

Amendment to Expressly Permit Guaranty Association Claims Handling of Run-Off Claims

Add the following to the NCIGF Model, Section 6 Powers and Duties, Paragraph 2:

2) The Association may

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h. Subject to approval by the Commissioner, provide claims handling services to any “run-off insurer” provided the association expenses related thereto are fully reimbursed. There shall be no liability on the part of, and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the board of directors, or any person serving as a representative of any director for any action taken or any failure to act by them in the performance of their activities under this paragraph h. For purposes of this paragraph h, “run off insurer” means a property and casualty insurer that has:

(a) Total Adjusted Capital under Risk Based Capital requirements in an amount less than the Authorized Control Level RBC as defined in section _____ as of the date specified in [applicable law] for filing of the annual financial statement and has indicated that it will cease writing new insurance policies, either as part of its corrective action plan or pursuant to being placed under regulatory control; or

(b) Total Adjusted Capital under Risk Based Capital requirements in an amount less than the Mandatory Control Level RBC as defined in section _____ as of the date specified in [applicable law] for the filing of the annual financial statement and that has not been placed into liquidation under section _____.

Drafting note: A companion run off transparency statute would call for annual claims handling review. In states where the companion statute is adopted guaranty funds engaged in these activities would be subject to this review. It is not intended that the normal statutory defenses applicable to guaranty fund handling of “covered claims” would apply to run-off claim handling nor is it intended that guaranty fund assets would be used for run-off claim or expense payment.