American Insurance Association

2101 L Street, NW

Suite 400

Washington, DC 20037

202-828-7100

www.aiadc.org

March 28, 2011

VIA ELECTRONIC MAIL (Comments@FDIC.gov)

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

Re: Interim Orderly Liquidation Rulemaking

Ladies and Gentlemen:

The American Insurance Association ("AIA") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") interim final rule regarding implementation of certain provisions of the FDIC's authority to resolve covered financial companies under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1] AIA represents approximately 300 major U.S. insurance companies that provide all lines of property-casualty insurance to U.S. consumers and businesses, writing more than $117 billion annually in premiums. Our members have a significant interest in the FDIC's interim final rule as it could impact property-casualty insurance companies.

Property-Casualty Insurers Do Not Present Systemic Risk

As we indicated in our November comment letter on the FDIC's proposed rule,[2] we believe that in view of their low risk profile and the fact that they are extensively regulated under state law and closely supervised by state insurance authorities, property-casualty insurers engaged in traditional insurance activities will never present a significant adverse risk to the financial stability of the United States. Moreover, section 203(e) of the Dodd-Frank Act directs that the

[1] 76 *Fed. Reg.* 4207 (Jan. 25, 2011).
[2] *See* American Insurance Association comment letter of November 18, 2010 to Robert E. Feldman regarding "Proposed Orderly Liquidation Rulemaking."

liquidation or rehabilitation of an insurance company shall be conducted as provided under applicable state law. Accordingly, it is highly unlikely that an insurance company will become subject to the orderly liquidation provisions of the Dodd-Frank Act. We believe that the FDIC should factor these considerations into its deliberations when finalizing its orderly liquidation rule.

Creditors and Shareholders Should Bear All Losses

AIA is of the view that creditors and shareholders should bear all losses associated with the liquidation of a covered financial company. Accordingly, AIA believes that the FDIC's stated policy should be that when it liquidates a covered financial company, it will strive to impose all losses on the company's creditors and shareholders. The FDIC should seek to ensure that it does not make any payments or advances to any party that is either not recoverable from the party or that will impose costs on persons other than creditors or shareholders. Establishing such a policy minimizes the likelihood that taxpayers and financial companies will be assessed to cover payments made by the FDIC, an objective that is consistent with Congressional intent. This also suggests that any "haircut" applied by the FDIC in determining interim payouts to claimants should be sufficiently deep so as to ensure that liquidation proceeds will be adequate to cover such payouts.

AIA believes that exceptions to the FDIC's ability to "claw back" payments in the event liquidation proceeds are insufficient to fully repay monies received from the U.S. Treasury provide additional support for the need for the FDIC to exercise caution when making payments to creditors. Should liquidation proceeds and proceeds obtained through the exercise of the claw back authority be insufficient to cover all claims, the FDIC would then have no choice but to impose assessments on certain financial companies under section 210(o) of the Dodd-Frank Act. Such assessments will constitute a subsidy for creditors of the financial company in liquidation. AIA believes that, in managing a liquidation of a financial company, the FDIC should make every effort to prevent the need for such assessments to avoid imposing unfair costs on financial companies that may not have had any relationship to the company being liquidated. The cost should appropriately be borne by creditors and shareholders of the company in liquidation.

Additional Payments to Creditors

Section 380.2 of the interim final rule clarifies the circumstances under which certain creditors may receive payments of additional amounts. AIA supports the FDIC's position that short-term debt holders as well as holders of long-term unsecured senior debt are unlikely to meet the FDIC's criteria for such additional payments. AIA envisions virtually no circumstances under which holders of the described short-term debt and long-term unsecured senior debt should expect to receive additional payments from the FDIC. In this regard, AIA believes that the FDIC's proposal to define long-term debt as a term of more than 360 days is a reasonable bright line to distinguish long-term debt from short-term debt.

Determination of Fair Market Value

AIA appreciates the FDIC's determination that collateral in the form of U.S. government and agency securities should be valued at fair market value. This will establish a level playing field for determining values for all forms of collateral. The FDIC also proposes to use the fair market value of collateral as of the date that the FDIC was appointed as receiver. AIA agrees that the value of an asset on the date on which the FDIC was appointed receiver should apply to all assets, not just U.S. government and agency securities. However, while the value of collateral on the date the FDIC was appointed receiver may be a good starting point for purposes of an initial assessment of collateral values, AIA believes that the FDIC should periodically mark the asset to market, and use the value of the collateral when it is actually disposed of in determining the extent to which a claim is secured.

Personal Services Contracts

The Dodd-Frank Act authorizes the FDIC to repudiate a personal services contract that the FDIC determines is burdensome and if its repudiation promotes the orderly liquidation of the company. The interim final rule provides that a personal services contract will not continue to apply to employees in connection with the sale or transfer of a subsidiary of a covered company unless the acquiring party expressly agrees to assume the personal services agreement. AIA sees nothing in the Dodd-Frank Act that enables the FDIC to exercise authority to repudiate any contract entered into by a subsidiary of a covered financial company in liquidation. For example, if a subsidiary of a covered financial company is in sound condition and continuing to operate notwithstanding the liquidation of its parent, AIA sees no basis or justification for the FDIC, in connection with the transfer of the subsidiary, to repudiate employment contracts the subsidiary may have in place. Such action is inconsistent with the well-established and time-honored principle of corporate separateness. Accordingly, AIA strongly urges the FDIC to modify section 380.3 of the rule to delete references to subsidiaries of covered financial companies.[3]

Insurance Company Subsidiaries

Section 380.5 of the interim final rule provides that where the FDIC acts as receiver for a subsidiary of an insurance company, the FDIC will distribute the value realized from the liquidation, transfer, sale or other disposition of the subsidiary according to the order of priorities set forth in section 210(b)(1) of the Dodd-Frank Act. In order to clarify that such value will be available to the policyholders of the parent insurance company to the extent required by the applicable State laws and regulations, the interim final rule recognizes the requirement that the FDIC remit all proceeds due to the parent insurance company in accordance with the order of priority set forth in section 210(b)(1). AIA appreciates the FDIC's confirmation that the

---

[3] AIA recognizes that section 380.1(d) defines "covered subsidiary" to exclude a subsidiary of a covered financial company that is not an insurer. However, section 380.3(c) permits a party acquiring any subsidiary from the FDIC, not just a covered subsidiary, to reject any personal services contract.

interim final rule recognizes that an insurance company (and policyholders) might submit different claims according to its capacity as a shareholder, general creditor or otherwise in relation to the order of priority.

Liens on Insurance Company Assets

Section 380.6 of the interim final rule limits the ability of the FDIC to take liens on insurance company assets and assets of an insurance company's covered subsidiaries under certain circumstances after the FDIC has been appointed receiver. Section 204(d)(4) of the Dodd-Frank Act authorizes the FDIC to take liens on assets of a covered financial company or any covered subsidiary to secure repayment of any funding provided by the FDIC in connection with the orderly liquidation of covered financial companies and covered subsidiaries. If an insurance company is a covered financial company, the liquidation or rehabilitation of the insurance company is to be conducted under state law. However, where a subsidiary or affiliate (including a parent entity) of an insurance company is not itself an insurance company, such entity is subject to orderly liquidation by the FDIC without regard to state law.

The interim final rule provides that, in the event that the FDIC makes funds available to a covered financial company that is an insurance company or is a covered subsidiary or affiliate of an insurance company, the FDIC will exercise its right to take liens on some or all assets of the covered entities receiving such funds to secure repayment of any such transactions only when the FDIC determines that taking such lien is necessary for the orderly liquidation of the entity, and taking such lien will not either unduly impede or delay the liquidation or rehabilitation of the insurance company, or recovery by its policyholders.

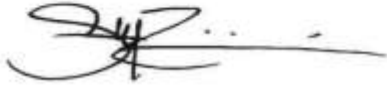
The interim final rule further provides that no restriction on taking a lien on assets of a covered financial company or any covered subsidiary or affiliate will limit or restrict the ability of the FDIC to take a lien in such assets in connection with the sale of such entities or any of their assets on a financed basis to secure any financing being provided in connection with such sale. AIA appreciates the FDIC's clarification that its power is limited to taking a lien on the assets of the company that received the advance of funds.

AIA further believes that the Dodd-Frank Act, in recognition of the unique role insurers play in the nation's financial system, established a careful balance between the needs of the FDIC and those of state insurance authorities. To preserve this balance, AIA believes that it is of the utmost importance for the FDIC to incorporate into the interim final rule that the FDIC will consult with and obtain the consent of the appropriate state insurance authority before exercising its authority to take a lien on assets of a covered insurance company or its covered subsidiary or affiliate.

* * *

AIA appreciates this opportunity to provide its additional views on the FDIC's interim final rule and would be pleased to discuss our comments further with you.

Respectfully submitted,



J. Stephen Zielezienski
Senior Vice President & General Counsel
American Insurance Association
2101 L Street, N.W., Suite 400
Washington, DC 20037
202-828-7100