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February 28, 2011

Via Electronic Transmission
www.regulations.gov

Office of Comptroller of the Currency
250 E Street, SW, Mail Stop 2-3
Washington, D.C. 20219

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Robert E. Feldman, Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: Joint Notice of Proposed Rulemaking on Risk-Based Capital Standards: Advanced Capital Adequacy Framework – Basel II; Establishment of a Risk-Based Capital Floor (FRB Docket No. R-1402 and RIN No. 7100-AD62; FDIC PIN XXXX-XXXX; OCC Docket ID OCC-2010-0009)

Ladies and Gentlemen:

On behalf of Mutual of Omaha, we appreciate the opportunity to provide information in response to the Joint Notice of Proposed Rulemaking (JNPR) referenced above. As a mutual insurer that is also a savings and loan holding company, we are concerned about the manner in which the Federal Reserve Board (Board) may exercise its regulatory authority over savings and loan holding companies. We are specifically concerned about the potential application of bank capital standards on our insurance company. We offer commentary for your consideration specific to section I.E. of the Supplementary Information provided as part of the JNPR.

Section I.E., entitled "*Effect of Section 171 of the Act on Certain Institutions and Their Assets,*" discusses the fact that certain depository institution holding companies that are subject to section 171 have not previously been subject to bank capital requirements and may hold assets that do not have a specific risk-weight assigned under generally applicable bank risk-based capital requirements. We appreciate this realization on the part of your agencies and fully support the concerns expressed by the ACLI in its recent letter, that bank capital rules could be inappropriately applied to life insurance companies.

As mentioned by the ACLI, member companies are working to provide greater detail on various asset classes. In addition to separate account assets, we would also point to the problematic fixed-income class of corporate debt, of which insurers typically own a great deal, but banks typically own little or none. Two corporate debt subsets, private placements and non-investment grade debt, are of particular concern and should be given special consideration as these rules are implemented.

We find that applying section 171 of the DFA to institutions where it has not previously been applied will present significant capital compliance issues for the following reasons:

- Savings and loan holding companies and bank holding companies have different capital requirements at the parent level.

  While there are nearly identical capital standards for banks, bank holding companies and thrifts, there is a significant difference in the treatment of savings and loan holding companies versus bank holding companies at the parent level. In the present system, OTS does not impose a quantitative capital requirement on savings and loan holding companies but requires that they maintain a "prudential" level of capital. Bank holding companies and financial holding companies, on the other hand, are subject to specific capital requirements at the parent holding company level.

- Accounting and capital rules for insurance companies differ from accounting and capital rules for banks.

  Although the rulemaking does not address accounting issues, we believe that for mutual insurers that are savings and loan holding companies, imposition of bank risk-based capital rules creates a conflict between bank and insurance capital standards. Insurance company capital standards carefully consider both asset and insurance liability risk characteristics. Inappropriately applying bank-specific capital factors to an insurance statutory or GAAP balance sheet may result in misleading capital implications, impacting millions of customers. While we believe the Federal Reserve has set a suitable precedent with Metropolitan Life, clarification as to how this issue will be reconciled is imperative as your agencies begin to implement section 171.

- The Federal Reserve and OCC should first review whether an insurance company/parent is adequately capitalized under its state insurance regulator and take corrective action if it is not.

  As an insurance company, Mutual of Omaha is subject to regulatory capital standards imposed by state insurance regulators. As a savings and loan holding company, we are subject to the prudential capital requirements of the OTS, soon to be merged into the OCC. In order to address the discrepancies between bank and insurance capital rules, we believe regulatory language should reflect an insurer's risk-based capital standard equivalent. This standard should clarify that as long as a mutual insurer meets its state regulator's capital requirements it would be deemed to be in compliance with bank capital requirements. If it fails to meet its state regulator's capital requirements or, upon specific findings that such requirements are inadequate, the Federal Reserve could intervene and impose a capital standard on that particular insurer. Such a standard would not diminish the Board's authority to act as a consolidated regulator, impose additional capital standards or require that a mutual insurance company that is organized as a bank holding company or savings and loan holding company act as a source of strength for a subsidiary insured depository institution.

- Mutual companies do not have the same capabilities for raising capital as stock companies.

  One of the consequences of subjecting a savings and loan holding company to bank capital requirements is that it may trigger the need for the parent company (even those already deemed adequately capitalized under their state regulator) to raise significant amounts of additional capital, potentially at both the subsidiary and the parent holding company levels. Such a requirement would be arduous, and perhaps impossible, given the organizational structure of a mutual insurer.

Our company, along with a number of other similarly situated entities, provides income, asset protection and growth to millions of Americans. We operate principally through the business of insurance and complementary asset management and brokerage. Generally, our thrift operations are a smaller component of our overall activities and serve to support and supplement our primary business. The thrift provides valuable services to policyholders, agents and customers by offering convenience and reducing costs. Certainty in the application of our capital requirements is paramount to continuing to provide these services.

Once again, we appreciate the opportunity to comment on this very important issue. Thank you for your consideration.

Respectfully submitted,

David A. Diamond
EVP, CFO & Treasurer
Mutual of Omaha