

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I pertaining to Group Capital Calculation ) NOTICE OF PROPOSED ADOPTION ) NO PUBLIC HEARING ) CONTEMPLATED

TO: All Concerned Persons

1. On September 1, 2022, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to adopt the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on June 10, 2022, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail [csi@mt.gov](mailto:csi@mt.gov).

3. The rule as proposed to be adopted provides as follows:

NEW RULE I GROUP CAPITAL CALCULATION (1) The lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination that the insurance holding company system meets all of the following criteria:

- (a) Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;
- (b) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- (c) Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
- (d) The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
- (e) The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(2) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

(a) The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and

(b) All of the following additional criteria are met:

(i) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(ii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(iii) The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the ability of the insurers to honor policyholder obligations.

(3) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to (1) or (2) of this rule, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

(a) Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in 33-2-1904, MCA, or a similar standard for a non-U.S. insurer; or

(b) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in ARM 6.6.3401 and 6.6.3402; or

(c) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(4) A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

(a) With respect to 33-2-1111, MCA:

(i) The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

(ii) Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in (4)(a)(i).

(b) The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(5) A list of non-U.S. jurisdictions that "recognize and accept" the group capital calculation will be published through the NAIC Committee Process:

(a) A list of jurisdictions that "recognize and accept" the group capital calculation pursuant to 33-2-1111, MCA, is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under 33-2-1111(7)(b)(iv), MCA. To assist with a determination under 33-2-1111(7)(b)(v), MCA, the list will also identify whether a jurisdiction that is exempted under either 33-2-1111(7)(b)(iii) or (iv), MCA, requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

(b) For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of (4)(a)(ii) will serve as support for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process.

(c) If the lead state commissioner makes a determination pursuant to 33-2-1111(7)(b)(iv), MCA, that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

(d) Upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to "recognize and accept" the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that "recognize and accept" the group capital calculation.

AUTH: 33-1-313, 33-2-1117, MCA

IMP: 33-2-1111, MCA

4. REASON: The Commissioner of Securities and Insurance, Montana State Auditor, Troy Downing (commissioner) is the statewide elected official responsible for administering the Montana Insurance Code and regulating the business of insurance. Senate Bill 364 (Ch. 344, L. 2021) passed by the 67th Montana Legislature (effective October 1, 2021), amended 33-2-1101, 33-2-1111, and 33-2-1116, MCA, providing a framework for liquidity stress testing, and enacting 33-2-1140, regarding groupwide supervision of internationally active insurance groups.

The National Association of Insurance Commissioners (NAIC) is an organization of insurance regulators from the 50 states, the District of Columbia, and

the U.S. Territories. The NAIC provides a forum for the development of uniform policy and regulation when uniformity is appropriate. The statutory amendments passed in 2021 were based on changes to the NAIC Insurance Holding Company System Regulatory Act (Model #440) (2021). The proposed New Rule I concerning group capital calculation is derived from changes to the associated model regulation of NAIC, the Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (Model #450) (2021). Together the statutory amendments and proposed new rule ensure uniformity with other states. Further, it is anticipated that adoption of the regulations in Model #450 will be required for Montana to meet the NAIC accreditation standards in the next accreditation review period.

The proposed New Rule I regarding group capital calculation is necessary to implement the statutory changes made in 2021 and conform with the NAIC model regulations. Model Regulation #450 is currently under discussion and review by NAIC and the language of proposed New Rule I here is consistent with the changes NAIC is expected to adopt.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail [CSI@mt.gov](mailto:CSI@mt.gov), and must be received no later than 5:00 p.m., June 24, 2022.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., June 24, 2022.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be far in excess of 25 persons based on the potential for the actions to impact every insured person in Montana if domestic insurance companies choose to use a certified reinsurer.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered

to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, CSI has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kirsten Madsen  
Kirsten Madsen  
Rule Reviewer

/s/ Ole Olson  
Ole Olson  
Chief Legal Counsel  
Commissioner of Securities and Insurance,  
Office of the Montana State Auditor

Certified to the Secretary of State May 17, 2022.