February 18, 2014

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

**RE: The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy**

Dear Mr. Feldman:

The American Council of Life Insurers ("ACLI")[1] appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's Notice that was published in the Federal Register on December 18, 2013 entitled *The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy*.

Title II of the Dodd-Frank Act ("the Act") establishes the "Orderly Liquidation Authority" ("OLA") which provides for the appointment of the FDIC as the receiver of a systemically important financial institution ("SIFI") if no viable private-sector alternative is available to prevent its default and a resolution through the federal bankruptcy process would have serious adverse effects on the financial stability of the U.S.

Under the proposed Single Point of Entry ("SPOE") approach, the FDIC would be appointed receiver of only the top-level U.S. holding company, while its operating subsidiaries would remain open and continue operations. The FDIC would then establish a bridge financial company into which the FDIC would transfer all assets and certain liabilities from the receivership estate – unsecured debt obligations would be left as claims of the estate. These unsecured claims would be satisfied through a securities-for-claims exchange, whereas the unsecured claimants and/or creditors would receive securities representing debt or equity of the new bridge financial company.

Our comments focus on two aspects of the proposed SPOE strategy: (1) Our understanding that the SPOE strategy appropriately would not be applied to operating insurance companies; and (2) The need to establish clear protocols that mandate close coordination between the FDIC and state insurance regulators in the event that the FDIC is appointed receiver of a non-operating holding company that has one or more insurance subsidiaries.

[1] The ACLI is a Washington, DC-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90% of industry assets and premiums.

As to the first aspect, in creating the OLA, Congress appropriately recognized that troubled insurance companies have historically been rehabilitated and/or liquidated pursuant to a state insolvency framework and specifically determined that there was no reason to disturb the operation of this framework. Section 203(e) of the Act provides that "*if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such insurance company, and any subsidiary or affiliate of such company that is [an insurance company], shall be conducted under applicable State law*." This significant policy choice – to make an operating insurance company that is (or is part of) a SIFI subject to resolution according to state law – reflected Congress' confidence in the state-based resolution system and the certainty that the system provides.

On June 30, 2010, House Financial Services Chairman Barney Frank engaged in a colloquy with Representative André Carson regarding the intent of the Section 203(e) of the Act. During that exchange, Representative Carson requested that the Chairman confirm that "*under Title II of the conference report, all insurance companies … remain subject to resolution under the existing State insurance insolvency and liquidation regimes*." In response, Chairman Frank stated that Representative Carson "*is absolutely right. We have no intention here of disturbing the well-run State insurance regime*."[2]

Given the clear language of, and policy rationale for, Section 203(e), we presume that the FDIC's proposed SPOE strategy would not be applied to operating insurance companies, whether they are stock, mutual, or fraternal. An operating insurance company that issues policies and pays claims is exempt from resolution under the OLA, regardless of whether the insurance company is the top-level company in an enterprise or a lower-level subsidiary.

With regard to the second aspect, it is important that the FDIC work with state regulators to establish clear written protocols as to how the SPOE approach would work if an insurance company is a subsidiary of a SIFI that is liquidated under this strategy (e.g., information sharing, confidentiality, continued operation of the insurance company). In this instance, the FDIC would become the receiver of the non-operating holding company and the insurance subsidiary would operate under the bridge financial company.

Specifically, we would urge the FDIC to establish procedures for the close coordination with the state insurance regulator from the insurance subsidiary's state of domicile in order to: (1) enable the regulator, prior to the initiation of a receivership of the top-level company, to prepare necessary communications to policyholders and other stakeholders; (2) confirm that there would be no need for the regulator to place the insurance subsidiary into liquidation under the state's insolvency framework pursuant to Section 203(e) of the Act; and (3) effectively coordinate and address any other changes to the top-level company's business that might affect the insurance subsidiary.

[2] 111 Cong. Rec. H5216 (daily ed. June 30, 2010) (statements of Rep. André Carson and Rep. Barney Frank).

Thank you again for the opportunity to comment on the FDIC's proposed SPOE strategy. If you have any questions, please feel free to contact me at (202) 624-2135.

Sincerely,

Wayne A. Mehlman

Wayne Mehlman
Senior Counsel, Insurance Regulation