

January 24, 2018

Mr. Thomas B. Considine  
Chief Executive Officer  
National Council of Insurance Legislators  
Atlantic Corporate Center  
2317 Route 34, Suite 2B  
Manasquan, NJ 08736

Re: Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies

Dear Commissioner Considine:

This letter serves as a follow-up to the email communication sent to you on November 15, 2017. The undersigned are members of the Financial Information Services Association of the Software & Information Industry Association<sup>1</sup>. We are writing to express concerns, detailed below, with the wording of NCOIL's Model Act to Support State Regulation of Insurance by Requiring Competition Among Rating Agencies (the "Model Act").

Ratings are valuable to market participants because they translate complex analysis into an easily understood scale. Given the complexity of the work that leads to a rating outcome, there is a need for the analytical process to be rigorous, transparent and tested

The undersigned welcome qualified voices, in addition to their own, which enhance the availability of relevant information and enable users of credit ratings to make informed decisions. However, while as a group not expressing any opinion on the Model Act as such, there are technical concerns with the wording of the Model Act, which we believe should be addressed. Ambiguities in the phrasing may inadvertently confuse or mislead market participants, and as such certain revisions aimed at clarifying the language would be in the best interests of the market.

First, the definition of a "Competent Rating Agency" in Section 3 of the Model Act specifies several organizations, all of which are NRSROs (or components or affiliates of NRSROs) except for one. However, not all qualified NRSROs (those registered to rate insurance companies) are

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<sup>1</sup> As a neutral industry forum, the Financial Information Services Association creates and supports working groups that facilitate member sharing of information and ideas, and the development of industry consensus, including such a group comprised of credit rating agencies registered with the US Securities and Exchange Commission (the "SEC") as nationally recognized statistical rating organizations ("NRSROs"). This letter is being submitted only by those NRSROs whose names appear at the end of this letter.

listed, thereby favoring some of such NRSROs over others. In addition, the names of certain of the NRSROs that are listed do not match the names by which those entities are registered with the SEC on Form NRSRO.

More fundamentally, however, by specifically naming both NRSROs and non-NRSROs in the definition of Competent Rating Agency without any distinction, market participants and other parties who consult the Model Act (but are not fully familiar with the credit rating industry) might be inadvertently confused or misled. This could lead to the erroneous notion that those rating agencies listed as a “Competent Rating Agency” are all held to the same standards under the same regulatory framework, which is not the case.

We note that NRSROs are subject to federal registration, as well as rigorous standards regarding the conduct of their business through applicable laws and regulations. This requires NRSROs to demonstrate transparency, integrity and consistency, and to be free from conflicts of interest (or in the case of permissible conflicts of interest, to manage and disclose them). Non-NRSROs are not necessarily subject to these same requirements. For example, the one non-NRSRO named in the Model Act definition of “Competent Rating Agency” can provide consulting and advisory services to entities it rates—and advertises its ability to do so. The conflict of interest rules applicable to NRSROs under the Securities Exchange Act of 1934 prohibit them from providing such services to the entities they rate.

Accordingly, we suggest that consideration be given to replacing the current listing of entities within the definition of “Competent Rating Agency”, with terminology stating that a “Competent Rating Agency” is one that is “duly registered to rate insurance companies with the U.S. Securities and Exchange Commission as a nationally recognized statistical ratings organization” or otherwise meets the criteria listed in the Model Act. The first portion of Model Act Section 3(1), as amended and adopted by the NCOIL Executive Committee on November 19, 2017 would therefore read “‘Competent Rating Agency’ means an entity that is duly registered to rate insurance companies with the U.S. Securities and Exchange Commission as a nationally recognized statistical rating organization...”. We believe that this approach will help to mitigate the risk of potential confusion regarding the regulatory framework applicable to NRSROs. It may also alleviate the need for further amendment of this portion of the definition upon entry of other qualified NRSROs into the marketplace or organizational or other changes impacting the names of the entities listed within the definition.

Second, regarding the latter portion of the sentence referred to above, the undersigned note that the phrase “rating agencies certified or approved by a national entity that engages in such a process” is vague and ambiguous. It is also inconsistent, in the case of NRSROs, with Section 15E(f) of the Securities Exchange Act of 1934 which provides that SEC-registration of an NRSRO does not constitute any form of recommendation or approval by the United States or any agency, officer, or employee thereof. Also, it is not clear if “national entity” would only capture

entities in the United States, therefore leading to additional confusion for market participants. This latter portion of Section 3(1) should therefore be revised to provide further clarification in light of the forgoing concerns.

While not objecting to non-NRSROs coming within the scope of competent providers of information under the Model Act, the undersigned agree that the clarifications discussed above would be beneficial. Therefore, the undersigned believe that in the spirit of full and complete transparency for the benefit of market participants as a whole, the Model Act definition of a “Competent Rating Agency” should make a distinction between NRSROs and non-NRSROs, and the other ambiguities detailed above should also be clarified.

We thank NCOIL for the opportunity to comment. For any questions, comments or concerns please contact Tom Davin, Managing Director, FISD, via email at [tdavin@siia.net](mailto:tdavin@siia.net) or via phone at (202) 789-4465.

Sincerely,

A.M. Best Rating Services, Inc.  
DBRS, Inc.  
Egan-Jones Ratings Co.  
Fitch Ratings, Inc.  
S&P Global Ratings

cc: Senator Jason Rapert, President, NCOIL  
Ken Wasch, President, SIIA