

# International Center for Law & Economics

April 16, 2026

Philip Barlow  
Chair, Risk-Based Capital Investment Risk and Evaluation (E) Working Group  
National Association of Insurance Commissioners  
1101 K Street, N.W., Suite 650  
Washington, DC 20005

## Re: Comments on the American Academy of Actuaries' CLO Risk Factors Study and Proposal 2025-22-IRE MOD

Dear Mr. Barlow and Members of the Working Group,

The International Center for Law & Economics (ICLE) respectfully submits these comments on the American Academy of Actuaries' March 2026 presentation on CLO C-1 factor modeling and Proposal 2025-22-IRE MOD concerning CLO RBC structure with tranche thickness. At the Spring 2026 National Meeting, the RBC Investment Risk and Evaluation Working Group exposed the Academy's CLO presentation for comment through April 16 and re-exposed a modified version of Proposal 2025-22-IRE through April 17. That re-exposure, rather than final adoption of a new factor regime, reflects an appropriately measured posture.<sup>1</sup>

ICLE supports the NAIC's prudential objective. Insurer solvency oversight requires regulators to assess increasingly complex assets, and the NAIC's work in this area is plainly consequential. Our concern is narrower and more institutional: where an accreditation-backed, nationally influential process is considering increasingly granular investment-policy judgments, the better course is to proceed with transparent incrementalism, to favor the simplest administrable rule that fits the evidence, and to avoid hard-coding methodological choices before they are clearly stable and reproducible.<sup>2</sup>

A substantial academic literature helps explain why that kind of restraint is warranted. In *Is U.S. Insurance Regulation Unconstitutional?*, Daniel Schwarcz argues that many NAIC materials function with the practical force of law because state insurance codes commonly require adherence to current NAIC manuals and related materials. He further argues that this occurs through dynamic

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<sup>1</sup> Nat'l Ass'n of Ins. Comm'rs, *Risk-Based Capital Investment Risk and Evaluation (E) Working Group Summary*, Spring 2026 Nat'l Meeting (Mar. 23, 2026), [https://content.naic.org/sites/default/files/national\\_meeting/2026-spnm-summary-e-rbcirewg.pdf](https://content.naic.org/sites/default/files/national_meeting/2026-spnm-summary-e-rbcirewg.pdf).

<sup>2</sup> Nat'l Ass'n of Ins. Comm'rs, *Life Risk-Based Capital (E) Working Group*, <https://content.naic.org/committees/e/life-risk-based-capital-wg> (last visited Apr. 13, 2026).

incorporation by reference, even though the NAIC is a private entity not subject to the ordinary procedural safeguards that govern public rulemaking and administrative review.<sup>3</sup> Whether or not one accepts the article's broadest constitutional conclusion, its institutional point is hard to ignore: when NAIC materials can effectively shape binding state regulatory outcomes, the case for modesty in highly technical policymaking becomes stronger, not weaker.

The NAIC accreditation program underscores that point. Schwarcz describes accreditation as creating powerful incentives for states to remain aligned with NAIC standards, including because a loss of accreditation can expose domestic insurers to costly multi-state examinations and create pressure for redomestication, job loss, and lost tax revenue.<sup>4</sup> At the same time, he also recognizes the real benefits of NAIC-led uniformity and agility and suggests that states could preserve those benefits while adding review safeguards, including through an interstate-compact-style oversight mechanism or by allowing a meaningful period for state review of NAIC materials before they become operative.<sup>5</sup> That is a useful frame here: the answer to institutional concern is not hostility to the NAIC, but procedural discipline and regulatory modesty.

The NAIC's own recent issue brief on SVO discretion points in the same direction.<sup>6</sup> The brief fairly emphasizes that the NAIC cannot unilaterally reject or override a rating and that any discretionary review is intended for limited circumstances with notice rights, appeal rights, and regulator oversight. But the same brief also confirms that regulators, through the NAIC, are developing due-diligence standards for credit rating providers; that the SVO Credit Committee may place a filing-exempt security under review; that a three-notch materiality test is applied; and that, if regulators authorize removal of a CRP rating from filing exemption and no alternate CRP rating is available, the SVO's designation becomes the NAIC designation.<sup>7</sup> Properly understood, the brief does not show arbitrary power. It shows that substantial evaluative authority over complex credit instruments is already concentrated within the NAIC-centered process. That is another reason to avoid layering in additional granularity unless the incremental gain is clearly justified.

Those institutional considerations matter acutely in the CLO project. The Academy's March 2026 presentation describes a working model and the Spring 2026 meeting summary reports progress in developing model documentation. The materials are therefore best understood as an ongoing modeling exercise, not a finished policy justification for materially changing insurer capital treatment. That distinction matters because the present record does not appear to include a formal

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<sup>3</sup> Daniel Schwarcz, *Is U.S. Insurance Regulation Unconstitutional?*, 25 CONN. INS. L.J. 189 (2018), [https://scholarship.law.umn.edu/faculty\\_articles/866](https://scholarship.law.umn.edu/faculty_articles/866).

<sup>4</sup> *Id.* at 201-203.

<sup>5</sup> *Id.* at 259-262.

<sup>6</sup> Nat'l Ass'n of Ins. Comm'rs, *SVO Discretion Issue Brief* (Mar. 2026), <https://content.naic.org/sites/default/files/svo-discretion-issue-brief.pdf>.

<sup>7</sup> *Id.*

comparative analysis explaining why the more punitive, tranche-thickness-based approach should be preferred over the simpler rating-only framework as a regulatory matter.

The Academy's presentation states that modeled tail risk can largely be explained by remaining reinvestment horizon, rating, and tranche thickness, with tranche thickness needed only for Baa3-and-below CLO debt.<sup>8</sup> But the presentation also offers an alternative rating-only framework that explicitly prioritizes ease of implementation. Under Option 1, the modeled after-tax factor for Baa3 is 2.73%; under Option 2, the modeled factor for Baa3 rises to 12.52% when thickness is 4% or less. The Academy also reports that, after ratings and reinvestment-horizon interactions are added, the tranche-thickness flag increases adjusted R-squared from 81.6% to 83.2%.<sup>9</sup> Elsewhere, however, the presentation notes that thickness differences do not trend across ratings, provide only minor improvements to model fit, and generate noisy results for B1/below, leading the Academy to use a single average premium across all Baa3/below ratings to avoid overfitting.<sup>10</sup> The methodology is valuable and thoughtful, but on this record it does not yet amount to a formal empirical showing that insurers should move from the simpler rating-only framework to substantially higher capital charges for thin tranches.

That conclusion is reinforced by the structure of Proposal 2025-22-IRE MOD itself.<sup>11</sup> The proposal expressly states that it does not contemplate any changes to factors. Instead, it would create a more granular reporting structure that separates CLOs from other long-term bonds and carves out broadly syndicated loan CLO tranches with current thickness of 4% or less for separate reporting, while leaving factors to a separate proposal if changes are later deemed necessary.<sup>12</sup> That is an important distinction. A reporting change can be useful as a data-gathering and transparency exercise. But where the structural proposal is plainly a precursor to later factor choices, the NAIC should resist allowing the reporting architecture to harden prematurely into an implicit endorsement of the more complex and more punitive methodology before a separate, formal justification has been published and tested.

The timing of the current process further supports restraint. The Life RBC Working Group page states that structural RBC changes must be adopted by May 15 of the reporting year and non-structural changes, including factors and instructions, by June 30.<sup>13</sup> With the Academy materials open through April 16 and the modified structural proposal open through April 17, there is limited room for further empirical testing, public scrutiny, state-level review, and refinement before the

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<sup>8</sup> Am. Acad. of Actuaries, *C1 Subcommittee Update on CLO C1 Factors Modeling* (Mar. 2, 2026), [https://content.naic.org/sites/default/files/call\\_materials/life-pres-clo-2603.pdf](https://content.naic.org/sites/default/files/call_materials/life-pres-clo-2603.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Nat'l Ass'n of Ins. Comm'rs, *Proposal 2025-22-IRE: CLO Modified RBC Structure with Tranche Thickness* (2026), [https://content.naic.org/sites/default/files/inline-files/ATTN\\_E%20Proposal%202025-22-IRE%20CLO%20modified%20RBC%20structure%20with%20tranche%20thickness.pdf](https://content.naic.org/sites/default/files/inline-files/ATTN_E%20Proposal%202025-22-IRE%20CLO%20modified%20RBC%20structure%20with%20tranche%20thickness.pdf).

<sup>12</sup> *Id.*

<sup>13</sup> Nat'l Ass'n of Ins. Comm'rs, *supra* note 2.

current-cycle deadlines. Where the institutional stakes are high and the model still presents meaningful implementation choices, the better course is to keep the near-term rule simple.

For that reason, ICLE respectfully urges the NAIC to separate the questions of disclosure, structure, and calibration. In the near term, the NAIC should favor reporting improvements that generate comparable data and improve transparency. If factor changes are pursued later, the NAIC should strongly consider beginning with the Academy's rating-only approach, which the presentation itself identifies as easier to implement, while using any new reporting on thin tranches to gather additional evidence before adopting a thickness-based surcharge. And if tranche thickness is eventually retained, the NAIC should be wary of a hard 4% breakpoint that creates cliff effects and incentives to structure around the rule. A more graduated approach would be preferable, but only after more validation than the current record appears to provide.

In practical terms, ICLE recommends five steps. First, the NAIC should keep Proposal 2025-22-IRE MOD clearly limited to reporting architecture unless and until a separate factor proposal is independently justified on a more mature record. Second, before any increase in CLO factors is proposed, the Academy and the Working Group should publish a formal analysis explaining why the rating-only framework is inadequate and why any tranche-thickness-based surcharge is sufficiently robust, administrable, and empirically justified to warrant adoption. Third, if new CLO factors are pursued, the NAIC should begin from the rating-only framework and require additional validation before adopting tranche-thickness-driven surcharges. Fourth, any eventual use of tranche thickness should avoid abrupt cliff effects around a single 4% threshold. Fifth, given the *de facto* national significance of NAIC materials under accreditation and dynamic incorporation, the NAIC should build in a meaningful review period for state regulators and legislatures before major methodological changes are allowed to function as the nationwide baseline. That final point is not an attack on the NAIC. It is a recognition that the more complex and policy-laden the rule, the stronger the case for accountable review.

The NAIC's solvency mission is legitimate, and the effort to refine insurer treatment of CLOs is serious and worthwhile. But the combination of accreditation-backed influence, dynamic incorporation, and expanding NAIC-centered evaluative discretion means that complexity should be added only when it is plainly necessary and clearly supported. On the present record, the better path is constructive caution: separate reporting from calibration, prefer the simplest workable rule, and leave time for state-level review before contested modeling choices become *de facto* national investment policy.

Respectfully submitted,

R.J. Lehmann, Editor-in-Chief and Senior Fellow

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