

January 18, 2011

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> St., N.W.  
Washington, D.C. 20429

Re: Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of Dodd-Frank Wall Street Reform and Consumer Protection Act

Dear Mr. Feldman:

We write on behalf of the National Association of Insurance Commissioners (NAIC) to submit this comment in response to the Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act)<sup>1</sup>, which was published in the Federal Register on October 19, 2010 (Notice). Founded in 1871, the NAIC is the voluntary association of the chief insurance regulatory officials of the 50 states, the District of Columbia and the five U.S. territories. The NAIC serves the needs of state insurance regulators as they protect consumers and maintain the financial stability of the marketplace.

The NAIC previously submitted comment to the proposed rule contained in the Notice on November 18, 2010. In that comment, we explained our concerns with proposed rule 380.6 relating to the limitations on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies. Specifically, we noted that Title II of the Act recognized the time-tested insurance company resolution process already in place by requiring that an insurance company be resolved pursuant to state law. We also noted that the FDIC must harmonize any new rules involving insurance companies with the state receivership regime already in place.<sup>2</sup>

As part of the Notice, the FDIC also requested comments identifying specific areas relating to the FDIC's orderly liquidation authority that would benefit from additional rulemaking.<sup>3</sup> In this regard, we have identified two specific areas that we believe require additional rulemaking.

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<sup>1</sup> Pub. L. No. 111-203.

<sup>2</sup> Id. at §§ 203, 209.

<sup>3</sup> Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 75 Fed. Reg. at 64180 (October 19, 2010).

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## Consultation with Insurance Regulators

Section 204(c) of the Act requires that the FDIC consult with 1) the primary financial regulatory agencies of covered financial companies for the purpose of ensuring an orderly liquidation of such companies, and 2) the primary financial regulatory agency of any covered financial companies' subsidiaries that are not covered subsidiaries to coordinate on the treatment of such subsidiaries when solvent or the resolution of such subsidiaries when insolvent. As we indicated in our comment of November 18, 2010, the state insurance regulatory regime presently has an orderly resolution process for financially distressed or insolvent state licensed insurance companies. This process is primarily designed to protect the policyholders of such insurers, by safeguarding, marshaling and distributing assets in accordance with payment priorities of each class of claim specified under state law. As a result, state receivership laws are somewhat different than the bankruptcy laws and the rules used to resolve failing banks.

Because of the unique nature of the state insurance regulatory system, we believe, as the Act requires, that it is critical that the FDIC consult with state insurance regulators of any insurance company involved in or affected by the orderly liquidation of a covered financial company. We respectfully urge the FDIC to put processes in place through rulemaking to ensure prompt and robust coordination with the appropriate regulators. Such an effort should include processes to provide the domestic insurance regulator advance warning if the FDIC, as a part of a resolution of a covered financial company, is considering taking any action with respect to an insurance holding company or a subsidiary of an insurer.

## Mutual Insurance Holding Companies

Another area that requires rulemaking is the treatment of mutual insurance holding companies as insurance companies for purposes of Title II of the Act. Under Section 203(e), insurance companies are to be resolved pursuant to state law. Section 201 defines "insurance company" as an entity that is "1) engaged in the business of insurance, 2) subject to regulation by a state insurance regulator, and 3) covered by a state law that is designed specifically to deal with rehabilitation, liquidation, or insolvency of an insurance company."<sup>4</sup> As holding companies, mutual insurance holding companies do not specifically engage in the "business of insurance", but are nevertheless subject to regulation by state insurance commissioners and state receivership authorities. We are concerned that even though such entities are subject to state receivership laws, the FDIC could interpret Title II to require such entities be resolved pursuant to the new authorities granted the FDIC rather than pursuant to state law as is required for all other insurance companies. The legislative history of the Act is clear that such mutual insurance holding companies should be treated as insurance companies and be resolved pursuant to state laws and regulations.<sup>5</sup> We therefore urge the FDIC to confirm Congressional intent through rulemaking and clarify that mutual insurance holding companies are resolved pursuant to state law.

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<sup>4</sup> Pub. L. No. 111-203 at § 201.

<sup>5</sup> See, 156 Cong. Rec. S5903 (daily edition July 15, 2010)(statements of Sen. Nelson and Sen. Dodd); 156 Cong. Rec. H5216 (daily edition June 30, 2010)(statements of Rep. Frank and Rep. Carson).

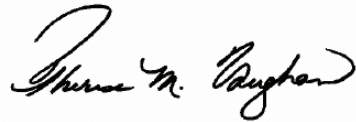
Conclusion

In conclusion, we would appreciate the opportunity to comment on these issues with you further. We look forward to reviewing any other proposed rules relating to these issues and providing comments as appropriate. Should you have any questions regarding this response or any other matter relating to the NAIC's views on the rulemaking process, please do not hesitate to contact Ethan Sonnichsen, Director of Government Relations, at (202) 471-3980, Moira Campion McConaghy, Government Relations Manager, at (202) 649-4997, or Mark Sagat, Government Relations Analyst and Counsel, at (202) 471-3987.

Sincerely,



Susan E. Voss, Commissioner  
Iowa Insurance Division  
NAIC President



Therese M. Vaughan, Ph.D.  
NAIC Chief Executive Officer