

NAIC Adopts List of Regulatory Considerations Impacting Insurance Company Investors

November 14, 2022

As private equity and venture capital investors add insurance company investments to their portfolios, those investments may ultimately end up being regulated more than they bargained for. Although private equity investment in insurance companies is not new, the market has seen increasing investments as of late, especially with respect to the life insurance industry. [In an October 2020 client alert](#), we discussed how such investments can trigger a change in control under state insurance laws modeled after the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act.

Background

A person or entity that is acquiring control of an insurance company must first file a Form A with that insurer's domestic state insurance regulator and secure approval for the proposed transaction prior to consummation. Under state insurance law, "control" of an insurer is presumed to exist if a person directly or indirectly owns, controls, or holds with the power to vote 10% or more of the voting securities of the insurer. When analyzing control, insurance regulators do not just look at the individual or entity that directly holds the voting securities of the insurer – they look all the way up the corporate chain to any individual who beneficially owns, controls or holds with the power to vote 10% or more of the insurer's voting securities.

Over the past year, however, some state insurance regulators have expressed additional concerns regarding private equity ownership or investment – and other complex investments – in insurance companies. Under the auspices of the NAIC, [these concerns were recently discussed in a list of 13 regulatory considerations](#), along with specific action items designed to address them. Even for private investors that own less than 10%, which often includes venture capital, additional regulatory disclosures currently are being considered.

While many venture capital and other private investors have gone out of their way to stay below the 10% threshold, the NAIC Group Solvency Issues (E) Working Group is expected to consider additional disclosures and questions that would be helpful to insurance regulators in identifying whether a person that directly or indirectly owns **less** than 10% of the issued and outstanding voting securities of an insurance company nonetheless should be considered to control the insurance company. This could be, for example, as a result of board or management representation or contractual arrangements. It also could include noncustomary minority shareholder rights or covenants. These additional disclosures and questions about those who own than 10% may be included in a Form A filing and/or in periodic regulatory filings, such as the annual Form B insurance holding company registration statement filings.

Increased federal interest

The issuance of the NAIC's list of proposed considerations coincides with increased federal interest in private equity's role in the insurance industry. This past summer, US Sen. Sherrod Brown, a Democrat from Ohio who's chairman of the US Senate Committee on Banking, Housing, and Urban Affairs, sent [letters to the Treasury Department's Federal Insurance Office](#), as well as the NAIC, requesting their continuing consideration of private equity's growing role in the insurance industry.

If you would like to learn more about these recent developments, please reach out to your Cooley contact.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.