NATIONAL COUNCIL OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
INTERIM COMMITTEE MEETING
JUNE 3, 2022
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee held an interim meeting via Zoom on Friday, June 3, 2022 at 11:00 A.M. (EST)

Assemblywoman Maggie Carlton of Nevada, Chair of the Committee, presided.

Other members of the Committee present were:

Asm. Ken Cooley (CA)	Rep. Carl Anderson (SC)
Sen. Travis Holdman (IN)	Rep. Jim Dunnigan (UT)
Sen. Walter Michel (MS)	Sen. Eric Nelson (WV)
Sen. Bob Hackett (OH)	Del. Steve Westfall (WV)
Rep. Wendi Thomas (PA)	

Other legislators present were:

Rep. Joe Fischer (KY)
Rep. Brenda Carter (MI)
Sen. Vickie Sawyer (NC)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel

QUORUM

Upon a Motion made by Asm. Ken Cooley (CA), NCOIL President, and seconded by Del. Steve Westfall (WV), the Committee voted without objection by way of a voice vote to waive the quorum requirement.

INTRODUCTORY REMARKS: CHAIR CARLTON

Asw. Carlton thanked everyone for joining the meeting today and stated that the purpose of today's meeting is for the Committee to conduct some business in advance of its July meeting in New Jersey so that the Committee is able to handle all of the issues on its New Jersey agenda in a timely manner. We'll get started today with a continued discussion on enhanced cash surrender value (ECSV) endorsements on life insurance policies and their interaction with the standard nonforfeiture law (SNL). This issue has been discussed at a very high level during the NCOIL – NAIC Dialogue the past two NCOIL national meetings, and now is an opportunity to get a bit more into the weeds on the issue by discussing it in this committee which has subject matter jurisdiction over the issue. We'll then have an update and discussion on the S&P Global Rating proposal to revise its methodology for assessing insurers' financial strength: "Insurer Risk-Based Capital Adequacy – Methodology and Assumptions." There has been a lot of activity on this issue since it was first brought to our attention earlier this year, so this will be a productive overview and discussion on what the status is and what the next steps are.

CONTINUED DISCUSSION ON ENHANCED CASH SURRENDER VALUE (ECSV) ENDORSEMENTS ON LIFE INSURANCE POLICIES AND THEIR INTERACTION WITH THE STANDARD NONFORFEITURE LAW

Asw. Carlton first recognized Sen. Travis Holdman (IN), former NCOIL President, for some introductory comments. Sen Holdman thanked Asw. Carlton for placing this very important issue on the agenda. This issue came to my attention in Indiana with what appears to be a violation of the SNL. Just to bring folks up to speed, the ECSV endorsements are limited time offers made to life insurance policyholders to surrender their contracts for amounts well over the cash surrender value, for the purpose of terminating the policy and allowing the carrier to convert reserves to profit. At the same time there are viatical settlements, which are heavily regulated, and are sales of a policy owner's existing life insurance policy to a third party for more than its cash surrender value, but less than its net death benefit.

Upon hearing about this issue in my home state of Indiana, I sent a letter to our Insurance Commissioner Amy Beard and we followed that up with discussions at the NCOIL-NAIC Dialogue in Scottsdale. I think the thing that disturbs me the most is what appears to be the violation of the rule of law. There is a course for insurance companies to take if they wish to do ECSV endorsements and it has to become a viatical settlement company and be regulated as one instead of doing this as a life insurance company apart from viatical settlement legislation in all our states. With that, that’s all I have and I know there are other folks who want to speak and I think we should pursue this. I note that we have had somewhat of a positive response from Cmsr. Beard in IN to basically send a letter to put an end to this practice by life carriers so hopefully that will come about.

Nat Shapo, Partner at Katten, Muchin, Rosenmann, LLP, and former Director of the Illinois Department of Insurance thanked Asw. Carlton and Sen. Holdman for the opportunity to speak and stated that my client is the life insurance settlement association (LISA), the trade ass’n for licensed life settlement brokers and providers in the thoroughly regulated secondary market as Sen. Holdman mentioned before. The concern that they’ve raised and that we’re grateful to have the opportunity to talk about is carriers making spiked limited time cash offers to induce surrender of the benefits of the policy – ECSV. It’s only being done at a small corner of the market and we hope it won’t spread and will be prevented from continuing. There are some examples here of these big spikes in cash surrender values for limited times: enhance CSV from $4,756.20 to $14,682.45 for four and a half months; enhance CSV from $19,037 to $360,601 for three months; and Enhance CSV from $0 to $561,000 for 15 days. These are the increases in cash surrender value for limited times.

The graph here is basically what it looks like – you have the steady progression of a normal CSV and then the big jump and it stays even for the offer period and then it goes back to the issued policy’s CSV. The issue that Sen. Holdman flagged is the SNL smoothness requirement. The SNL of course is a pillar of the insurance code and it’s mainly known for establishing minimum values for cash surrender for products that have an investment component. The smoothness requirement is not as well known but was added after extensive debate in 1980 and it was meant to apply in addition to so there are two requirements - you have to meet minimums and then progressions have to be consistent as you can tell from the new section added to the SNL: "Consistency of Progression of Cash Surrender Values with Increasing Policy Duration."

Dir. Shapo then presented some information from 40 years ago and stated that he did some digging and found a very clear legislative history and clear understanding of what the smoothness requirement means. The report that preceded the drafting and adoption of the smoothness requirement said that the policy concern was equity among policyholders and different policy durations and noted that the law at the time didn't put in any constraints upon the progression of cash values. The goal was for the CV to follow an equitable pattern as they progressed. That led to the adoption of the smoothness requirement in 1980 and the drafters of it which included department of insurance actuaries and life and health actuaries stated that the changes were extensive and dramatic and that it was very clear that the underlying purpose is to require a reasonably ordered sequence of increases and the purpose was to cure the defect that the SNL previously allowed for which was sharp increases in CV.

The Society of Actuaries (SOA) described the rule as stating that you can't have erratic CV, can't have sharp jumps, can't have spikes in nonforfeiture structure, can't have a policy design that provides benefits discontinuous in nature and available only during certain windows of time. Going back to the graph I showed before, if you line that up with what's happening in the market with the rules I just quoted, I'm hoping that it wouldn't be a rhetorical question that whether the progression of CV you see in the graph – does it follow a reasonably order of sequences, no; are they erratic, yes; is there a spike, a sharp increase or sharp jump, yes; are the offers made in the middle of the graph "benefits discontinuous in nature" that are "available only during certain windows of time"? These are all the standards that were understood by the authorities at the time the smoothness requirement was added. Hopefully this is rhetorical – does this comply with the SNL – no. And I don't think I'm being facetious in saying that it would be hard to intentionally design a product less complaint with a less smooth progression in CSV.

The discussion should really begin and end with what the law says and what it requires but it is certainly worth looking at the rationale behind the law which is consumer protection and it was explained at the time what the consumer protections were. The report that preceded the adoption and development of the smoothness requirement described a troubling case where the actual values are zero for nine years and arbitrarily set equal to a desired value for year ten well in excess so they are saying this is what we are trying to stop and is an example of what you see in the market where you had zero cash value and then a big jump in year 10. As a practical matter, let's say you have a policy and are trying to decide what to do with it and the CV of it is going down and you ask for an illustration for the carrier and they say, going back to the example I used before, it's about $18,000 or $19,000 and that's the CSV and they project it to continue to go down because you're not funding it more or if you continue funding they project it is going to $20,000 and you say I'd rather use my resources somewhere else and I think I'll surrender not knowing that an ECSV offer is coming in the mail as you had an illustration from the carrier that didn't tell you it was coming and you surrender and then the next day or week or month the offer letters go out and you would have gotten paid 1,800% higher or $360,000 from the previous slide. So, if you have another person who is an identical risk to you and has an identical policy and they pay the premiums for an identical period of time and they didn't surrender and got that offer in the mail what happens is they got 18 times the benefit for the same price as you so the inequities of that are obvious.

That's the basic law. As a policy matter, our position is the SNL argument should be the beginning and end and Sen. Holdman referred to the rule of law but as a policy concern it is important to us that these offers mimic life settlements and they don't follow the life settlement act's consumer protections. I have three comparisons where the life insurer ECSV offer materials use almost the same language to promote the product as life settlements providers use to promote their product. Both ECSV offers and life settlements are limited time big cash offers in exchange for forfeiting the policy and death benefit. That's a risky proposition and the life settlement act's protections are tailored to those risks and they are observed by life settlement licensees but not observed in ECSV offers. Some of those key rights include recission rights as the life settlement statutes require by law that a life settlement offer recission rights of 15-60 days depending on the jurisdiction after a life settlement and that's important because you could have seller's remorse as somebody got offered a big pile of cash and didn't really think it through and shouldn't have given up their death benefit so you can rescind the life settlement by a statutory right. And if the insured dies during the rescission period, and this happens frequently, and it involves millions of dollars the rescission is automatic and you don't have those protections with a ECSV.

There is a fiduciary duty for brokers in the settlement market and not on ECSV. There is a statutory requirement for a physician certification of consumer competency which is important with elderly consumers and you have to disclose relevant competing options with a life settlement but that's not being done with ECSV. I did some more digging and found the American Council of Life Insurers' (ACLI) testimony when they were drafting the NAIC's viatical settlements model and there is a back and forth where the idea of carriers competing with life settlements is brought up and ACLI said no, you shouldn't do that as there are accelerated death benefits which are authorized life insurer benefits and regulated and protected by the department and if you're' doing viatical settlements you need to be a viatical settlement company and again these offers closely mimic life settlements. So, the bottom line is that ECSV offers violate the SNL and avoid the protections of life settlements which are similar limited time cash offers. An issue has been raised of whether the smoothness requirement applies to universal life (UL) and it plainly does. The plain language of the SNL smoothness requirement of section 8 says that it shall apply to all policies and the SNL does have an exemptions section, section 9, and it enumerates eight products which are exempt and UL is not one of the exempt products so it's a basic plain language reading. SNL does authorize rulemaking for UL but its only for the minimums and as we discussed before there are two requirement for SNL - you have to meet minimums and meet the smooth progression of cash values. The rulemaking in the UL model only applies to minimums and is silent on smoothness and everyone knows if you have a statute and regulation and the statute says one thing and the regulation is silent then the statutory language controls.

The model regulation I think it's important to note states in its purpose that it "does not supersede existing requirements" so it would not need supersede the SNL and again the UL model nonforfeiture provisions apply only to minimums, not just to smoothness. This was well recognized at the time. The American Academy of Actuaries (AAA) had a task force that the National Association of Insurance Commissioners (NAIC) was asked to consult with during the drafting of the UL model regulation and there was a quite categorical statement by the task force which said "Universal life policies should comply with Section 8 of the Standard Nonforfeiture Law—the 'smooth cash value' test." The AAA UL Task Force, Sept., 1987, Statement on UL Model rulemaking: "In our report, we stated what we believe to be obvious: Universal life should comply with Section 8 of the Standard Nonforfeiture Law regarding smooth cash values. It should not be necessary to add this requirement to the model regulation; the requirement already exists." Again that's basic statutory interpretation if you've got a requirement in statute and the regulation is silent on it then the requirement stands. The SOA had a later discussion and said the same thing: "The universal life model, when it was created, had as its apparent main purpose the creation of a commissioners reserve valuation method standard [affecting reserves and taxation]….Because of this, the universal life model only addressed a small part of nonforfeiture. It controlled front-end loads and surrender charges. It doesn't mention… smoothness." So, smoothness by the plain language of the SNL and by well understood interpretations of smoothness it does apply to UL products.

Karen Melchert, Regional VP, State Relations at the ACLI thanked the Committee for the opportunity to speak and provide brief remarks in response to issues that have been raised to this committee regarding ECSV endorsements. First, let me address the issue of whether or not these riders violate the SNL and the accompanying smoothness test. While we do not believe that these ECSV endorsements violate the smoothness requirement under the SNL, it's our understanding that at the March 3, 2022 NCOIL meeting in Las Vegas during the NCOIL – NAIC Dialogue, Oklahoma Insurance Commissioner Glen Mulready indicated that he had reached out to Ohio Insurance Director Judy French who currently Chairs the "A" committee at the NAIC which is the committee with jurisdiction over life insurance issues and has requested that Dir. French bring this issue to the Life Actuarial Task Force (LATF) and we believe that is the appropriate place to begin this evaluation of whether or not there is a violation of the smoothness test. As I said earlier we don't believe that is the case but we do think that LATF should take a look at it to settle the matter once and for all and perhaps put additional guidelines around that and if that is the case and it would require further statutory changes then I think it would be an appropriate discussion for NCOIL to take up but it is an actuarial evaluation and we think to start with LATF would be an appropriate place. We have not had a chance to develop a policy statement other than what I can share with you today which is what in our discussions with our members they feel that this does not violate the smoothness requirement for various reasons. Unfortunately that's about all I can say on that issue but we do think an examination by LATF is appropriate and we look forward to participating in that process and then coming back to discuss whatever necessary changes might be with NCOIL at that time.

With respect to other issues that have been raised with respect to ECSV endorsements, they are not a life settlement transaction - they are endorsements most of the time added at the time of issuance and they are offered across the block and they cannot be offered individually as they have to be offered across the block of business for everyone whereas a life insurance settlement offer is solely discriminatory in that they offer them to individuals after extensive underwriting and review of the health of the policyholder and there are no such underwriting provisions of the exercise of an ECSV endorsement as it is something that can be and should be elected by the policyholder and is not unilaterally offered by the insurance company as they can't activate it as it's at the sole discretion of the insurance policyholder if they want to surrender their policy. It's an option versus a life settlement as that's certainly another option too but these ECSV are offered non-discriminatorily across the book of business and cannot be addressed at an individual policyholder level.

In addition, insurance companies are highly regulated entities and they are subject to the Unfair Trade Practices Act (UTPA) and these riders and endorsements must be filed and approved by the department of insurance before they can be used and the UTPA among many things prohibits discrimination and those laws would also apply to these riders as well. In contrast to life settlements where a policyholder is selling their policy to an acquiring company, an ECSV is just that it is a surrendering of the policy so when you surrender your policy the policy ceases to exist but when you sell it to a life settlement company they continue to pay the premium to keep that policy in force so there is a difference with continuing a policy in force and obviously surrendering a policy. When you surrender a policy, and you can do that for a number of reasons, to an insurance company that policy ceases to exist and in order to reinstate it the policyholder would have to go through underwriting again and would have to pay the missing premium that had not been paid during the period of time when they had surrendered the policy in order to reinstate the policy. That's standard across all life insurance policy's - when you surrender it you are surrendering it and its very clear and you have to sign it over and make sure that is something that's been made clear to you.

They are obviously very different than what a life insurance settlement company is. They are enhanced value benefits that are added to the policy most of the time at the beginning of the policy or elsewhere in accordance with the life insurance company's operations but again it has to be made across the entire block of business and can't be cherry picked for those that they think are appropriate. Most importantly, these ECSV products are a benefit to the consumer and do not harm the consumer in any way and the policyholder is under no obligation to surrender the policy at any point in time. They are the ones who decide to exercise the benefit. It provides a consumer with another option when he or she might be considering selling their policy for the cash value that has accumulated and unlike life settlement offers whose value is based on an individual assessment of the health of the policyholder, ECSV products are calculated uniformly across the block of business based on a formula included in the benefit.

I can't speak to the examples that Dir. Shapo provided where these spikes and offers and limited time offers were made because from the discussions that I've had I'm not aware of that practice so I'm not prepared to respond to that because I don't have knowledge of that, but I'd certainly like to see the examples that Dir. Shapo has noted and to see whether or not there is an issue there. But these are very widely used but maybe not in the circumstances that Dir. Shapo had pointed out - they are endorsements that are added and they come in a variety of forms and most of them don't have limited time options and again as I said they are all filed and approved for use by the DOI and are subject to all the regulations that life insurance companies are required to follow. In contrast, life settlement companies up until the laws were enacted with the NAIC life settlements model act and the NCOIL life settlements model act there were no regulations around life settlement companies and that is precisely why those laws were put into place. We don't think these products are in violation of any laws and we think they are perhaps an alternative to a life settlement option that a policyholder may hope to choose and it's not something that we think should be prohibited or turned into a life settlement company in order to do them as they are enhanced value endorsements which are added to UL policy's primarily.

Before opening it up for questions and comments, Asw. Carlton stated that she thinks it sounds like there does need to be a lot more discussion. I don't think we'd be having this discussion if there wasn't an issue somewhere so I think there is going to be a lot more discussion to get the actual impact of all of this.

Dir. Shapo stated that I have a lot of notes and I have a big picture point which is that Ms. Melchert described her understanding that ECSV is something that's done at policy issuance and that is widely done throughout the industry on a variety of forms and that they are not limited time options. We may be talking across each other a little as there are certainly products of endorsements and riders that have bene used for years that are called ECSV offerings and we don't have a beef with those. I do want to make clear that the way I heard Ms. Melchert describe it, those are not the products we are concerned with. There is a very small strata that's just come up in the last few years as opposed to the well-established ECSV products described by Ms. Melchert and the product we're talking about is very new and has only been seen by 2 or 2.5 companies depending on how you want to describe it and they are exactly what I described before and that's a small portion of the market and they are indisputably making these spiked limited time offers and they are using the same nomenclature and calling them ECSV's. We are not raising a concern about the ones I heard Ms. Melchert describe – widely used, available at the issuance of the policy and not spiked offers that come out of the blue 10 years into a product which is what I described earlier which is what we are concerned with. I want to make clear that with respect to what I heard Ms. Melchert describe we do not object to them.

Asw. Carlton stated that more conversation needs to occur to make sure we're talking about the exact problem that's occurring so a lot more information needs to come up and I do think NCOIL is the proper venue to have this conversation because ultimately we're all responsible to our constituents that are experienced these issues.

Asm. Cooley agreed with Asw. Carlton's statements that this is a very important topic and noted that he would like to acknowledge that Ms. Melchert makes a good point that you have unfair practices laws and other laws with wide application and the approval process itself makes sure the right things happen in the marketplace and I think the issue becomes that those laws of broad application are important and do sort of scrub the business and makes sure it stays within the lines but something like this where its offered on a short term to a limited audience there is a reason we have a more specific statute so if a law of general application applies that's always relevant but where there are more specific statutes that becomes important and in the fact pattern of what is going on and it's a limited universe of recipients and also for a limited time it makes it a little harder to understand how the fairness issues work. I certainly do agree that the broad statutes of application that sort of lay down the applications of the business are directly on point but that while true we still have the more specific statutes on the books that address this practice and they become relevant. This is a good topic for discussion.

Sen. Holdman stated that I appreciate everyone's time and I think Asm. Cooley said it best in that we have the smoothness requirement which I think this practice violates and I think the practical fairness question comes into play and a right of rescission for those folks gets ignored and I would take issue with a number of things that ACLI said and I think it's a great topic to continue discussion around and it has got the attention of the IN Cmsr. and I think with an intention to preclude companies from doing this any longer so I think it's an issue we need to have further discussion on.

Rep. Jim Dunnigan (UT) stated that it seems to me that we need to get more specificity on the issue as what Ms. Melchert talked about is a broader practice that's gone on for many years and it's been raised in IN that there may be a problem so it would be really nice to get some specificity as to what carriers are doing and where it's being offered. I think we're talking about two different issues here and I think we need to know what they are. Asw. Carlton thanked everyone and stated that we will be discussing this during the Summer Meeting in NJ.

UPDATE AND DISCUSSION ON S&P GLOBAL RATING PROPOSAL TO REVISE ITS METHODOLOGY FOR ASSESSING INSURERS' FINANCIAL STRENGTH: "INSURER RISK-BASED CAPITAL ADEQUACY – METHODOLOGY AND ASSUMPTIONS

Asw. Carlton stated that we'll now move on to our next topic, S&P's proposed changes to its insurer rating methodology. As you can see on the NCOIL website on the page with the materials for this meeting, NCOIL submitted a comment letter to S&P focusing on the "notching" aspect of S&P's proposal which states that when examining the bonds held by insurance companies, S&P will lower, or "notch", the rating of that insurer if the bonds were rated by anyone other than S&P. NCOIL raised a number of concerns with this aspect of the proposal, including that it came across as anticompetitive, contrary to the spirit and intent of the NCOIL Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies, and, if implemented, would create a caste system among rating agencies, particularly given S&P's market share.

There has been a lot of attention on this issue on both the state and federal level, including a hearing being held by the U.S. House Financial Services Committee, and the Antitrust Division of the U.S. Department of Justice sending a letter to S&P stating that S&P's actions could raise significant concerns that federal antitrust laws have been—or will be—violated and warrant additional scrutiny. A copy of the DOJ's letter also appears on the NCOIL website. As you may know, there is some good news in that S&P did announce the withdrawal of the "notching" aspect its proposal. While that is a positive development, I also note that it's concerning that S&P has not posted publicly on its website the comments that were submitted regarding its proposal. NCOIL will be reaching out to S&P to express our concerns regarding the lack of transparency surrounding this process.

Additionally, S&P indicated that it plans to repropose something in this area, which is why it is important we remain vigilant. I also note that we invited S&P to participate in this discussion today, several times in fact, but we have not received any response. With all that being said, I'd like to now open this up for discussion from interested parties. Again, while the "notching" aspect was withdrawn, it's important that we monitor this issue and understand what S&P's next steps will be.

Adam Raucher, Managing Director, Investment Bank Origination & Advisory at Deutsche Bank Securities Inc. (DB) thanked the committee for the opportunity to speak and stated that among other things I help cover the insurance sector as it relates to advice on capital and capital structure. The S&P proposal is therefore very important to pretty much all of our clients and what I'd like to do is share a little background and then share what appear to be the next steps in the process. First, I'll say that the opinions that I am about to express are my own and don't necessarily represent those of DB and any remarks that I make during this are subject to public disclosure without review, notification or context. To provide a brief background on this, as many or most of you know, in December 2021, S&P released a proposal regarding its capital methodology. That means that S&P has its own internal proprietary capital model that it uses to evaluate the capitalization of insurance companies that it rates. That capital model is not public so the full level of outputs from the model are not observable to the public and it is important in my estimation to how many insurance companies manage their capitalization in some cases above and beyond state regulatory requirements. As mentioned, in December 2021 S&P released a proposal to amend its existing capital methodology. That methodology has been in place since 2010 and there are a number of aspects of the proposal that drew the attention of the industry.

Form a high-level perspective, S&P did indicate that the expected impact of the proposal was that it would only result in approximately 10% of its rated insurance company audience seeing adjustment to its ratings. However, as it relates to its view of capitalization it did announce that it expected the impacts to be about 35% of insurers so a more material impact. On the one hand it indicted that there would be benefits in the updated model from diversification however, there are a number of aspects of the proposal that would negatively impact capital structures for insurance companies and in addition there would be an incremental notching in the capital model for investments that were not rated by S&P so the consequence being that that non S&P rated bonds would suddenly attract additional capital.

In addition to that, however, the proposal would impose several limitations on the use of debt and hybrid capital to help capitalize insurance offering company entities and that would result in a fair amount of restructuring for insurance companies in the U.S. in order to properly capitalize the businesses. The initial proposal had a comment deadline of February 18. In light of comments which as noted have not been made public the comment deadline was extended to March and then further extended to April and then indicated in May that it would be withdrawing the notching aspect of its proposal. However, it also indicated that it is considering alternatives for the withdrawn elements of the proposed criteria so it's important to note S&P has not indicated that the topic has gone away but rather is considering alternatives. As far as next steps are concerned, S&P has indicated that it intends to issue a new request for comments that will incorporate any proposed alternatives for the withdrawn elements along with any other changes that it might consider to its original proposal. At this point we don't have a view of what that request for comment will read. From a timing perspective, in light of the fact that it will need to release a new request for comment, S&P has indicted that it will not finalize its criteria until at least the 4th quarter of 2022 and there is risk it will extend into 2023 which will of course result in some uncertainty for insurers that need to raise capital or otherwise engage in capital markets transactions without certainty regarding how those transactions will be treated. S&P further indicated that it will update market participants on the expectations about what changes will be made but at this point we have no further information as to what that will entail.

Jennifer Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives at The Cato Institute, thanked the Committee for the opportunity to speak and stated that I was one of the folks that testified in front of the House Financial Services Committee with respect to this S&P notching issue. My focus is on securities and capital markets issues which also include the credit rating agencies at issue here. S&P has withdrawn the proposal and we do expect to see a new proposal. From my perspective and what I stated to the House Committee is that while this is certainly something that can raise anti-competitive concerns and is something that deserves continued attention it is not something that is primed for legislative action at this point in time and is rather something that should remain in focus but there should not be a rush to judgment from a legislative standpoint and my focus here is mostly on federal law. First, because the proposal has been withdrawn, any new proposal that's put forward may ameliorate any potential anti-competitive concerns or raise different ones and it would be prudent to delay any legislative action until the issue itself becomes more clear. I think what's also important to note particularly in the context of the federal hearing on this is that there are other laws that already apply to prohibit anti-competitive behavior and as Asw. Carlton noted the DOJ had sent in a letter in response to the S&P proposal noting the potential applicability of federal antitrust laws and there are also specific rules with respect to the regulation of nationally recognized statistical ratings organization (NRSROs) that prohibit unfair or abusive NRSRO behavior. It's possible that the type of proposal that has been withdrawn would have run afoul of existing law.

Finally, to add to the list of things to think about here is any sort of legislative or other action here should be narrowly drawn because the proposed notching and proposed methodology changes themselves go to the question of the NRSROs ability to rate the credit worthiness of insurers and their own methodologies and any legislative action should be very careful to avoid taking steps that substantively regulate credit rating and credit rating methodologies. The bottom line as I see it is that this is something to continue to keep an eye on and continue to be concerned about potential anti competitive effects but with the withdrawn proposal the appropriate thing to do is to wait for a new proposal and see what kind of commentary that proposal requires.

Caitlin Colvin, Managing Director, Business Development at Kroll Bond Rating Agency (KBRA), stated that KBRA appreciates the opportunity to speak on this very important topic. I run investor relations for KBRA and KBRA did participate in the House Financial Services Committee hearing on this issue and it was our General Counsel that testified alongside Ms. Schulp and we very much appreciated that opportunity. A brief statement on KBRA, we were founded in 2010 and for those who aren't familiar with us we are a global full service rating agency with 450plus employees and our mission is to provide transparent ratings and valuable info and thorough research to investors particularly with respect to insurance companies given their presence in the fixed income markets. We've rated more than 4,000 entities representing more than $3 trillion in debt. We are widely accepted by the investment community including insurance companies and there are almost 1,000 KBRA only rated bonds in the market and 1,250 plus rated bonds which can be KBRA plus S&P, Moody's, Fitch or DBRS.

Without belaboring the point on what the S&P proposal did as I think that's been covered but what would benefit the group is to understand that during the comment period that was twice extended, KBRA had close to 1,200 conversations with market participants which included insurance companies and regulators and in all of those conversations the regulators and insurance companies expressed a deep concern about the proposal and while we understand that problematic elements of the proposal have been withdrawn we do certainly agree that this needs to continue to be followed closely and I think what's important to note is that S&P does notch in other asset classes so I think that this proposal with respect to notching in connection with their capital adequacy model is something that needs to be closely followed and is something that we need to keep an eye on from an anti-competitive standpoint. I think if anyone is interested and hasn't seen it the link to the federal hearing on this issue is publicly available on the House Financial Services Committee website and I would be happy to answer any questions.

John Huff, CEO of the Association of Bermuda Insurers and Reinsurers (ABIR) and former NAIC President and Missouri Insurance Director, thanked the Committee for the opportunity to speak and stated that I just wanted to highlight that there are many issues in the S&P consultation beyond notching and the notching issue has progressed because of the withdrawal but there is a very significant issue that deals with debt and how different regulatory regimes handle debt and whether it has to be at the holding company or operating company level. I won't go into all the details here but I will put a link to our comments to S&P in the chat. I do think there is uncertainty form many of our members as to what is going to happen in the fourth quarter – will S&P move forward with some of the proposal and then have a new consultation for notching and some other issue? It's very unclear. I will tell you that if this debt issue is decided in the quarter, that could cause some chaos for lack of a better word as we go into January 1 renewals for reinsurance. Our members are known for providing natural catastrophe coverage and in many of your states its very important that that coverage be placed at the reinsurance level to make sure there is adequate coverage keeping rates affordable and accessible in your states. I think you're right on the mark to monitor this issue and it's a significant concern for these debt instruments and I'll give you one brief example. If they flip the switch and decide to go with this new methodology in the fourth quarter some of our members may have to scramble to completely rewrite debt instruments that were placed in very favorable rates and because of the inflation that has taken place now they would have to rewrite those instruments at much less favorable rates and the same capital would be there but if they flip the switch it would be very detrimental and consumers would ultimately have to pay for the increase in interest rates for the instruments. I'll put the comments there but I just wanted to note that this hits more than the notching issue. Asw. Carlton thanked Dir. Huff for his comments and asked him to send the ABIR comments to NCOIL staff so they are made part of this record.

ANY OTHER BUSINESS

Asw. Carlton stated that as you may know, during this Committee's meeting this past November in Scottsdale, the issue of legislative and regulatory obstacles to the recruitment and retention of insurance producers was discussed. On behalf of Finseca, the Honorable Greg Serio, former Superintendent of the New York Department of Financial Services, stated that the agent licensing process is something that needs a deep analysis and reengineering in light of COVID and other developments the past several years. Superintendent Serio's remarks were met with some pushback from groups such as the Independent Insurance Agents & Brokers of America (IIABA) and the National Association of Insurance and Financial Advisors (NAIFA). However, it's odd that after said pushback, proposals similar to what Supt. Serio had mentioned were sent to the NAIC's Producer Licensing Task Force in a letter signed by NAFIA and others such as ACLI.

To the extent that any of these proposed changes to the agent licensing process require statutory changes, I think it's axiomatic that NCOIL, as a legislative organization, should be the forum in which these issues should be discussed rather than the NAIC – a regulatory organization. This Committee will be further discussing these issues during its July meeting and I encourage anyone with any comments to reach out to me or NCOIL staff. I would note that some points in the letter to the NAIC seem to conflict with points made to this committee in November, and I will ask the organizations involved to clarify that inconsistency when we meet next month.

Melissa Bova, VP of State Affairs at Finseca stated that I'd like to provide an update on our efforts regarding recruitment and retention and diversity in the financial profession. As you highlighted, NCOIL was the first to show interest in this issue and allowed Supt. Serio to present on behalf of Finseca in November about our concerns and we thank you for showing that initial interest and this continued interest. Retention in the profession does sit at just 14% in the first 5 years and during COVID we saw an increase in individuals rightfully thinking about financial security so it's imperative that we increase and retain the number of people in this profession to ensure yours and Finseca's shared desire for financial security for everyone. To that end, we certainly hope this committee will add to its July agenda a resolution that reflects your longstanding support of these efforts and while some of these items could be done in a regulatory way the bigger issues of recruitment and retention we do believe need to take a legislative approach and we hope to work with your committee to develop that legislation and move forward in those efforts.

Asw. Carlton stated that we have always found when it comes to this level of professional development that mentorship through those that actually do the job is one of the best ways to proceed even though the regulatory body does have some appropriate oversight of this because you always have to make sure everyone is playing by the same playbook. When it comes to actual diversification and bringing folks in I think that mentorship is probably very valuable and that's where NCOIL can play a key component.

Wes Bissett, Senior Counsel at IIABA thanked the Committee for the opportunity to speak and stated that when we heard Supt. Serio speak in November it was a little unclear specifically what he was proposing as he talked a lot about a NY specific issue and I don't know whether his organization has been looking to resolve that matter and I also don't know whether they have submitted any formal, legislative proposal. As we said in November, if there are specific ideas on the table we'd be happy to look at those and comment but we would be concerned with any kind of effort to water down the standards that might apply to agents especially those that would have the adverse effect of consumer protection. I would hope all the groups whether commenting to NCOIL or NAIC be very specific about what they are talking about and get beyond nebulous concepts and be very precise and that would foster a more meaningful conversation as to what should be done but I agree wholeheartedly that this is an issue that if anyone is going to take action it ought to be NCOIL.

Asw. Carlton thanked everyone for their comments and stated that this issue will be discussed in July. Please submit any comments to me or NCOIL staff.

ADJOURNMENT

Upon a Motion made by Rep. Carl Anderson (SC) and seconded by Sen. Bob Hackett (OH), the Committee adjourned at 12:15 p.m.