

Hearing Agenda 2

**Statutory Accounting Principles (E) Working Group
Hearing Agenda 2
December 1, 2023**

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Kevin Clark, Vice Chair	Iowa	Doug Bartlett	New Hampshire
Sheila Travis	Alabama	Bob Kasinow	New York
Kim Hudson	California	Diana Sherman	Pennsylvania
William Arfanis/Michael Estabrook	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Cindy Andersen	Illinois	Amy Malm/Elena Vetrina	Wisconsin
Melissa Gibson/Stewart Guerin	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jake Stultz, Jason Farr, Wil Oden

Note: This meeting will be recorded for subsequent use.

REVIEW of COMMENTS on EXPOSED ITEMS with November comment deadlines

The following items are open for discussion and will be considered separately.

1. Ref #2023-23: Residuals in Preferred Stock and Common Stock
2. INT 23-04: Life Reinsurance Liquidation Questions

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2023-23 (Julie)	Residuals in Preferred Stock and Common Stock	2.1 – Agenda item	Minor Comments Received	IP’s – 1

Summary:

This agenda item was exposed via an evote on Oct. 31, 2023, and incorporates minor clarifications to *SSAP No. 30R—Unaffiliated Common Stock* and *SSAP No. 32R—Preferred Stock* to clarify that investments that are in substance residual interests shall be reported on Schedule BA on the dedicated reporting line for residuals. Revisions are not required to the annual statement instructions, as the Schedule BA instructions already specify that investment structures that are in-substance residuals shall be reported within the residual line category.

This agenda item has been developed to specifically identify in SSAP No. 30R and SSAP No. 32R that structures that are in substance residual interests shall be accounted and reported as residual interests. Common stock and preferred stock structures reflect ownership equity interests. Such structures would not ordinarily be construed to be in-substance residual interests or residual security tranches (residuals). However, information has been shared that investments are being created to repackage potential “additional interest” or “performance coupons” separately from debt instruments and are referring to these structures as preferred stock issuances.

From information received, an example of such a design has occurred to eliminate an investment structure from being classified as a principal-protected note, which will not qualify as a bond under the adopted bond definition effective Jan. 1, 2025, and eliminate the assessment of the investment under the SVO’s principal-protected note methodology. With the repackaged structure, the debt security and ‘additional interest’ (equity) components will be separately issued. The debt structure will likely qualify as a bond and will likely have a higher credit designation than is permitted to be obtained from a credit-rating provider. (If reporting as a principal-protected note, the investment would be required to be filed with the SVO for a credit designation under the PPN methodology.)

Although the restructure of the investment design can occur, and the debt security component can be separately assessed to qualify as a bond, it is important to highlight that the equity component, which is based on the “additional interest / performance” of the dedicated pool of assets within the structure, is in substance a residual interest and is not in substance a common or preferred stock investment.

This agenda item proposes minor edits to SSAP No. 30R and SSAP No. 32R to explicitly state that structures that are in-substance residual interests shall be reported as residuals. Similar to the principal concepts detailed within the adopted bond definition, naming convention shall not direct investment classification, and the substance of the investment shall determine appropriate classification for statutory reporting. The revisions to the Annual Statement Instructions adopted in agenda item 2023-12 already identify that residual interests or residual security tranches that are not captured in *SSAP No. 43R—Loan-Backed and Structured Securities* or *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies* but that reflect residuals, shall be captured in the dedicated Schedule BA reporting lines for residual interests.

Interested Parties’ Comments:

Interested parties recommend the following edits to clarify the proposed changes:

- Move the new language in paragraph 2 of SSAP No 30R to a new paragraph 3 and renumber the subsequent paragraphs. This would be similar to what is reflected in the changes for SSAP No. 32R.
- Add the proposed language from SSAP No. 30R to the annual statement instructions (ASI) for Schedule D – Part 2 – Section 2 as follows:
 - Shares of all mutual funds, regardless of the underlying security, whether specialized or a mixture of bonds, stock, money market instruments or other type of investments, except money market mutual funds that are reported in Schedule E, Part 2 as cash equivalents, are considered to be shares of common stock and should be listed in the appropriate category of Mutual Funds.
 - Only transferable shares (i.e., can be bought and sold) of savings and loan or building and loan associations are to be reported in this schedule.
 - Investments in the form of common stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals and not in this schedule.
- Add the proposed language from SSAP No. 32R to the ASI for Schedule D – Part 2 – Section 1 as follows:
 - Only transferable shares (i.e., can be bought and sold) of savings and loan or building and loan associations are to be reported in this schedule.
 - Investments in the form of preferred stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals and not in this schedule.

- No additional changes are needed to the ASI for Schedule BA for this item as the ASI were changed implicitly via the Working Group referral memo dated October 30, 2023.

Recommendation:

NAIC staff recommends that the Working Group adopt the exposed agenda item 2023-23 with the minor placement revisions proposed by interested parties to be effective immediately for year-end 2023 reporting. This item is a SAP clarification and only reiterates principal concepts for the reporting of residuals that mirror concepts already adopted. These revisions are only deemed necessary because investment structures have been recently designed to refer to a redesigned residual as a ‘preferred share,’ and without the explicit guidance in SSAP No. 30R or SSAP No. 32R, there is concern there could be reporting inconsistencies among insurers. By adopting for year-end application, all in-substance residuals shall be captured on the dedicated Schedule BA reporting line and allow for complete regulator assessment of exposure. As a reminder, to showcase the principal concepts already adopted, the revisions already adopted to the Annual Statement Instructions for the residual category identified that it shall include residual interests within investment structures that are not captured in scope of SSAP No. 43R or SSAP No. 48, but that reflect, in substance, residual interests.

Although it was not captured in their comment letter, interested parties email submission requested deferral of the adoption of this guidance until March 31, 2024. The reason given was due to the proximity of this guidance to the year end and the additional work effort required to identify these additional items so the Working Group should provide direction on the effective date. NAIC staff does not believe extensive work will be required to identify residuals in these structures.

The revisions proposed to SSAP No. 30R—Unaffiliated Common Stock is a placement change to a new paragraph. The proposed edits to SSAP No. 32R—Preferred Stock were already in a separate paragraph.

NAIC staff also recommend that the Working Group direct a year-end blanks memo and a subsequent blanks proposal to incorporate additional annual statement instructions recommended by interested parties. Although the agenda item identified that further revisions to the Schedule BA instructions were not necessary, interested parties have proposed clarifying edits to the annual statement instructions for Schedule D-2-1: Preferred Stock and Schedule D-2-2: Common Stock. NAIC staff support these edits as they provide clarifying guidance.

Illustration of revisions proposed to be adopted:

Proposed Revisions to *SSAP No. 30R—Unaffiliated Common Stock*
(*Moving the tracked changes to a new paragraph 3 is the only edit from the exposure. All other paragraphs in SSAP No. 30R will be renumbered.*)

1. This statement establishes statutory accounting principles for common stocks.
2. Investments in common stock of subsidiaries, controlled or affiliated entities (investments in affiliates) are not within the scope of this statement. They are addressed in SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities.
- 2-3. Investments in the form of common stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals.

Proposed Revisions to *SSAP No. 32R—Preferred Stock* (*No edits from exposure.*)

1. This statement establishes statutory accounting principles for preferred stock.

2. Investments in preferred stock of entities captured in SSAP No. 97—*Investments in Subsidiaries, Controlled or Affiliated Entities* or SSAP No. 48—*Joint Ventures, Partnerships and Limited Liability Companies*¹ as well as preferred stock interests of certified capital companies per INT 06-02: *Accounting and Reporting for Investments in a Certified Capital Company (CAPCO)* are included within the scope of this statement. The requirement to file investments in preferred stock of certain subsidiaries, controlled or affiliated entities with the NAIC pursuant to SSAP No. 97 does not affect the application of the accounting, valuation or admissibility under this statement. In addition to the provisions of this statement, preferred stock investments in SCAs are also subject to the provisions of SSAP No. 25—*Affiliates and Other Related Parties* and SSAP No. 97—*Investments in Subsidiary, Controlled and Affiliated Entities*.

2.3. Investments in the form of preferred stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
INT 23-04 (Robin)	INT 23-04T: Life Reinsurance Liquidation Questions	2.2– Agenda item	Provides comments	ACLI – 3 Lincoln – 7 Nationwide – 9

Summary:

Interpretation 23-04: Life Reinsurance Liquidation Questions provides accounting and reporting guidance for ceding entities with a life reinsurance counterparty in liquidation. Liquidations of U.S. licensed life reinsurers are uncommon. Due to a 2023 liquidation order of a U.S.-based life reinsurer, life industry cedents requested an interpretation to address the accounting and reporting for reinsurance receivables from the reinsurer’s estate. The recent liquidation was for a company that has been in run-off for a number of years. The liquidation order cancelled reinsurance contracts effective for September 30, 2023. Settlement from the reinsurer’s estate is expected to exceed one year. The interpretation is intended to be effective for year-end 2023 reporting and addresses the following areas:

- 1) Commutation or Recapture of a Life Reinsurance Contract – following existing guidance for life reinsurance commutation.
- 2) Impairment of Reinsurance Recoverables – following existing guidance on impairment.
- 3) Reporting of Reinsurance Recoverables – provides guidance for reporting the reinsurance payables (liabilities line 9) separate from the reinsurance recoverables on asset lines 16.1 and 16.3)
- 4) Admissibility of Reinsurance Recoverables – recommends nonadmitting the reinsurance recoverables after evaluation for impairment because of the uncertainty of recovery.
- 5) Disclosures – notes that existing relevant disclosures such as those on reinsurance commutation, uncollectible reinsurance continue to apply. Also provides an additional disclosure of information necessary to obtain an understanding of the impact of reinsurance counterparties in liquidation, including information regarding the status of any collateral.

American Council of Life Insurers (ACLI) Comments:

The American Council of Life Insurers (ACLI) appreciates the opportunity to submit comments on the proposed INT 23-04T: Life Reinsurance Liquidation Questions (the “INT”), which was exposed for comment on October 25, 2023 with comments due on November 15, 2023. We appreciate NAIC staff and regulators’ prompt attention to this matter, which has implications for companies’ year end 2023 reporting.

¹ Certain legal entities captured in SSAP No. 48, such as LLCs that are corporate-like, do not issue preferred stock in legal form, but instead issue identical instruments labeled preferred units, interests, or shares. These instruments shall be captured in this statement provided they meet the structural characteristics as defined in paragraph 3. Additionally, these instruments shall not be in-substance common stock in which the holder has risk and reward characteristics that are substantially similar to common stock.

The INT provides guidance for ceding entities when the life reinsurance counterparty is in liquidation. Specifically, the INT addresses five key accounting and reporting issues with respect to these transactions:

- 1) Commutation or Recapture of a Life Reinsurance Contract
- 2) Impairment of Reinsurance Recoverables
- 3) Reporting of Reinsurance Recoverables
- 4) Admissibility of Reinsurance Recoverables
- 5) Disclosures

Although we understand the proposed guidance is intended to be applicable to reinsurance liquidations in general, our analysis and comments on the INT also consider the specific facts and circumstances of an ongoing life reinsurer liquidation (liquidation order effective September 30, 2023), which we believe provide helpful context and inform our views of the appropriate guidance for liquidation events more generally.

Life insurer liquidations are very rare occurrences, and the current ongoing liquidation is the first for a life reinsurer of which we are aware. Recent industry discussions have highlighted that each counterparty involved in the current liquidation has specific facts and circumstances which may not be consistent with a) other parties to the current liquidation or b) other (re)insurer liquidations that may arise in the future. The contractual obligations of a reinsurer are commercial contracts negotiated between sophisticated counterparties and the rights and obligations of each contract are unique. Some contracts are collateralized by a trust and some contracts contain guarantees or other provisions that provide cedants with varying degrees of rights to estate assets. The uniqueness of the facts and circumstances will lead to varied outcomes of a liquidation across cedants. Additionally, some liquidation proceedings may allow for more transparency than others and may provide more actionable information for measurement and reporting.

Given the rarity of (re)insurer liquidations and potential for diverse facts and circumstances, we believe any guidance should provide for consistency in application while allowing latitude for prudent management and regulator judgment. Our comments on specific issues below reflect this view, particularly with respect to the question of whether receivables from a liquidation estate should be considered admitted assets.

Issue 1 – Commutation or Recapture of a Life Reinsurance Contract

This guidance specifies that if a liquidation order cancels a life reinsurance contract, then SSAP 61R paragraph 58 provides guidance under which recaptured balances should be written off through accounts, exhibits, and schedules in which they were originally recorded. We believe the intent of this guidance, when viewed together with the guidance in Issue 3 below, is to require that reporting entities a) unwind reinsurance balances in the manner prescribed by paragraph 58 and b) establish new balances to which the provisions outline under Issue 3 would apply.

ACLI agrees that it is appropriate to apply SSAP No. 61R paragraph 58 and to write off recaptured balances. However, we have comments regarding presentation which are detailed further under Issue 3 below. We believe our proposed changes would eliminate possible inconsistencies when Issues 1 and 3 are viewed together since, as currently drafted, the guidance in Paragraph 16 of the INT could be interpreted to require the continuation of certain reinsurance balances in conflict with paragraph 58 of SSAP No. 61R.

Issue 2 – Impairment of Reinsurance Recoverables

We have no comments on this issue.

Issue 3 – Reporting of Reinsurance Recoverables

The proposed guidance separates recoverables from the estate that arise from unreimbursed claims from “other amounts receivable.” We believe reporting entities will be capable of separating these amounts for the current ongoing liquidation, but future liquidations may not have the same facts and circumstances or may be measured in

different ways. Additionally, we believe it is problematic to require separate reporting of amounts such as unreimbursed claims and other receivables as it may give the incorrect impression that some amounts are more recoverable than others. Although certain amounts such as unreimbursed claims may be more readily estimated, we have no information at this time suggesting that amounts will be given higher priority in the current ongoing liquidation solely based on the nature or origin of the receivables. Finally, we believe it may create confusion or obfuscate relevant information if amounts recoverable under liquidation were combined with amounts recoverable under in-force reinsurance contracts.

As an alternative and to allow for industry-wide analysis of aggregate exposure, our proposal is to report the estimated recoverable amount (net of impairment) as a specific write in on line 25.01, Aggregate write-ins for other than invested assets, and identify line 25.01 as Receivables from Liquidation (or similar). The components of the receivable could then be disclosed and potentially data captured. We believe a net write-in would provide more transparency, as regulators and other users would see a net number due from a liquidation estate after it has been appropriately written down based on each company's knowledge of expected recoveries. The amounts would also not be combined with and potentially obfuscated by other reinsurance balances.

Paragraph 16 states that the amount expected to be recovered from the reinsurer's estate and any payables shall continue to be reported in annual statement Schedule S. However, this appears to conflict with the guidance in Issue 1 (which requires that all reinsurance balances be eliminated), and it is not clear where on Schedule S these amounts should be reported. We believe that disclosure requirements would be equally as effective in providing and tracking details of the components of a liquidation receivable.

Issue 4 – Admissibility of Reinsurance Recoverables

Paragraph 18 provides that “Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life reinsurer in liquidation.”

We acknowledge and support state regulators in their exercise of vigilant and prudent oversight as to the financial condition of insurance companies, including the expectation that companies would be conservative in their accounting and provide robust and objective information in support of financial reporting estimates such as those associated with (re)insurer liquidations. However, we believe a blanket requirement to non-admit all balances would be unduly punitive. Such an approach would be inconsistent with the guidance in SSAP No. 61R that is appropriately applied elsewhere in the INT, which provides for the recognition (and admission) of reinsurance recoverables. It would also circumvent the balanced and judicious consideration of relevant facts and circumstances by reporting entities and their domestic regulators, who are best positioned to analyze and opine on the individual facts and circumstances of a given insurer's exposure in a liquidation (and have done so in the context of the current ongoing liquidation).

While our understanding is that the INT is designed to provide general guidance, it is also important to consider the question of admissibility in the context of the current ongoing liquidation. While there is uncertainty as to the amount and timing of recoveries, the company currently in liquidation has significant assets and reporting entities have sufficient data, informed by the initial assessment drafted by the receiver of the liquidation, to reasonably estimate their recoveries. However, as noted above, the uniqueness of the facts and circumstances will lead to varied outcomes of a liquidation across cedants. Certain companies may have assets held in trust or contractual guarantees (which the liquidation trustee acknowledge have value) that place them in a different economic position than other parties and should be considered in determining appropriate accounting and reporting.

Amounts in trust are one example of a specific constraint that we believe should be considered. The beneficiaries of the trusts in this case are the ceding companies; therefore, the assets will be distributed to them, in accordance with A-785. We believe the guidance should explicitly specify that secured receivables (e.g. by funds held in trust) are admitted to the extent such trust funds are sufficient.

For amounts not otherwise secured, it is appropriate to provide for the wide diversity in facts and circumstances and allow for prudent regulation by companies' states of domicile. The impairment of recoverables from a life reinsurer in liquidation is not inherently more uncertain than other impairments that may be recognized under SSAP No. 5R, paragraphs 9-12 (to which SSAP No. 61R paragraph 42 refers). We believe SSAP No. 5R provides appropriate latitude for the assessment of impairment and should be consistently applied to amounts recoverable from a life reinsurer in liquidation without additional proscriptions.

Based on the considerations above, we propose the following revisions:

18. To the extent amounts recoverable are secured by assets in trust or otherwise legally restricted as to use for the payment of the reporting entity, such recoverable amounts may be admitted to the extent the security is sufficient.

19. Other recoverable amounts admitted by a reporting entity should be based on appropriate supporting documentation and reasonable assumptions in consideration of a reporting entity's individual facts and circumstances, which are subject to review by that reporting entity's domiciliary regulator.

Issue 5 – Disclosures:

As noted above, we believe disclosure is the most effective mechanism for providing transparency and tracking of amounts arising from liquidation proceedings. We propose the following revision to paragraph 21 (as proposed) to provide for detailed disclosure in both the Annual Statement and audited financial statements of reporting entities with exposure to a reinsurer in liquidation.

21. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of reinsurance counterparties in liquidation, including, but not limited to, information regarding the status of any collateral and the measurement and collectability of any reinsurance recoverables. Where applicable, reporting entities should disclose any individual components (e.g. unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements.

Other Comments:

We would recommend removing section 1.f from the background section, as the validity of this portion of the liquidation order is in question. Specifically, it is not clear whether this portion of the liquidation order violates the legal status of the trusts. As a result, we do not believe the provision should be the basis for any change in or interpretation of the accounting guidance on reinsurance recoverables.

We are supportive of the Working Group's efforts to provide clear guidance on reinsurer liquidations, and we appreciate the time and engagement by both NAIC staff and regulators, particularly given the time-sensitive nature of this issue in the context of year-end reporting. If you have any questions regarding this letter, please do not hesitate to contact us.

Lincoln Financial Group:

Lincoln Financial Group ("Lincoln") appreciates the opportunity to submit comments on the proposed INT 23-04T: Life Reinsurance Liquidation Questions (the "INT"), which was exposed for comment on October 25, 2023 with comments due on November 15, 2023. We would like to express our gratitude to the NAIC staff and regulators for their prompt attention to this issue and consideration of our comments.

The American Council of Life Insurers, of which we are a member, has submitted comments on the INT, that we agree with and support. We'd like to take the opportunity to provide additional commentary with respect to Issue 4 on admissibility – specifically as relates to amounts held in trust and claims receivables.

The INT as currently drafted states that “Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life insurer in liquidation”. However, we believe that reinsurance recoverables that represent assets held in trust and claims receivable have a significant degree of certainty associated with them and, therefore, should be admissible.

Amounts held in trust are representative of assets held as collateral with respect to coinsured reserves. In accordance with the NAIC Credit for Reinsurance Model Law, the trust agreements provide that “if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation or liquidation, and “if the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the U.S. ceding insurers of the grantor of the trust, the assets or any part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.” Although the reinsurance has been terminated and reserve credit may no longer be taken, the ceding companies are the beneficiaries of the trusts in this case; therefore, the assets will be distributed to them. As such, we believe the assets held in trust are recoverable and therefore a receivable representing the market value of the assets should be an admitted asset.

Claims receivables represent paid claims incurred before the reinsurance contract cancellation due from the reinsurer to the ceding companies under the reinsurance treaties. These claims are still owed to the ceding companies and will be paid out through the liquidation process once policies and procedures for the Proof of Claims process are established. The INT Issue 3, as currently drafted, validates that SSAP 61R is the guidance applicable to the measurement of reinsurance recoverables. It suggests that claims receivables should be reported on asset page line 16.1 – Amounts Recoverable from Reinsurers, which we agree with. However, we do not object to the possibility that this could be reported as an Aggregate write- in. In accordance with SSAP 61R, reinsurance recoverable amounts on paid or unpaid claims should be analyzed for collectability. We don’t believe any changes to this established guidance are necessary. The collectability analysis, which takes all known facts and circumstances into account, results in appropriate impairment charges, and provides the best estimate of recoverable amounts at a given point in time.

With respect to Lincoln’s own facts and circumstances and based on the information provided to date from the Receivership and Court in the ongoing U.S.-based reinsurer liquidation (liquidation order effective September 30, 2023), we anticipate that a percentage of the claims receivable amount will be paid out through the liquidation. As such, an impairment charge for the uncollectible amount has been recorded. The impairment analysis is updated on a quarterly basis and additional charges will be taken if necessary as we receive additional information related to collectability. Given the timely monitoring of the receivable amounts for impairment based on information provided directly from the Receivership and Court, non-admission of the balances in their entirety would be unnecessarily punitive. Therefore, such amounts should be admissible up to the amount deemed to be collectible in accordance with the established guidance in SSAP 61R. Insurers could be required to disclose their calculation and supporting documentation with their domestic regulator.

In summary, we recommend that the guidance should explicitly specify that secured receivables (e.g., by funds held in trust) are admitted to the extent such trust funds are sufficient. For amounts not otherwise secured, it is appropriate to account for the wide diversity in facts and circumstances and permit prudent regulation by companies’ states of domicile. Therefore, we recommend that claims and other receivables be subject to the impairment analysis prescribed by SSAP 61R and admitted to the extent deemed collectible based on known facts and circumstances of the liquidation.

Nationwide:

Nationwide appreciates the opportunity to comment on the exposure draft of Interpretation 23-04T – Life Reinsurance Liquidation Questions. We offer the following comments with respect to the request for comments on the admissibility of reinsurance recoverables highlighted in paragraph 18 of the exposure draft:

Issue 4 – Admissibility of Reinsurance Recoverables

18. *Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life reinsurer in liquidation.*

Nationwide supports the admissibility of receivables related to the liquidation of reinsurers held at the amount expected to be recovered from the reinsurer's estate (i.e., less estimates for unrecoverable amounts), concurring with rationale outlined in the ACLI Interested Parties comment letter on INT 230-04T, dated November 15, 2023. Additionally, we believe the facts and circumstances regarding trust assets supporting reinsurance recoverables require separate consideration for admissibility. Supplementing the rationale outlined in the ACLI letter, Nationwide believes that, at a minimum, the value of trust assets supporting reinsurance recoverables should be considered an admissible reinsurance recoverable due to the following:

- The trust agreements are specifically established with the stated sole purpose of securing the trust grantor's (reinsurer's) obligations to the trust beneficiary (ceding insurer/reporting entity), i.e., securing the reporting entity's recoverable interest.
- If the trust agreement themselves, which are still in effect, provide a unilateral right to the beneficiary to terminate the trust agreement and receive the assets, any reinsurance recoverable held by the ceding entity should be admitted at the fair value of the trust assets held, up to the amount of the recoverable from the reinsurer. It is unlikely that this amount will not be recovered by the reporting entity.
- Penalizing ceding insurers by non-admitting trust assets initially used to back ceded reserves with a reinsurer (prior to termination) under receivership would call into question the utilization of a trust under Appendix A-785, *Credit for Reinsurance*. The requirements for trust agreements to qualify for reinsurance credit outlined under Appendix A-785 are extensive with regards to the acceptable categories of assets that can be held in a trust and legal rights of those assets. The beneficiaries of the trusts in this case are the ceding companies; therefore, the assets will be distributed to them, in accordance with A-785. We believe the guidance should explicitly specify that receivables secured by funds held in trust are admitted to the extent such trust funds meet accounting requirements as established in securing reinsurance obligations under A-785.
- Information used to estimate the amount recoverable includes: 1) an evaluation of the sufficiency of trust assets held which is verifiable and reliably measured, and 2) to the extent the fair value of trust assets is insufficient to cover the expected recoverable, an evaluation of information independently provided by the Receiver or Trustee to determine a recoverable amount.

In support of admitting reinsurance recoverables backed by trust assets, we concur with the suggested modifications to paragraph 18 included within the ACLI comment letter on INT 23-04T, dated November 15, 2023.

Recommendation:

NAIC Staff recommends that the Working Group provide input on issue 3 reporting; issue 4 admissibility and issue 5 disclosure as detailed below. The Working Group can then elect to adopt or direct exposure of a revised INT 23-04 for a shortened comment period based on the Working Group input.

ACLI wrote the primary comment letter. Lincoln Financial Group and Nationwide also wrote comments. Both Nationwide and Lincoln Financial Group noted support for the ACLI letter while also providing extra emphasis comments regarding issue 4 on admissibility.

NAIC Staff Recommended Revisions and Requests for Input:

Background, paragraph 1 f. – NAIC staff recommends deleting the last sentence.

- ACLI recommend deleting this paragraph.
- NAIC staff recommend deleting the last sentence as **it is not strictly necessary.**

- f. Some ceding insurers established trusts to hold assets backing the reserves under the reinsurance agreements. ~~The liquidation order prevents enforcing default clauses within the trust agreements, delaying liquidation of assets held within any trusts.~~

Background, Scope

INT 23-04 is written generically to apply to reinsurance amounts from or to U.S. life reinsurer in liquidation. This is because the Working Group generally tries to avoid developing company specific guidance. However, if desired the INT could be made to be specific to the liquidation of Scottish Re if the Working Group prefers not to create a broad rule. **NAIC Staff has drafted the below wording if the Working Group wants to make the INT company specific.**

- Update the title to INT 23-04T: Scottish Re Life Reinsurance Liquidation Questions
- Update the scope paragraphs:
 - 1.a. The recent liquidation order was for a Scottish Re, a U.S. life reinsurance entity, which was in regulatory supervision for several years.
 2. This interpretation is focused on the accounting and reporting of reinsurance recoverables from Scottish Re, a U.S.-based life reinsurer in liquidation. The Statutory Accounting Principles (E) Working Group tentative consensuses to the noted issues are included below.
- Update the disclosure paragraph 22 to make it specific to Scottish Re as shown shaded below:

22. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of Scottish Re reinsurance counterparties in liquidation, including but not limited to, reinsurance payable liabilities, reinsurance recoverables by paid claims and other amounts, information regarding the status of any collateral and its fair value. Where applicable, reporting entities should disclose any individual components (e.g., unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements. The disclosure shall include measurement, impairment and collectability of any reinsurance recoverables including timing of expected payments and nonadmitted amounts.

Issue 1 – Commutation or Recapture - No Recommended Changes from NAIC Staff:

- ACLI agreed with the commutation guidance. ACLI agrees that it is appropriate to apply SSAP No. 61R, paragraph 58 and to write off recaptured balances.

Issue 2 – Impairment - No Recommended Changes from NAIC Staff:

- ACLI had no comments.

Issue 3 – Reporting / Netting - NAIC Staff Requests Working Group Direction:

ACLI recommended not reporting on Schedule S reinsurance but instead reporting as one net receivable from the insolvent reinsurer's estate as an aggregate write-in for other than invested assets in line 25-01. The ACLI recommendation would net reinsurance recoverables on paid claims pre-cancellation, other reinsurance recoverables and reinsurance payable liabilities.

- a. Netting of Reinsurance Assets and Liabilities – Because the reinsurance recoverables are more likely to be reduced by the reinsurer's liquidation estate, and reinsurance payables to the estate are more likely to be 100%, NAIC staff does not recommend netting any reinsurance payables to the reinsurer's liquidation estate with reinsurance recoverables from the liquidation estate. **NAIC staff recommends that the exposed reporting of the reinsurance payable on liability line 9.3 - Other Amounts Payable on Reinsurance be maintained with separate reporting of the reinsurance recoverable(s) from the liquidation estate and separate reporting of the reinsurance payables to the liquidation estate.**

b. Netting of Reinsurance Recoverable Assets - Because the reinsurance recoverable assets have different characteristics, **NAIC staff does not recommend netting reinsurance recoverables on paid claims with other reinsurance recoverables, however Working Group input is requested.**

- **Reporting Reinsurance Recoverable on Paid Claims** - Ceding entities should have an easily identifiable amount receivable for paid claims incurred before the reinsurance contract cancellation. Paragraph 13 of the INT directs that this amount should be reported on the asset page line 16.1 - Amounts Recoverable from Reinsurers. On Schedule S, part 2, this amount is shown as a reinsurance recoverable on paid claims. **NAIC staff's initial recommendation is not to change this proposed reporting.**
- **Reporting Other Reinsurance Recoverables** – The exposed INT 23-04, paragraph 14 reporting is in on the asset page line 16.3 - Other Amounts Receivable Under Reinsurance Contracts. NAIC staff notes that on Schedule S, Part 2 if the reinsurer is authorized, the reporting would default to unpaid claims which is more akin to a reserve credit. How this amount will be determined in the current liquidation has also not been shared with reinsurance ceding entities at this time. **NAIC staff requests input from the Working Group regarding reporting of other amounts receivable from the reinsurer's liquidation estate.**
 - A possible allocation is to report the reinsurance recoverable from claims and IBNR unpaid from the period prior to contract cancellation on asset page line 16.3 - Other Amounts Receivable Under Reinsurance.
- **Other Reporting Lines** - The ACLI has proposed reporting in the aggregate write in for other than invested assets line 25. NAIC staff notes that such reporting is not consistent with the normal reporting of reinsurance recoverables, and it would make tracking of industry exposure difficult for regulators to do an automated query. **NAIC staff requests input from the Working Group on this matter.**
 - If the Working Group is considering reporting an amount on the aggregate write-ins for other than invested assets (line 25), NAIC staff suggest only reporting the remaining reinsurance recoverables which represent an overall expected commutation settlement. The amount considered for reporting in aggregate write-ins for other than invested assets (line 25) would be the remainder of the expected settlement from the reinsurer's estate (after evaluation for impairment). This would have the effect of removing any reinsurance reserve credit for reinsurance recoverables post contract cancellation from Schedule S. Staff notes that such reporting would make industry-wide tracking more difficult.
- Depending on the reporting method chosen, INT 23-04, **paragraph 16 may also need consistency revisions.** ACLI notes that as “currently drafted, the guidance in paragraph 16 of the INT could be interpreted to require the continuation of certain reinsurance balances in conflict with paragraph 58 of SSAP No. 61R.”

NAIC Staff proposed language:

14. Other amounts receivable for claims unpaid related to the period before the reinsurance contract cancellation which are recoverable from the reinsurer's estate shall be reported on the asset page line 16.3 - Other Amounts Receivable Under Reinsurance Contracts.

16. After ~~removing the reinsurance credit and~~ impairing the recoverables, ~~the any other~~ amount expected to be recovered from the reinsurer's estate ~~and any payables~~ shall ~~continue to~~ be reported ~~in annual statement Schedule S — Reinsurance~~ on line 25 aggregate write-ins for other than

~~invested assets. This is consistent with the concept that these are reinsurance recoverables and allows for industry-wide analysis of aggregate exposure.~~

Issue 4 – Admissibility of Reinsurance Recoverables- NAIC Staff Requests Working Group Direction:

Working Group direction is requested on the admissibility of the recoverables from the reinsurer's estate. Comments were in two areas:

- a. Whether to admit reinsurance recoverables, if there is sufficient collateral in an A-785 compliant trust.

NAIC staff preliminary recommendation is to admit reinsurance recoverable to the extent that there are secured by adequate collateral funds in a trust which is compliant with the *Credit for Reinsurance Model Law* (#785). The NAIC staff recommended language would be more restrictive than what was suggested for paragraph 18 by ACLI and also notes that the amounts should not be in dispute. This is choice 1 language below.

Some members of the Working Group have indicated that they are supportive of admitting amounts in line 16.1 for paid claims incurred prior to the reinsurance contract cancellation after impairment review even if there is not collateral, if the Interpretation is made company specific. This is because Scottish Re has been in run off for several years and the amounts have been monitored. NAIC staff has drafted choice 2 language below.

ACLI proposed language:

18. To the extent amounts recoverable are secured by assets in trust or otherwise legally restricted as to use for the payment of the reporting entity, such recoverable amounts may be admitted to the extent the security is sufficient.

NAIC Staff proposed language alternatives:

Choice 1 - only admit amounts secured by an A-785 compliant trust:

18. To the extent reinsurance amounts recoverable are secured by assets in an Appendix A-785 – Credit for Reinsurance compliant trust, such recoverable amounts may be admitted to the extent the that the amounts are not in dispute and that the collateral in an Appendix A-785 compliant trust is sufficient.

Choice 2 - Admit paid claim reinsurance recoverables incurred prior to contract cancellation on line 16.1 and amounts secured by an Appendix A-785 compliant trust. (All amounts not in dispute).

18. Reinsurance recoverables from Scottish Re in liquidation are admitted as follows:

- a. The reinsurance recoverable amount from Scottish Re from paid claims incurred prior to the reinsurance contract cancellation which are reported on the asset page line 16.1 - Amounts Recoverable from Reinsurers which are not in dispute are admitted after impairment review.
- b. To the extent reinsurance amounts recoverable are secured by assets in an Appendix A-785 - Credit for Reinsurance compliant trust, such recoverable amounts may be admitted to the extent the that the amounts are not in dispute and that the collateral in an Appendix A-785 compliant trust is sufficient.

- b. Whether to admit other uncollateralized reinsurance recoverables if it has been written down to the amount expected to be received. Industry requests admissibility relying on SSAP No. 5 review.

NAIC staff continues to recommend nonadmission of other amounts recoverable from the estate of the reinsurer in liquidation to the extent there are not sufficient funds in an A-785 compliant trust. This recommendation would not incorporate the ACLI proposed paragraph 19.

ACLI proposed language:

19. Other recoverable amounts admitted by a reporting entity should be based on appropriate supporting documentation and reasonable assumptions in consideration of a reporting entity's individual facts and circumstances, which are subject to review by that reporting entity's domiciliary regulator.

NAIC staff proposed language:

19. Other reinsurance recoverables, which are not identified as admitted assets in paragraph 18 are nonadmitted until received. This includes amounts either in dispute or not secured by collateral in a trust that is compliant with Appendix A-785.

Issue 5 – Disclosures - NAIC Staff Requests Working Group Direction:

The ACLI recommended expanding the disclosure as illustrated below. **NAIC staff recommends that the Working Group make a modified expanded disclosure.**

ACLI proposed disclosure:

22. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of reinsurance counterparties in liquidation, including but not limited to, information regarding the status of any collateral and the measurement and collectability of any reinsurance recoverables. Where applicable, reporting entities should disclose any individual components (e.g., unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements.

NAIC staff proposed disclosure:

22. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of Scottish Re reinsurance counterparties in liquidation, including but not limited to, reinsurance payable liabilities, reinsurance recoverables by paid claims and other amounts, information regarding the status of any collateral and its fair value. Where applicable, reporting entities should disclose any individual components (e.g., unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements. The disclosure shall include measurement, impairment and collectability of any reinsurance recoverables including timing of expected payments and nonadmitted amounts.

Paragraph 23 is a summary paragraph of the issues, and it will require conforming updates.

The comment letters are included in Attachment 2.3 (10 pages).

Comment deadline if both items are exposed:

- Ref #2023-23: Residuals in Preferred Stock and Common Stock – February 9, 2024
- INT 23-04: Life Reinsurance Liquidation Questions – January 12, 2024

**Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A**

Issue: Residuals in Preferred Stock and Common Stock Structures

Check (applicable entity):

	P/C	Life	Health
Modification of Existing SSAP	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
New Issue or SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Description of Issue: This agenda item has been developed to specifically identify in *SSAP No. 30—Unaffiliated Common Stock* and *SSAP No. 32—Preferred Stock* that structures that are in substance residual interests shall be accounted and reported as residual interests.

Common stock and preferred stock structures reflect ownership equity interests. Such structures would not ordinarily be construed to be in-substance residual interests or residual security tranches (residuals). However, information has been shared that investments are being created to repackage potential “additional interest” or “performance coupons” separately from debt instruments and are referring to these structures as preferred stock issuances.

From information received, an example of such a design has occurred to eliminate an investment structure from being classified as a principal-protected note, which will not qualify as a bond under the adopted bond definition effective January 1, 2025, and eliminate the assessment of the investment under the SVO’s principal-protected note methodology. With the repackaged structure, the debt security and ‘additional interest’ (equity) components will be separately issued. The debt structure will likely qualify as a bond and will likely have a higher credit designation that is permitted to be obtained from a credit-rating provider. (If reporting as a principal-protected note, the investment would be required to be filed with the SVO for a credit designation under the PPN methodology.)

Although the restructure of the investment design can occur, and the debt security component can be separately assessed to qualify as a bond, it is important to highlight that the equity component, which is based on the “additional interest / performance” of the dedicated pool of assets within the structure, is in substance a residual interest and is not in substance a common or preferred stock investment.

This agenda item proposes minor edits to *SSAP No. 30R* and *SSAP No. 32R* to explicitly state that structures that are in-substance residual interests shall be reported as residuals. Similar to the principal concepts detailed within the adopted bond definition, naming convention shall not direct investment classification, and the substance of the investment shall determine appropriate classification for statutory reporting. The revisions to the Annual Statement Instructions adopted in agenda item 2023-12 already identify that residual interests or residual security tranches that are not captured in *SSAP No. 43R—Loan-Backed and Structured Securities* or *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies* but that reflect residuals shall be captured in the dedicated Schedule BA reporting lines for residual interests.

Existing Authoritative Literature:

- *SSAP No. 43R—Loan-Backed and Structured Securities*

Residual Tranches or Interests

27. A residual interest or a residual security tranche (collectively referred to as residuals) exists in investment structures that issue one or more classes of debt securities created for the primary purpose of

raising debt capital backed by collateral assets. The primary source of debt repayment is derived through rights to the cash flows of a discrete pool of collateral assets. These designs could be backed directly or indirectly through a feeder fund. The collateral assets generate cash flows that provide interest and principal payments to debt holders through a contractually prescribed distribution methodology (e.g., waterfall dictating the order and application of all collateral cash flows). Once those contractual requirements are met, the remaining cash flows generated by (or with the sale of) the collateral assets are provided to the holder of the residual security/residual interest holder. When an asset within the discrete pool of assets does not perform as expected, it impacts the extent to which cash flows will be generated and distributed. The residual holders in the structure continue to receive payments from the collateral so long as there are cash flows in excess of the debt obligations. The payments to the residual holder may vary significantly, both in timing and amount, based on the underlying collateral performance.

28. The structural design of a residual interest or residual security tranche can vary, but the overall concept is that they receive the remaining cash flows after all debt holders receive contractual interest and principal payments. Determining whether an investment in a structure reflects a residual interest or tranche shall be based on the substance of the investment held rather than its legal form. Common characteristics of residual interests/residual security tranches include the items noted below, but the presence or absence of any of these factors should not be definitive in determination. Classification as a residual should be based on the substance of the investment and how cash flows to the holder are determined.

- a. Residuals often do not have contractual principal or interest.
- b. Residuals may be structured with terms that appear to be stated principal or interest but that lack substance, and result in receiving the residual cash flows of the underlying collateral. The terms allow for significant variation in the timing and amount of cash flows without triggering a default of the structure.
- c. Residuals do not have credit ratings or NAIC assigned designations. Rather, they are first loss positions that provide subordination to support the credit quality of the typically rated debt tranches.
- d. Residuals may provide payment throughout the investment duration (and not just at maturity), but the payments received continue to reflect the residual amount permitted after debt tranche holders receive contractual principal and interest payments.
- e. Frequently, there are contractual triggers that divert cash flows from the residual holders to the debt tranches if the structure becomes stressed.

- ***SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies***

Residual Interests and Reporting

18. Investments in scope of this statement are reported on *Schedule BA: Other Long-Term Assets*. Schedule BA includes dedicated reporting categories for joint ventures, partnerships, and limited liability company investments as well as for residual interests, both with reporting lines in accordance with underlying asset characteristics. Investments within scope of this standard shall be divided within these reporting categories, with investments that reflect residual interests, or that predominantly hold residual interests captured in the residual interest reporting category.

19. A residual interest or a residual security tranche (collectively referred to as residuals) exists in investment structures that issue one or more classes of debt securities created for the primary purpose of raising debt capital backed by collateral assets. The primary source of debt repayment is derived through rights to the cash flows of a discrete pool of collateral assets. These designs could be backed directly or indirectly through a feeder fund. The collateral assets generate cash flows that provide interest and principal payments to debt holders through a contractually prescribed distribution methodology (e.g., waterfall dictating the order and application of all collateral cash flows). Once those contractual requirements are met, the remaining cash flows generated by (or with the sale of) the collateral assets are provided to the holder of the residual security/residual interest holder. When an asset within the discrete pool of assets does not perform as expected, it impacts the extent to which cash flows will be generated and distributed.

The residual holders in the structure continue to receive payments from the collateral so long as there are cash flows in excess of the debt obligations. The payments to the residual holder may vary significantly, both in timing and amount, based on the underlying collateral performance.

20. The structural design of a residual interest or residual security tranche can vary, but the overall concept is that they receive the remaining cash flows after all debt holders receive contractual interest and principal payments. Determining whether an investment in a structure reflects a residual interest or tranche shall be based on the substance of the investment held rather than its legal form. Common characteristics of residual interests/residual security tranches include the items noted below, but the presence or absence of any of these factors should not be definitive in determination. Classification as a residual should be based on the substance of the investment and how cash flows to the holder are determined.

- a. Residuals often do not have contractual principal or interest.
- b. Residuals may be structured with terms that appear to be stated principal or interest but that lack substance and result in receiving the residual cash flows of the underlying collateral. The terms allow for significant variation in the timing and amount of cash flows without triggering a default of the structure.
- c. Residuals do not have credit ratings or NAIC assigned designations. Rather, they are first loss positions that provide subordination to support the credit quality of the typically rated debt tranches.
- d. Residuals may provide payment throughout the investment duration (and not just at maturity), but the payments received continue to reflect the residual amount permitted after debt tranche holders receive contractual principal and interest payments.
- e. Frequently, there are contractual triggers that divert cash flows from the residual holders to the debt tranches if the structure becomes stressed.

Schedule BA Annual Statement Instructions:

Residual Tranches or Interests with Underlying Assets Having Characteristics of:

Investment in Residual Tranches or Interests should be assigned to the subcategory with the highest underlying asset concentration. There shouldn't be any bifurcation of the underlying assets among the subcategories.

Include: Residual tranches or interests from securitization tranches and beneficial interests as well as other structures captured in scope of *SSAP No. 43R – Loan-Backed and Structured Securities*.

Investments in joint ventures, partnerships and limited liability companies captured in scope of *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies* that represent residual interests, or that predominantly hold residual interests.

This category shall also include residual interests or residual security tranches within investment structures that are not captured in scope of *SSAP No. 43R* or *SSAP No. 48* but that reflect, in substance, residual interests or residual security tranches.

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 2023-12: Residuals was adopted on September 21, 2023, to clarify the description of residual interests / residual security tranches (residuals) and to clarify that all residuals shall be reported on the dedicated Schedule BA reporting lines.

- Bond Project – *SSAP No. 21R—Other Admitted Assets*: The revisions being considered to SSAP No. 21R under the bond project includes guidance for the measurement method (accounting) of residual interests. These revisions are still being discussed.

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

Convergence with International Financial Reporting Standards (IFRS): N/A

Recommendation:

NAIC staff recommend that the Working Group include this item on their maintenance agenda as a SAP Clarification and expose this agenda item with proposed revisions to *SSAP No. 30R—Unaffiliated Common Stock* and *SSAP No. 32R—Preferred Stock* to explicitly state that investments that are in-substance residual interests shall be reported on the dedicated reporting lines on *Schedule BA: Other Long-Term Assets*.

The Working Group is recommended to expose this agenda item via an interim evote for a shortened comment period to allow for adoption consideration during the 2023 Fall National Meeting to ensure appropriate reporting for year-end 2023.

Proposed Revisions to *SSAP No. 30R—Unaffiliated Common Stock*

1. This statement establishes statutory accounting principles for common stocks.
2. Investments in common stock of subsidiaries, controlled or affiliated entities (investments in affiliates) are not within the scope of this statement. They are addressed in *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*. Investments in the form of common stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on *Schedule BA: Other Long-Term Assets* in the dedicated reporting lines for residuals.

Proposed Revisions to *SSAP No. 32R—Preferred Stock*

1. This statement establishes statutory accounting principles for preferred stock.
2. Investments in preferred stock of entities captured in *SSAP No. 97—Investments in Subsidiaries, Controlled or Affiliated Entities* or *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*¹ as well as preferred stock interests of certified capital companies per *INT 06-02: Accounting and Reporting for Investments in a Certified Capital Company (CAPCO)* are included within the scope of this statement. The requirement to file investments in preferred stock of certain subsidiaries, controlled or affiliated entities with the NAIC pursuant to SSAP No. 97 does not affect the application of the accounting, valuation or admissibility under this statement. In addition to the provisions of this statement, preferred stock investments in SCAs are also subject to the provisions of *SSAP No. 25—Affiliates and Other Related Parties* and *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities*.
- 2-3. Investments in the form of preferred stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on *Schedule BA: Other Long-Term Assets* in the dedicated reporting lines for residuals.

Staff Review Completed by: Julie Gann - NAIC Staff, October 2023

¹ Certain legal entities captured in SSAP No. 48, such as LLCs that are corporate-like, do not issue preferred stock in legal form, but instead issue identical instruments labeled preferred units, interests, or shares. These instruments shall be captured in this statement provided they meet the structural characteristics as defined in paragraph 3. Additionally, these instruments shall not be in-substance common stock in which the holder has risk and reward characteristics that are substantially similar to common stock.

Status:

On October 31, 2023, the Statutory Accounting Principles (E) Working Group, through an e-vote, moved this agenda item to the active listing, categorized as a SAP clarification, and exposed revisions to SSAP Nos. 30 and 32 to specifically note that structures which are in substance residual interests shall be reported as residuals.

<https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/NationalMeetings/A.NationalMeetingMaterials/2023/12-1-23FallNationalMeeting/Hearing2/23-23-ResidualinPSCS.docx>

Interpretation of the Statutory Accounting Principles (E) Working Group

INT 23-04T: Scottish Re Life Reinsurance Liquidation Questions

Drafting Note: Tracked revisions are for Dec. 1, 2023 Working Group discussion.

INT 23-04T Dates Discussed

October 23, 2023; October 24, 2023; December 1, 2023

INT 23-04T References

Current:

SSAP No. 61R—Life, Deposit-Type and Accident and Health Reinsurance

INT 23-04T Issue

Background:

1. Liquidations of U.S. licensed reinsurers are uncommon. Due to a 2023 liquidation order of a U.S.-based life reinsurer, life industry cedents have requested an interpretation to address the accounting and reporting for reinsurance receivables from the reinsurer's estate. This interpretation is intended to be applied generically; however, the following circumstances are relevant to the accounting issues identified.

- a. The recent liquidation order was for Scottish Re, a U.S. life reinsurance entity, which was in regulatory supervision for several years.
- b. The life reinsurer was not assuming new business but was receiving ongoing premium on yearly renewable contracts.
- c. The 2023 liquidation order cancelled reinsurance contracts on a cut-off basis, effective September 30, 2023.
- d. Settlement from the reinsurer's estate is expected to exceed one year.
- e. Settlement from the reinsurer's estate to the ceding entities is expected to be less than 100%. That is, cedents are expected to receive a portion of what they are owed.
- f. Some ceding insurers established trusts to hold assets backing the reserves under the reinsurance agreements. ~~The liquidation order prevents enforcing default clauses within the trust agreements, delaying liquidation of assets held within any trusts.~~

Interpretation Discussion

2. This interpretation is focused on the accounting and reporting of reinsurance recoverables from Scottish Re, a U.S.-based life reinsurer in liquidation. The Statutory Accounting Principles (E) Working Group tentative consensuses to the noted issues are included below.

Issue 1 – Commutation or Recapture of a Life Reinsurance Contract

3. If a liquidation order cancels a life reinsurance contract on a cut-off basis, should the life reinsurance commutation guidance in *Statement of Statutory Accounting Principles (SSAP) No. 61R—Life*,

INT 23-04T: Life Reinsurance Liquidation Questions

Deposit-Type and Accident and Health Reinsurance be used as the primary accounting guidance for the commutation?

4. Yes. SSAP No. 61R, paragraph 58, provides the primary guidance for a life reinsurance commutation. The guidance provides that:

Recaptures and Commutations

58. A recapture or a commutation of a reinsurance agreement is a transaction which results in the complete and final settlement and discharge of all present and future obligations between the parties arising out of the agreement or a portion of the agreement. Commuted and recaptured balances shall be accounted for by writing them off through the accounts, exhibits and schedules in which they were originally recorded. The assumed reserves and reserve credits taken are eliminated by the reinsurer and ceding entity, respectively. The reinsurer and ceding entity must also make any required IMR liability adjustment changes. Any net gain or loss is reported in the summary of operations.

Issue 2 – Impairment of Reinsurance Recoverables

5. The reinsurer that was previously in regulatory supervision and is now in liquidation was known to have financial difficulties and many ceding entities have either established valuation allowances and/or written off reinsurance recoverables as impairment losses. Questions have been received in response to the diversity in practice on whether the ceding entities were reporting impairment losses or were reporting a valuation allowance on all categories of their expected reinsurance recoverables from the reinsurer which is now in liquidation.

6. Do reporting entities have the choice of setting up a valuation allowance or applying the impairment guidance in SSAP No. 61R to the reinsurance recoverables from the life reinsurer in liquidation?

7. No. Reporting entities do not have a choice of a valuation allowance or applying impairment analysis. SSAP No. 61R, paragraph 42, requires impairment analysis of uncollectible reinsurance amounts in accordance with *SSAP No. 5R—Liabilities, Contingencies and Impairments of Asset*. The guidance requires that impaired amounts shall be written off through a charge to the Statement of Operations utilizing the same accounts which established the reinsurance recoverables. SSAP No. 5R and SSAP No. 61R do not permit a valuation allowance.

8. The liquidation order of a reinsurer should prompt an impairment analysis of all amounts recoverable from the reinsurer with a write-off of amounts not expected to be recovered.

9. The impairment analysis shall be updated at every reporting date.

Issue 3 – Reporting of Reinsurance Recoverables

10. The liquidation order results in a commutation and recapture of business for the ceding entity. A liquidation will determine the reinsurer's estate assets, then determine payments based on liquidation priority. This will result in a delay in settlement from the estate of the reinsurer. As previously detailed, the amounts paid by the estate shall be impaired to the amount expected to be received by the ceding entities.

11. Where shall the ceding entity report the remaining receivables for the reinsurer's estate?

12. In accordance with the recapture and commutation guidance in SSAP No. 61R, paragraph 58 (quoted above), the ceding entity shall remove balances through the schedules and exhibits originally

INT 23-04T: Life Reinsurance Liquidation Questions

reported. No reserve credit or contra-liabilities shall be reported. The reinsurance reserve credits shall be removed. Gains or losses are reported in the summary of operations.

13. Based on preliminary information received, it is expected that there will be an amount receivable for paid claims incurred before the reinsurance contract cancellation. This amount shall be reported on the asset page line 16.1 - Amounts Recoverable from Reinsurers.

14. Other amounts receivable for claims unpaid related to the period before the reinsurance contract cancellation which are recoverable from the reinsurer's estate shall be reported on the asset page line 16.3 - Other Amounts Receivable Under Reinsurance Contracts.

15. If the ceding entity owes amounts to the reinsurer's estate, the amounts shall be reported as a liability on line 9.3 - Other Amounts Payable on Reinsurance.

16. After ~~removing the reinsurance credit and~~ impairing the recoverables, ~~the any other~~ amount expected to be recovered from the reinsurer's estate ~~and any payables shall continue to be reported in annual statement Schedule S - Reinsurance on line 25 aggregate write-ins for other than invested assets. This is consistent with the concept that these are reinsurance recoverables and allows for industry wide analysis of aggregate exposure.~~

Issue 4 – Admissibility of Reinsurance Recoverables

17. As noted above, quarterly impairment analysis of collectability is required. After evaluating for impairment, if there are remaining receivables from the reinsurer's estate, do those assets qualify as admitted reinsurance recoverable assets?

Drafting Note – The Working Group will discuss which version of paragraph 18 to use.

18. To the extent reinsurance amounts recoverable are secured by assets in an Appendix A-785 – Credit for Reinsurance compliant trust, such recoverable amounts may be admitted to the extent the that the amounts are not in dispute and that the collateral in an Appendix A-785 compliant trust is sufficient.

~~18. Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life reinsurer in liquidation.~~

Or

18. Reinsurance recoverables from Scottish Re in liquidation are admitted as follows:

a. The reinsurance recoverable amount from Scottish Re from paid claims incurred prior to the reinsurance contract cancellation which are reported on the asset page line 16.1 - Amounts Recoverable from Reinsurers which are not in dispute are admitted after impairment review.

b. To the extent reinsurance amounts recoverable are secured by assets in an Appendix A-785 - Credit for Reinsurance compliant trust, such recoverable amounts may be admitted to the extent the that the amounts are not in dispute and that the collateral in an Appendix A-785 compliant trust is sufficient.

19. Other reinsurance recoverables, which are not identified as admitted assets in paragraph 18 are nonadmitted until received. This includes amounts either in dispute or not secured by collateral in a trust that is compliant with Appendix A-785.

Issue 5 – Disclosures

INT 23-04T: Life Reinsurance Liquidation Questions

20. Do the relevant disclosures in SSAP No. 61R and other relevant SSAPs apply to a commuted life reinsurance contract which has not been fully settled due to a liquidation?

21. Yes. The relevant disclosures in SSAP No. 61R and other relevant SSAPs continue to apply to a life reinsurance contract which is commuted and recaptured due to a liquidation. These disclosures include but are not limited to the disclosures regarding commutation, uncollectible reinsurance and anything else that is required.

22. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of Scottish Re reinsurance counterparties in liquidation, including but not limited to, reinsurance payable liabilities, reinsurance recoverables by paid claims and other amounts, information regarding the status of any collateral and its fair value. Where applicable, reporting entities should disclose any individual components (e.g., unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements. The disclosure shall include measurement, impairment and collectability of any reinsurance recoverables including timing of expected payments and nonadmitted amounts.

INT 23-04 Summary

Drafting note – this summary paragraph will be conformed to the Working Group discussion.

22-23. Although readers should refer to the detailed guidance above, a summary of the key provisions is as follows:

- a. Issue 1 – Commutation or Recapture of a Life Reinsurance Contract: Follow SSAP No. 61R, paragraph 58, as it provides primary recapture and commutation guidance.
- b. Issue 2 – Impairment of Reinsurance Recoverables: SSAP No. 61R paragraph 42, requires impairment of uncollectible reinsurance in accordance with SSAP No. 5R.
- c. Issue 3 – Reporting of Reinsurance Recoverables: Follow the recapture and commutation guidance in SSAP No. 61R, then analyze for impairment. Report reinsurance payable separate from reinsurance recoverables. Amounts related to paid and unpaid claims prior to contract cancellation are reported on asset page line 16.1 - Amounts Recoverable from Reinsurers and asset page line 16.3 - Other Amounts Receivable Under Reinsurance Contracts, respectively. Any remaining reinsurance recoverables from the reinsurance counterparty after impairment assessment shall be on the asset page line 25 Aggregate Write-ins for Other than Invested Assets. Recognize as appropriate any reinsurance payable.
- d. Issue 4 – Admissibility of Reinsurance Recoverables: Admit amounts related to paid claims incurred prior to contract cancellation reported on asset page line 16.1 - Amounts Recoverable from Reinsurers which are not in dispute after impairment review. Admit reinsurance recoverables which are not in dispute, and which are secured by collateral in an A-785 compliant trust. Nonadmit all amounts recoverable from a life reinsurer in liquidation which are either in dispute or which are not secured by collateral in a trust compliant with Appendix A-785.
- e. Issue 5 – Disclosures: Follow existing applicable disclosures and provide additional information sufficient to understand the nature and impact of a reinsurance counterparty in liquidation as described in paragraph 22.

INT 23-04T: Life Reinsurance Liquidation Questions

INT 23-04T Status

~~23:24.~~ The tentative consensuses in this interpretation were exposed on October 24, 2023.

~~24:25.~~ Further discussion is planned.

[https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/maintenance/active form a's/2023/int 23-04t life re liq.docx](https://naiconline.sharepoint.com/teams/frsstatutoryaccounting/maintenance/active%20form%20a's/2023/int%2023-04t%20life%20re%20liq.docx)

**Statutory Accounting Principles (E) Working Group
Fall National Meeting
Comment Letters Received – Hearing #2**

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COMMENTS / DOCUMENT	PAGE REFERENCE
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November 17, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Interested Parties Comments on Item Exposed for Comment with Comments due
November 17

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the following item that was exposed for comment by the Statutory Accounting Working Group (the Working Group).

Ref # 2023-23: Residuals in Preferred Stock and Common Stock Structures

NAIC staff recommend that the Working Group include this item on their maintenance agenda as a SAP Clarification and expose this agenda item with proposed revisions to *SSAP No. 30R—Unaffiliated Common Stock* and *SSAP No. 32R—Preferred Stock* to explicitly state that investments that are in-substance residual interests shall be reported on the dedicated reporting lines on *Schedule BA: Other Long-Term Assets*.

The Working Group voted to expose this agenda item for a shortened comment period to allow for adoption consideration during the 2023 Fall National Meeting to ensure appropriate reporting for year-end 2023.

Interested parties recommend the following edits to clarify the proposed changes:

- Move the new language in paragraph 2 of SSAP No 30R to a new paragraph 3 and renumber the subsequent paragraphs. This would be similar to what is reflected in the changes for SSAP No. 32R.
- Add the proposed language from SSAP No. 30R to the annual statement instructions (ASI) for Schedule D – Part 2 – Section 2 as follows:

- Shares of all mutual funds, regardless of the underlying security, whether specialized or a mixture of bonds, stock, money market instruments or other type of investments, except money market mutual funds that are reported in Schedule E, Part 2 as cash equivalents, are considered to be shares of common stock and should be listed in the appropriate category of Mutual Funds.
 - Only transferable shares (i.e., can be bought and sold) of savings and loan or building and loan associations are to be reported in this schedule.
 - Investments in the form of common stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals and not in this schedule.
- Add the proposed language from SSAP No. 32R to the ASI for Schedule D – Part 2 – Section 1 as follows:
 - Only transferable shares (i.e., can be bought and sold) of savings and loan or building and loan associations are to be reported in this schedule.
 - Investments in the form of preferred stock that are in substance residual interests or a residual security tranche, as defined in SSAP No. 43R or SSAP No. 48, shall be reported on Schedule BA: Other Long-Term Assets in the dedicated reporting lines for residuals and not in this schedule.
 - No additional changes are needed to the ASI for Schedule BA for this item as the ASI were changed implicitly via the Working Group referral memo dated October 30, 2023.

* * * *

Please feel free to contact either one of us if you have any questions or would like to discuss the above recommendations.

Sincerely,

D. Keith Bell

Rose Albrizio

cc: Interested parties
 NAIC staff

**Mike Monahan**

Senior Director, Accounting Policy

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November 15, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: INT 23-04T: Life Reinsurance Liquidation Questions

Dear Mr. Bruggeman:

The American Council of Life Insurers (ACLI) appreciates the opportunity to submit comments on the proposed INT 23-04T: Life Reinsurance Liquidation Questions (the “INT”), which was exposed for comment on October 25, 2023 with comments due on November 15, 2023. We appreciate NAIC staff and regulators’ prompt attention to this matter, which has implications for companies’ year end 2023 reporting.

The INT provides guidance for ceding entities when the life reinsurance counterparty is in liquidation. Specifically, the INT addresses five key accounting and reporting issues with respect to these transactions:

- 1) Commutation or Recapture of a Life Reinsurance Contract
- 2) Impairment of Reinsurance Recoverables
- 3) Reporting of Reinsurance Recoverables
- 4) Admissibility of Reinsurance Recoverables
- 5) Disclosures

Although we understand the proposed guidance is intended to be applicable to reinsurance liquidations in general, our analysis and comments on the INT also consider the specific facts and circumstances of an ongoing life reinsurer liquidation (liquidation order effective September 30, 2023), which we believe provide helpful context and inform our views of the appropriate guidance for liquidation events more generally.

Life insurer liquidations are very rare occurrences, and the current ongoing liquidation is the first for a life reinsurer of which we are aware. Recent industry discussions have highlighted that each counterparty involved in the current liquidation has specific facts and circumstances which may not be consistent with a) other parties to the current liquidation or b) other (re)insurer liquidations that may arise in the future. The contractual obligations of a reinsurer are commercial contracts negotiated between sophisticated counterparties and the rights and obligations of each contract are unique. Some contracts are collateralized by a trust and some contracts contain guarantees or other provisions that provide cedants with varying degrees of rights to estate assets. The uniqueness of the facts and circumstances will lead to varied outcomes of a liquidation across cedants. Additionally, some liquidation proceedings may allow for more transparency than others and may provide more actionable information for measurement and reporting.

Given the rarity of (re)insurer liquidations and potential for diverse facts and circumstances, we believe any guidance should provide for consistency in application while allowing latitude for prudent management and regulator judgment. Our comments on specific issues below reflect this view, particularly with respect to the question of whether receivables from a liquidation estate should be considered admitted assets.

Issue 1 – Commutation or Recapture of a Life Reinsurance Contract

This guidance specifies that if a liquidation order cancels a life reinsurance contract, then SSAP 61R paragraph 58 provides guidance under which recaptured balances should be written off through accounts, exhibits, and schedules in which they were originally recorded. We believe the intent of this guidance, when viewed together with the guidance in Issue 3 below, is to require that reporting entities a) unwind reinsurance balances in the manner prescribed by paragraph 58 and b) establish new balances to which the provisions outline under Issue 3 would apply.

ACLI agrees that it is appropriate to apply SSAP No. 61R paragraph 58 and to write off recaptured balances. However, we have comments regarding presentation which are detailed further under Issue 3 below. We believe our proposed changes would eliminate possible inconsistencies when Issues 1 and 3 are viewed together since, as currently drafted, the guidance in Paragraph 16 of the INT could be interpreted to require the continuation of certain reinsurance balances in conflict with paragraph 58 of SSAP No. 61R.

Issue 2 – Impairment of Reinsurance Recoverables

We have no comments on this issue.

Issue 3 – Reporting of Reinsurance Recoverables

The proposed guidance separates recoverables from the estate that arise from unreimbursed claims from “other amounts receivable.” We believe reporting entities will be capable of separating these amounts for the current ongoing liquidation, but future liquidations may not have the same facts and circumstances or may be measured in different ways. Additionally, we believe it is problematic to require separate reporting of amounts such as unreimbursed claims and other receivables as it may give the incorrect impression that some amounts are more recoverable than others. Although certain amounts such as unreimbursed claims may be more readily estimated, we have no information at this time suggesting that amounts will be given higher priority in the current ongoing liquidation solely based on the nature or origin of the receivables. Finally, we believe it may create confusion or obfuscate relevant information if amounts recoverable under liquidation were combined with amounts recoverable under in-force reinsurance contracts.

As an alternative and to allow for industry-wide analysis of aggregate exposure, our proposal is to report the estimated recoverable amount (net of impairment) as a specific write in on line 25.01, Aggregate write-ins for other than invested assets, and identify line 25.01 as Receivables from Liquidation (or similar). The components of the receivable could then be disclosed and potentially data captured. We believe a net write-in would provide more transparency, as regulators and other users would see a net number due from a liquidation estate after it has been appropriately written down based on each company’s knowledge of expected recoveries. The amounts would also not be combined with and potentially obfuscated by other reinsurance balances.

Paragraph 16 states that the amount expected to be recovered from the reinsurer’s estate and any payables shall continue to be reported in annual statement Schedule S. However, this appears to conflict with the guidance in Issue 1 (which requires that all reinsurance balances be eliminated), and it is not clear where on Schedule S these amounts should be reported. We believe that disclosure requirements would be equally as effective in providing and tracking details of the components of a liquidation receivable.

Issue 4 – Admissibility of Reinsurance Recoverables

Paragraph 18 provides that “Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life reinsurer in liquidation.”

We acknowledge and support state regulators in their exercise of vigilant and prudent oversight as to the financial condition of insurance companies, including the expectation that companies would be conservative in their accounting and provide robust and objective information in support of financial reporting estimates such as those associated with (re)insurer liquidations. However, we believe a blanket requirement to non-admit all balances would be unduly punitive. Such an approach would be inconsistent with the guidance in SSAP No. 61R that is appropriately applied elsewhere in the INT, which provides for the recognition (and admission) of reinsurance recoverables. It would also circumvent the balanced and judicious consideration of relevant facts and circumstances by reporting entities and their domestic regulators, who are best positioned to analyze and opine on the individual facts and circumstances of a given insurer’s exposure in a liquidation (and have done so in the context of the current ongoing liquidation).

While our understanding is that the INT is designed to provide general guidance, it is also important to consider the question of admissibility in the context of the current ongoing liquidation. While there is uncertainty as to the amount and timing of recoveries, the company currently in liquidation has significant assets and reporting entities have sufficient data, informed by the initial assessment drafted by the receiver of the liquidation, to reasonably estimate their recoveries. However, as noted above, the uniqueness of the facts and circumstances will lead to varied outcomes of a liquidation across cedants. Certain companies may have assets held in trust or contractual guarantees (which the liquidation trustee acknowledge have value) that place them in a different economic position than other parties and should be considered in determining appropriate accounting and reporting.

Amounts in trust are one example of a specific constraint that we believe should be considered. The beneficiaries of the trusts in this case are the ceding companies; therefore, the assets will be distributed to them, in accordance with A-785. We believe the guidance should explicitly specify that secured receivables (e.g. by funds held in trust) are admitted to the extent such trust funds are sufficient.

For amounts not otherwise secured, it is appropriate to provide for the wide diversity in facts and circumstances and allow for prudent regulation by companies’ states of domicile. The impairment of recoverables from a life reinsurer in liquidation is not inherently more uncertain than other impairments that may be recognized under SSAP No. 5R, paragraphs 9-12 (to which SSAP No. 61R paragraph 42 refers). We believe SSAP No. 5R provides appropriate latitude for the assessment of impairment and should be consistently applied to amounts recoverable from a life reinsurer in liquidation without additional proscriptions.

Based on the considerations above, we propose the following revisions:

18. To the extent amounts recoverable are secured by assets in trust or otherwise legally restricted as to use for the payment of the reporting entity, such recoverable amounts may be admitted to the extent the security is sufficient.

19. Other recoverable amounts admitted by a reporting entity should be based on appropriate supporting documentation and reasonable assumptions in consideration of a reporting entity’s individual facts and circumstances, which are subject to review by that reporting entity’s domiciliary regulator.

Issue 5 – Disclosures:

As noted above, we believe disclosure is the most effective mechanism for providing transparency and tracking of amounts arising from liquidation proceedings. We propose the following revision to paragraph 21 (as proposed) to provide for detailed disclosure in both the Annual Statement and audited financial statements of reporting entities with exposure to a reinsurer in liquidation.

21. Disclosure in the reinsurance notes to the financial statements shall include additional information necessary to obtain an understanding of the impact of reinsurance counterparties in liquidation, including, but not limited to, information regarding the status of any collateral and the measurement and collectability of any reinsurance recoverables. Where applicable, reporting entities should disclose any individual components (e.g. unreimbursed claims or provisions for future losses) of recoverable amounts that are presented in the aggregate on the financial statements.

Other Comments:

We would recommend removing section 1.f from the background section, as the validity of this portion of the liquidation order is in question. Specifically, it is not clear whether this portion of the liquidation order violates the legal status of the trusts. As a result, we do not believe the provision should be the basis for any change in or interpretation of the accounting guidance on reinsurance recoverables.

We are supportive of the Working Group's efforts to provide clear guidance on reinsurer liquidations, and we appreciate the time and engagement by both NAIC staff and regulators, particularly given the time-sensitive nature of this issue in the context of year-end reporting. If you have any questions regarding this letter, please do not hesitate to contact us.

Sincerely,

Mike Monahan

Senior Director, Accounting Policy

A handwritten signature in black ink, appearing to read "M Monahan", written in a cursive style.

November 15, 2023

Mr. Dale Bruggeman, Chair
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners

Re: INT 23-04T: Life Reinsurance Liquidation Questions

Dear Mr. Bruggeman:

Lincoln Financial Group (“Lincoln”) appreciates the opportunity to submit comments on the proposed INT 23-04T: Life Reinsurance Liquidation Questions (the “INT”), which was exposed for comment on October 25, 2023 with comments due on November 15, 2023. We would like to express our gratitude to the NAIC staff and regulators for their prompt attention to this issue and consideration of our comments.

The American Council of Life Insurers, of which we are a member, has submitted comments on the INT, that we agree with and support. We’d like to take the opportunity to provide additional commentary with respect to Issue 4 on admissibility – specifically as relates to amounts held in trust and claims receivables.

The INT as currently drafted states that “Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life insurer in liquidation”. However, we believe that reinsurance recoverables that represent assets held in trust and claims receivable have a significant degree of certainty associated with them and, therefore, should be admissible.

Amounts held in trust are representative of assets held as collateral with respect to coinsured reserves. In accordance with the NAIC Credit for Reinsurance Model Law, the trust agreements provide that “if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation or liquidation, and “if the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the U.S. ceding insurers of the grantor of the trust, the assets or any part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.” Although the reinsurance has been terminated and reserve credit may no longer be taken, the ceding companies are the beneficiaries of the trusts in this case; therefore, the assets will be distributed to them. As such, we believe the assets held in trust are recoverable and therefore a receivable representing the market value of the assets should be an admitted asset.

Claims receivables represent paid claims incurred before the reinsurance contract cancellation due from the reinsurer to the ceding companies under the reinsurance treaties. These claims are still owed to the ceding companies and will be paid out through the liquidation process once policies and procedures for the Proof of Claims process are established. The INT Issue 3, as currently drafted, validates that SSAP 61R is the guidance applicable to the measurement of reinsurance recoverables. It suggests that claims

receivables should be reported on asset page line 16.1 – Amounts Recoverable from Reinsurers, which we agree with. However, we do not object to the possibility that this could be reported as an Aggregate write-in. In accordance with SSAP 61R, reinsurance recoverable amounts on paid or unpaid claims should be analyzed for collectability. We don't believe any changes to this established guidance are necessary. The collectability analysis, which takes all known facts and circumstances into account, results in appropriate impairment charges, and provides the best estimate of recoverable amounts at a given point in time.

With respect to Lincoln's own facts and circumstances and based on the information provided to date from the Receivership and Court in the ongoing U.S.-based reinsurer liquidation (liquidation order effective September 30, 2023), we anticipate that a percentage of the claims receivable amount will be paid out through the liquidation. As such, an impairment charge for the uncollectible amount has been recorded. The impairment analysis is updated on a quarterly basis and additional charges will be taken if necessary as we receive additional information related to collectability. Given the timely monitoring of the receivable amounts for impairment based on information provided directly from the Receivership and Court, non-admission of the balances in their entirety would be unnecessarily punitive. Therefore, such amounts should be admissible up to the amount deemed to be collectible in accordance with the established guidance in SSAP 61R. Insurers could be required to disclose their calculation and supporting documentation with their domestic regulator.

In summary, we recommend that the guidance should explicitly specify that secured receivables (e.g., by funds held in trust) are admitted to the extent such trust funds are sufficient. For amounts not otherwise secured, it is appropriate to account for the wide diversity in facts and circumstances and permit prudent regulation by companies' states of domicile. Therefore, we recommend that claims and other receivables be subject to the impairment analysis prescribed by SSAP 61R and admitted to the extent deemed collectible based on known facts and circumstances of the liquidation.

We appreciate the Working Group's time and consideration with respect to our comments. If you have any questions, please contact me or Roman Gabriel, Senior Vice President, Head of Government Relations, at roman.gabriel@lfg.com.

Sincerely,

Adam Cohen

Adam Cohen
Senior Vice President, Chief Accounting Officer

Adam.Cohen@lfg.com
484-883-5839

November 15, 2023

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: INT 23-04T - Life Reinsurance Liquidation Questions

Dear Mr. Bruggeman,

Nationwide appreciates the opportunity to comment on the exposure draft of Interpretation 23-04T – Life Reinsurance Liquidation Questions. We offer the following comments with respect to the request for comments on the admissibility of reinsurance recoverables highlighted in paragraph 18 of the exposure draft:

Issue 4 – Admissibility of Reinsurance Recoverables

18. Given the uncertainty of the reinsurance recoverables, reporting entities shall nonadmit all amounts recoverable from a life reinsurer in liquidation.

Nationwide supports the admissibility of receivables related to the liquidation of reinsurers held at the amount expected to be recovered from the reinsurer's estate (i.e., less estimates for unrecoverable amounts), concurring with rationale outlined in the ACLI Interested Parties comment letter on INT 230-04T, dated November 15, 2023.

Additionally, we believe the facts and circumstances regarding trust assets supporting reinsurance recoverables require separate consideration for admissibility. Supplementing the rationale outlined in the ACLI letter, Nationwide believes that, at a minimum, the value of trust assets supporting reinsurance recoverables should be considered an admissible reinsurance recoverable due to the following:

- The trust agreements are specifically established with the stated sole purpose of securing the trust grantor's (reinsurer's) obligations to the trust beneficiary (ceding insurer/reporting entity), i.e., securing the reporting entity's recoverable interest.
- If the trust agreement themselves, which are still in effect, provide a unilateral right to the beneficiary to terminate the trust agreement and receive the assets, any reinsurance recoverable held by the ceding entity should be admitted at the fair value of the trust assets held, up to the amount of the recoverable from the reinsurer. It is unlikely that this amount will not be recovered by the reporting entity.
- Penalizing ceding insurers by non-admitting trust assets initially used to back ceded reserves with a reinsurer (prior to termination) under receivership would call into question the utilization of a trust under Appendix A-785, *Credit for Reinsurance*. The requirements for trust agreements to qualify for reinsurance credit outlined under Appendix A-785 are extensive with regards to the acceptable categories of assets that can be held in a trust and legal rights of those assets. The beneficiaries of the trusts in this case are the ceding



companies; therefore, the assets will be distributed to them, in accordance with A-785. We believe the guidance should explicitly specify that receivables secured by funds held in trust are admitted to the extent such trust funds meet accounting requirements as established in securing reinsurance obligations under A-785.

- Information used to estimate the amount recoverable includes: 1) an evaluation of the sufficiency of trust assets held which is verifiable and reliably measured, and 2) to the extent the fair value of trust assets is insufficient to cover the expected recoverable, an evaluation of information independently provided by the Receiver or Trustee to determine a recoverable amount.

In support of admitting reinsurance recoverables backed by trust assets, we concur with the suggested modifications to paragraph 18 included within the ACLI comment letter on INT 23-04T, dated November 15, 2023.

Respectively,

James D. Benson

James D. Benson
Senior Vice President, Enterprise Controller and Chief Accounting Officer
Nationwide