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Office of Comptroller of the Currency
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Washington, D.C. 20219

Jennifer J. Johnson, Secretary
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Robert E. Feldman, Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
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Washington, D.C. 20429

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

Ladies and Gentlemen:

For more than 80 years, Nationwide's insurance and financial products and services have helped millions of Americans protect what matters most to them—their homes, their cars, their businesses, and their financial security as they prepare to live in retirement. Across the country, the company employs 34,000 associates and is supported by 20,000 exclusive and independent agents.
We operate under the assumption that market and economic downturns are an unfortunate, but inevitable, aspect of the business cycle.

Accordingly, when the latest crisis erupted in 2008, we were prepared with a strong balance sheet and significant capital on hand. As the severity of the crisis became evident, we took immediate action to reduce risk, enhance liquidity and preserve our capital. Because of our preparation and decisive actions, Nationwide remained strong, stable and financially sound during the darkest days of late 2008 and early 2009, while some of our peers accepted bailout funds through the Troubled Asset Relief Program or raised capital under distressed circumstances.

Managing our business through difficult economic cycles is a challenge we've faced before. During the Great Depression, Nationwide not only survived, but thrived. In the 1930s, we increased our policies in force, assets, premiums and surplus, establishing a historical record of financial performance that continues to be recognized in our industry. In 2009, *Best's Review* listed Nationwide among the property and casualty and the life and health insurers that had maintained at least an "A" rating in each business line for 75 years. Nationwide is time tested as a source of financial strength and stability.

As a mutual insurance company, we see our mutual standing as another reflection of our roots and historical strength. Mutual ownership enables us to focus more on our customers and to make decisions and investments with a longer-term perspective than many of our publicly traded peers that often must focus on short-term results. Another key to our success is strong business mix.

Our diverse mix of businesses is a key advantage for Nationwide. We're able to serve the lifetime insurance and financial services needs of our customers through four key businesses:

- <u>Personal Protection</u>—Auto and homeowners insurance, life insurance, banking, and farm coverage
- <u>Personal Investments</u>—Fixed and variable annuities, variable and universal life insurance, and mutual funds
- <u>Retirement Planning</u>—Public- and private-sector retirement plans
- <u>Commercial and Specialty</u>—Agribusiness and commercial insurance, excess and surplus lines, specialty health, and health management

This diverse, balanced business portfolio ensures our ability to drive consistent levels of performance regardless of economic or market forces, and it's one of the reasons we've been able to weather these recent turbulent times.

We wanted to share this basic information to highlight some of the key ingredients emblematic of financial stability: financial stability reflected in solid capital and liquidity through protection of our customers (the hallmark of safety and soundness), sound risk management reflected in the insurance business model and diversification.

Nationwide operates through an insurance holding company system registered with the Ohio Department of Insurance. By virtue of its ownership of Nationwide Bank, Nationwide is registered with the Office of Thrift Supervision as a savings and loan holding company pursuant to Section 10 of the *Home Owners' Loan Act of 1933* that is grandfathered under Section 10(c)(9)(C) as added by Section 401 of the *Gramm-Leach-Bliley Act of 1999*.

Nationwide in 2009 reported $21 billion in revenue and $140 billion in assets on a consolidated basis including separate accounts. At the end of 2010, Nationwide Bank reported under $4 billion in assets.

As a U.S. nonbank financial company, Nationwide appreciates the opportunity to provide comment upon the Joint Notice of Proposed Rule Making ("JNPRM") that would amend the advanced risk-based capital adequacy standards (advanced approach rules) to be consistent with the "Collins Amendment" as reflected in Section 171 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "Act") and amend the general risk-based capital rules to provide limited flexibility consistent with Section 171(b) of the Act for recognizing the relative risk of certain assets generally not held by depository institutions.

Section 171(b) of the Act provides as follows:

> (b) Minimum Capital Requirements-
> (1) MINIMUM LEVERAGE CAPITAL REQUIREMENTS- The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.
> (2) MINIMUM RISK-BASED CAPITAL REQUIREMENTS- The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be

less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

Section 171(a) of the Act provides as follows:

(a) Definitions- For purposes of this section, the following definitions shall apply:
(1) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS- The term `generally applicable leverage capital requirements' means--
(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and
(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.
(2) GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS- The term `generally applicable risk-based capital requirements' means--
(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and
(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

Section 171(b) of the Act mandates that the agencies establish minimum leverage and risk based capital requirements on a consolidated basis applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors ("covered institutions"). Section 171(b) specifies that the minimum leverage and risk-based requirements shall not be less than "generally applicable" capital requirements which shall serve as a floor for any capital requirements the agencies may require. Section 171 goes on to specify that the agencies may not establish leverage or risk-based capital requirements for covered institutions that are quantitatively lower than the generally applicable leverage or risk-based capital requirements in effect for insured depository institutions as of July 21, 2010, the date of enactment of the Act.

Section 171(a)(1) defines the term "generally applicable leverage capital requirements" to mean: (A) the minimum ratios of Tier 1 capital to average total assets, as established by the agencies to apply to insured depository institutions under the prompt corrective action regulations implementing Section 38 of the Federal Deposit Insurance Act (the "FDIA") regardless of total consolidated asset size or foreign financial exposure; and (B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

Section 171(a)(2) defines the term "generally applicable risk-based capital requirements" to mean: (A) the risk-based capital requirements, as established by the agencies to apply to insured depository institutions under the prompt corrective action regulations implementing Section 38 of the FDIA; and (B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

In the Supplemental Information to the JNPRM at Section I.E., the agencies recognize that:

> [c]ertain covered institutions may not previously have been subject to consolidated risk-based capital requirements. Some of these companies are very likely to be similar in nature to most depository institutions and bank holding companies subject to the general risk- based capital rules. Others, may be different with exposure types and risks that were not contemplated when the general risk-based capital rules were developed.

For example, Nationwide Bank, an institution under $4 billion in total assets as an insured depository institution has been subject to the consolidated risk-based capital requirements. By contrast, Nationwide a family of insurance and financial services companies with over $140 billion in consolidated assets has not. In our view, the risks and exposures related to the business of insurance in which Nationwide is predominately engaged were not contemplated when the bankcentric general risk-based capital rules were developed.

Under the general risk-based capital rules, exposures are generally assigned to five risk weight categories (0%,10%,50%,100% and 200%) according to relative riskiness. Assets not explicitly included in a lower risk weight category are assigned to the 100% risk weight category.

Notably, as reflected in the JNPRM at Section I.E., the agencies recognize that:

> [g]oing forward, there may be situations where exposures of a depository institution holding company or nonbank financial company supervised by the Board [of Governors] not only do not wholly fit within the terms of the risk weight category, but also impose risk that are incommensurate with the risk weight otherwise specified in the generally applicable risk-based capital requirements.
>
> For example, there are some material exposures of insurance companies that, while not riskless, would be assigned to a 100 percent risk weight category because they are not explicitly assigned to a lower risk weight category. An automatic assignment to the 100 percent weight category without consideration of an exposure's economic substance could overstate the risk of the exposure and produce uneconomic capital requirements for a covered institution.

We think that by these statements, the agencies have recognized the crux of the problem. Banking and insurance business models and risk profiles are fundamentally different. Insurance obligations tend to have much longer duration than banking obligations which can be due upon demand (*e.g.* demand deposit accounts).

Fortunately, State insurance risk based capital requirements are specifically designed for the business of insurance and reflect the insurance business model. Likewise State insurance reserving requirements recognize the appropriate asset-liability mix and risk classifications and profile of the insurance company. Imposition upon insurers of the bank capital requirements without significant adjustment to risk weighting that accounts for a longer duration asset-liability mix and an insurer's lower need for liquidity as compared to banks could create dislocations for insurers that undermine efficient use of capital, curtail insurance capacity and disrupt and destabilize insurance markets and potentially individual insurers depending upon the effects of new constraints on their capital frameworks.

For example insurance company separate accounts which are not counted in an insurer's general account assets should be assigned a weight of zero for leverage and risk based capital purposes. Separate account assets support variable life and annuity insurance contracts and their investment risk is borne by the policyholder and not the insurer. In the case of Nationwide, $57.3 billion of its $140 billion in total assets in 2009 were separate account assets that should be assigned a risk weighting of zero. A 100% risk weighting would grossly distort the true risk picture of Nationwide and harm its policyholders by undermining sound capital management. To the extent that Nationwide would need to cease writing business, doing so would impact insurance availability and market and financial stability.

Thusp, under the Ohio insurance risk based capital framework, the insurance company is assigned a five basis point (.05%) capital charge with respect to separate account assets reflecting the lack of risk to the insurer. By contrast, under the bank Tier I core capital regime, the insurance company would unnecessarily suffer an eight percent (8%) capital charge that would adversely affect efficient capital management and its ability to write business.

We think similar difficulties arise in connection with the treatment of reserves. For banks, the allowance for loan and lease losses is specifically defined as Tier 2 capital. By contrast, there is no guidance with respect to insurance loss reserves. Given the highly technical nature of bank capital regulations based upon the experience of prudent bank capital management overtime, we think their unadjusted application to the insurance capital structure would inaccurately reflect the insurer's true risk picture.

Another example in which difficulties arise is in connection with the risk weighting of corporate bonds. Under the bank capital regulations all corporate debt gets a 100% risk weighting. Under the bank capital regulations, a lower weight can apply to asset or mortgage backed securities, and some other limited positions. Thus, a AAA or AA asset or mortgage backed security is assigned a 20% risk weight, while a AAA or AA corporate bond gets a 100% risk weight.

This approach reflects the fact that the risk weightings under the bank regulations naturally do not account for the insurance business model which is not based on loan originations (like banks) but rather primarily upon liquid securities. Accordingly, the bankcentric RBC standards do not account for the liquidity benefits of insurance company assets in the form of a liquid securities portfolio. For example, insurance company investment portfolios typically contain a large proportion of corporate bonds. Were insurers required to reduce their corporate bond holdings to offset the higher capital requirements as a result of applying bank risk weighting, doing so would have the unintended consequence of reducing insurance company demand for corporate bonds and for insurers to substitute less liquid securities including asset or mortgage backed securities. This could have a significant and systemic impact on the ability of U.S. companies to raise debt and would likely lead to higher funding costs and less access to debt for U.S. businesses. Thus, without major adjustments to the risk weighting criteria as applied to insurers, we believe the purpose of the Collins Amendment in facilitating financial stability would be compromised.

We believe that the safest and soundest, timeliest and most administratively feasible way to carry out their mandate under Section 171(b) of the Act is for the agencies to recognize the long established State insurance company risk based capital standards as functionally equivalent to the Section 171 leverage and risk based capital requirements. As noted above, the Section 171 requirements must not be less than the general applicable leverage and risk based capital requirements which serve as a floor nor quantitatively lower than the generally applicable risk-based capital requirements in effect for FDIC member banks and thrifts as of July 21, 2010.

Notably the principle of equivalence is used by the Board of Governors to determine if the capital of a foreign bank is equivalent to the capital that would be required of a U.S. bank holding company. The JNPRM notes that the Board has been making capital equivalency findings for foreign banks since 1992. The agencies should consider a similar approach for domestic insurance companies. It would be manifestly unfair to treat foreign banks more favorably than U.S. insurance companies that are subject to the laws of the several States of the United States of America.

On a separate note, under the Section 171 floor approach we believe that foreign banking organizations get a distinct competitive advantage over U.S. banking organizations since foreign bank holding companies can continue to maintain the lower capital requirements under the Basel II advanced approaches. By contrast, U.S. banking organizations which had invested significant dollars to justify use of the Basel II advanced approaches will now be forced back into the higher Basel I requirements. Moreover, foreign banks doing business in the U.S. that can rely upon Basel II as in their home country would get a competitive advantage over U.S. banks which under Section 171 must comply with the higher Basel I standard as a floor. Nationwide is opposed to this unfair and discriminatory treatment against U.S. financial firms and nonbank financial companies.

We look forward to future opportunities to comment.

Very truly yours,

NATIONWIDE

Mark R. Thresher
Executive Vice President & Chief Financial Officer