reporting period, such as sold on May 1 and repurchased on May 20 and then held at the reporting date do not pose any greater risk than if the investments had been held throughout that period and at the period end date. The real risk with these transactions is investments that are sold prior to the end of a reporting period and then repurchased shortly after that date.

Existing Authoritative Literature:

* *SSAP No. 103R*—*Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* provides the definition of a wash sale and the disclosure requirements.
* U.S. GAAP provides limited guidance on wash sales, mostly to identify that wash sales are captured as “sales” unless there is a concurrent contract to repurchase or redeem the transferred financial asset. (There is no definition or required disclosure for wash sales under U.S. GAAP.)
* The SEC defines a wash sale as follows:

A wash sale occurs when you sell or trade securities at a loss and within 30 days before or after the sale you:

Buy substantially identical securities,

Acquire substantially identical securities in a fully taxable trade, or

Acquire a contract or option to buy substantially identical securities.

Internal Revenue Service rules prohibit you from deducting losses related to wash sales. For more information about wash sales, read IRS Publication 550, Investment Income and Expenses (Including Capital Gains and Losses).

* The IRS has a similar definition to the SEC and disallows the recognition of losses for wash sales:

A wash sale occurs when you sell or trade stock or securities at a loss and within 30 days before or after the sale you:

Buy substantially identical stock or securities,

Acquire substantially identical stock or securities in a fully taxable trade,

Acquire a contract or option to buy substantially identical stock or securities, or

Acquire substantially identical stock for your individual retirement account (IRA) or Roth IRA.

If you sell stock and your spouse or a corporation you control buys substantially identical stock, you also have a wash sale.

If your loss was disallowed because of the wash sale rules, add the disallowed loss to the cost of the new stock or securities (except in (4) above). The result is your basis in the new stock or securities. This adjustment postpones the loss deduction until the disposition of the new stock or securities. Your holding period for the new stock or securities includes the holding period of the stock or securities sold.

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups):

Agenda item 2017-23 included clarification that money market mutual funds are excluded from the wash sale disclosure. Further, agenda item 2017-31 clarified that all cash equivalents, derivative instruments and short-term investments with credit assessments equivalent to an NAIC 1-2 designation are excluded from the disclosure.

**Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:** None

**Convergence with International Financial Reporting Standards (IFRS):** None

Staff Recommendation:

It is recommended that the Working Group move this agenda item to the active listing, categorized as nonsubstantive, and expose draft revisions to clarify that only investments that meet the definition of a wash sale in accordance with SSAP No. 103R, which are purchased or sold prior to a reporting period end and sold or repurchased after that reporting date would be subject to the wash sale disclosure. This will eliminate the need to report transactions that meet the wash sale criteria in SSAP No. 103R that are sold and purchased within the same reporting period. Wash sales that cross either a quarterly or annual reporting period must be disclosed.

Proposed Revisions to SSAP No. 103R:

28.l. A reporting entity shall disclose the following information for wash sales, as defined in paragraph 12, involving transactions for securities with an NAIC designation of 3 or below, or that do not have an NAIC designation (excluding all cash equivalents, derivative instruments as well as short-term investments with credit assessments equivalent to an NAIC 1-2 designation). This disclosure shall be included in the financial statements for when the investment was initially sold and is only applicable for sales and purchases that cross quarter-end or year-end reporting periods. For example, if the investment was sold December 20, 2017, and reacquired on January 10, 2018, the transaction shall be captured in the wash sale disclosure included in the year-end 2017 financial statements, while an investment sold on May 1, 2019 and reacquired on May 20, 2019 would not be required to be disclosed:

i. A description of the reporting entity’s objectives regarding these transactions;

ii. An aggregation of transactions by NAIC designation 3 or below, or that do not have an NAIC designation;

iii. The number of transactions involved during the reporting period;

iv. The book value of securities sold;

v. The cost of securities repurchased; and

vi. The realized gains/losses associated with the securities involved.

Staff Review Completed by:

Jake Stultz—June 2019

**Status:**

On August 3, 2019, the Statutory Accounting Principles (E) Working Group moved this agenda item to the active listing, categorized as nonsubstantive, and exposed revisions to *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, as illustrated above,to clarify that only investments that meet the definition of a wash sale in accordance with SSAP No. 103R that cross reporting period-end dates would be subject to the wash sale disclosure.

G:\FRS\DATA\Stat Acctg\3. National Meetings\A. National Meeting Materials\2019\Summer\NM Exposures\19-22 - Wash Sales.docx