

# NAIC Takes Dive Start on Investment Management Agreements With New Guidance for Insurers

May 09, 2024

During its Winter National Meeting, various groups within the National Association of Insurance Commissioners continued addressing the Macroprudential (E) Working Group's 2021 list of "Regulatory Considerations Applicable (But Not Exclusive) to Private Equity-Owned Insurers." This included receiving the Risk-Focused Surveillance (E) Working Group's report of the Affiliated Investment Management Agreement Drafting Group's work addressing the regulatory oversight of investment management agreements. In 2023, the IMA Drafting Group was tasked to consider affiliated investment management services and investment management agreements and ensure consistency between the NAIC's *Financial Analysis Handbook* and the NAIC's *Financial Condition Examiners Handbook*. The IMA Drafting Group proposed enhancements to the *Financial Condition Examiners Handbook's* current guidance to examiners in Section 1-III F regarding outsourcing of critical functions, which applies to the examination of all investment management agreements, including those with affiliates. In reviewing the *Financial Analysis Handbook*, the IMA Drafting Group determined that similar guidance would be desirable for the analysis of Form D filings for affiliated IMAs and proposed new language for two sections of the *Financial Analysis Handbook* – Section V.C. Domestic and/or Non-Lead State Analysis – Form D Procedures and Section V.F. Domestic and/or Non-Lead State Analysis – Analyst Reference Guide. Under the IMA Drafting Group's proposed language, as part of the Form D filing or a financial examination, an IMA would be reviewed for the following:

- **Selection of Investments** – The specificity of the investment guidelines given to the investment adviser who will be making investments.
- **Authority for Transactions** – The level of authority that will be given to the investment adviser in executing transactions.

- **Conflicts of Interest** – The manner in which any known conflicts of interest will be considered.
- **Fiduciary Responsibility** – An acknowledgment by the investment adviser that it acts as a fiduciary in advising the insurer and a statement of the adviser’s registration status. In this regard, the NAIC’s Financial Condition Examiners Handbook’s language includes a statement that it would be advisable for the investment adviser to be registered with the SEC or, at a minimum, to acknowledge that it is subject to applicable guidance and requirements under the Investment Advisers Act of 1940.
- **Calculation of Fees** – The way fees are calculated and whether the fees appropriately reflect current market conditions, as well as the nature of the assets and type of asset management. Where the investment adviser is an affiliate of an insurer, care is needed to ensure that fees are not being used to impermissibly evade dividend restrictions.
- **Sub-Advisers** – The authority to engage sub-advisers, including the required consent by the insurer, and payment of sub-adviser fees in a manner that ensures the investment adviser is not being paid for services being provided by the sub-adviser.
- **Reporting** – The information required to be provided to the insurer as to compliance with applicable guidelines and as to performance and risk metrics, as well as to enable the insurer to comply with regulatory requirements.
- **Termination** – The rights of the insurer to terminate and to transition the investment advisory services to a successor adviser.

The deadline for public comment was April 30, 2024.

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