

March 28, 2011

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

*By electronic submission to [www.fdic.gov](http://www.fdic.gov)*

Re: Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup>

Dear Mr. Feldman:

The undersigned companies, which constitute the Mutual Insurance Holding Company Coalition (the “Coalition”)<sup>2</sup> wish to comment generally on the definition of “insurance company” as it applies to the Orderly Liquidation Authority entrusted to the Federal Deposit Insurance Corporation in the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) and specifically on the related Interim Final Rule published in the Federal Register on January 25, 2011. This comment is limited specifically to Section 380.1(e) of the IFR and seeks to assure that any Final Rule adopted or subsequent rulemaking undertaken accurately reflects the legislative history and intent of the definition of “insurance company” as applied in the context of the Orderly Liquidation Authority created in Title II of Dodd-Frank. Should the FDIC be unable to clarify the issue raised in this comment when finalizing the outstanding IFR, the Coalition requests that such clarification be made when the FDIC engages in subsequent rulemaking on Orderly Liquidation Authority.

In the IFR, the FDIC indicates that the definitions in Section 380.1 of the IFR are intended to reflect the “same meanings these terms are given in the Dodd-Frank Act.”<sup>3</sup> However, while the legislative history detailed below repeatedly indicates that mutual insurance holding companies are to be included in the definition of “insurance company” for the purposes of the FDIC’s Orderly Liquidation Authority, this clarification is not reflected in the text or explanation of the IFR. Without such clarification, the IFR could be viewed as leaving open the possibility that mutual insurance holding companies may not be treated like all other insurance companies for the purposes the Orderly Liquidation Authority established in Dodd-Frank. To avoid this unintended consequence, we submit

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<sup>1</sup> 76 Fed. Reg. 4207 (Jan. 25, 2011) (to be codified at 12 C.F.R. pt. 380) (hereinafter the “Interim Final Rule” or “IFR”).

<sup>2</sup> The Coalition consists of the following mutual insurance holding companies: American Enterprise Mutual Holding Company, American United Mutual Insurance Holding Company (One America), Assurity Security Group, Baltimore Life Holdings, Inc., EMC National Life Mutual Holding Company, Mutual Trust Financial Group, National Life Group, Ohio National Mutual Holdings, Inc., Pacific Mutual Holding Company, Pan-American Life Insurance Group, Securian Financial Group, Inc., Trustmark Mutual Holding Company, UNIFI Mutual Holding Company (Ameritas), United Heritage Mutual Holding Company, Western and Southern Mutual Holding Company.

<sup>3</sup> IFR at p. 4211.

this comment to request that the FDIC clarify through rulemaking that mutual insurance holding companies are included under the definition of “insurance company” at Section 380.1(e).

The mutual insurance holding company structure was first created in Iowa in 1995 and exists primarily to allow mutual insurers access to the capital markets not available to traditional mutual insurance companies. Today, most U.S. jurisdictions have adopted the mutual insurance holding company structure. Mutual insurance holding companies are structurally analogous to mutual bank holding companies and serve as an alternative to demutualization for a mutual insurer seeking such access. Mutual insurance holding companies are regulated at the holding company level by the insurance commissioner of their domiciliary state and are specifically subject to state insurance insolvency statutes.<sup>4</sup> Most importantly in this context, mutual insurance holding companies also differ from traditional mutual insurance companies in that mutual insurance holding companies, even when not typically considered to be engaged in the business of insurance at the holding company level, are treated as insurers under State insurance insolvency statutes.<sup>5</sup>

The Orderly Liquidation Authority created in Dodd-Frank is not intended to alter state insurance insolvency statutes. Section 209 of Dodd-Frank Title II requires that the FDIC harmonize Orderly Liquidation Authority “rules and regulations . . . with the insolvency laws that would otherwise apply to a covered financial company.”<sup>6</sup> So as to treat all insurance companies similarly in this regard, the House-passed version of Dodd-Frank specifically included within the definition of “insurance company” “any entity covered by a State law designed specifically to deal with the rehabilitation, liquidation, or insolvency of an insurance company.”<sup>7</sup> As mutual insurance holding companies are covered by State insurance insolvency laws, mutual insurance holding companies were specifically included in the original House definition of “insurance company” for the purposes of Orderly Liquidation Authority.

Similarly, while the original Senate-passed text also requires that an entity be “engaged in the business of insurance” to be considered an insurance company for the purpose of the Orderly Liquidation title of Dodd-Frank,<sup>8</sup> the relevant Senate report

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<sup>4</sup> See, e.g. Iowa Admin. Code 191.46.5(1) (521A)(1) (2011) (“The commissioner shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.”); Ohio Rev. Code Ann. § 3913.35(C) (LexisNexis 2011) (“A mutual insurance holding company, and, if applicable, its intermediate holding company, shall not be dissolved or liquidated without compliance with the provisions of Chapter 3903 [Reserve Valuation, Rehabilitation and Liquidation] of the Revised Code.”).

<sup>5</sup> NEB. REV. STAT. § 44-6125(6)(a)(2010); Iowa Code § 521A.4 (2009); see also Comment of National Association of Insurance Commissioners, *Notice of Proposed Rulemaking Implementing Certain Orderly Liquidation Authority Provisions of Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 18, 2011); available at <http://www.fdic.gov/regulations/laws/federal/2010/10c23Orderliq.PDF>.

<sup>6</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 209, 124 Stat. 1376, 1460 (2010).

<sup>7</sup> The Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, 111th Cong. § 1602 (as passed by House, Dec. 11, 2009).

<sup>8</sup> The Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, 111th Cong. § 201 (as passed by Senate, May 20, 2010).

language clarifies that “a mutual insurance holding company organized and operating under State insurance laws may be considered an insurance company for the purpose of” the Orderly Liquidation title of Dodd-Frank.<sup>9</sup> As the Senate-passed text became the base text for the final, enacted version of the statute, the relevant Senate report language remains relevant to the enacted version of the statute.

To dispel any doubt as to the unified House and Senate intent that mutual insurance holding companies are included under the definition of “insurance company” for the purpose of the Orderly Liquidation Authority created in Dodd-Frank, both House Financial Services Committee Chairman Barney Frank and Senate Banking Committee Chairman Christopher Dodd clarified during floor debate on the final, enacted version of Dodd-Frank that mutual insurance holding companies are included under the definition of “insurance company” for the purpose of the Orderly Liquidation Authority. On June 30, 2010 Chairman Frank engaged in a colloquy with Rep. André Carson during which Chairman Frank stated unequivocally that

[Congress had] no intention here of disturbing the well-run State insurance regime. We respect and honor that form of the mutual insurance holding company . . . [t]hey will remain subject to resolution under their existing State insurance liquidity and insolvency regimes.<sup>10</sup>

Likewise, in response to an inquiry from a former Nebraska Insurance Commissioner, Sen. Nelson, on July 15, 2010 Chairman Dodd stated during Senate debate that

a mutual insurance holding company organized and operating under State insurance laws should be considered an insurance company for purposes of title II of this legislation.<sup>11</sup>

Further, the intent of Congress to include mutual insurance holding companies within the definition of “insurance company” for the purpose of the Orderly Liquidation Authority created in Dodd-Frank is unchallenged at any point in the legislative or administrative history of the statute.

In light of repeated expressions of congressional intent to treat all insurance companies, specifically including mutual insurance holding companies for this purpose, uniformly for the purposes of the Orderly Liquidation Authority created in Dodd-Frank, the Coalition believes it appropriate that any rule or regulation promulgated with regard to such Orderly Liquidation Authority clearly indicate that mutual insurance holding companies are included within the definition of “insurance company” at Section 380.1(e) for this purpose.

Thank you for your consideration of these views. The Coalition would be pleased to provide the FDIC with such additional information as it considers necessary in order to

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<sup>9</sup> S. Rep. No. 111-116, at 57 (2010).

<sup>10</sup> 111 Cong. Rec. H5216 (daily ed. June 30, 2010) (statement of Rep. Barney Frank).

<sup>11</sup> 111 Cong. Rec. S5903 (daily ed. July 15, 2010) (statement of Sen. Christopher Dodd).

better understand and incorporate that which the Coalition hopes is a technical clarification into any final rules promulgated under the Orderly Liquidation Authority created under Dodd-Frank. For further information regarding the Coalition and this comment, please contact L. Charles Landgraf of Dewey & LeBoeuf LLP (202.346.8067; llandgraf@dl.com) or Sharon Cheever at Pacific Mutual Holding Company (Tel: 949.219.3852; SCheever@PacificLife.com).

Sincerely,

Mutual Insurance Holding Company Coalition

American Enterprise Mutual  
Holding Company

American United Mutual Insurance  
Holding Company (One America)

Assurity Security Group

Baltimore Life Holdings, Inc.

EMC National Life Mutual Holding  
Company

National Life Group

Mutual Trust Financial Group

Ohio National Mutual Holdings, Inc.

Pacific Mutual Holding Company

Pan-American Life Insurance Group

Securian Financial Group, Inc.

Trustmark Mutual Holding Company

UNIFI Mutual Holding Company  
(Ameritas)

United Heritage Mutual Holding Company

Western and Southern Mutual  
Holding Company