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May 20, 2011

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington DC 20429

Re: Proposed Rule Providing Additional Guidance Relating to the Orderly Liquidation Authority of the Dodd-Frank Act – RIN 3064-AD73

Dear Mr. Feldman:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI). The ACLI is a national trade association with over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. On behalf of all of our members, we appreciate the opportunity to again comment on the FDIC proposed rulemaking implementing the Orderly Liquidation Authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). Our two primary concerns with the Title II of DFA broadly, and with the immediate proposed rulemaking, are: (1) that an insurance company should remain subject to state regulation for purposes of rehabilitation or liquidation; and (2) application of FDIC Orderly Liquidation Authority should be limited to systemically important companies.

FDIC Rulemaking should continue to defer to state regulator based resolution.

ACLI strongly believes that markets and consumers are best served if state insurance regulators continue to play their historic lead role in any future insurance company rehabilitation or insolvency. The predictability of state regulators' continued performance of financial oversight functions, including those related to rehabilitation and liquidation, is both essential to and consistent with the DFA goal of promoting stability.

The tools that FDIC will have at its disposal pursuant to Title II of DFA already exist within the state-based rehabilitation and receivership context. These tools include:

- Access to data
- Independent examinations
- Valuation of assets & liabilities
- Sale or transfer of contracts
- Funding
- Risk management
- Ordering of corrective actions
- Coordination with other regulators, including foreign regulators

These and similar tools have all been employed effectively by state insurance regulators to oversee insurance companies and to rehabilitate or liquidate them if they become distressed or insolvent. Moreover, state insurance regulators have the technical experience to perform these tasks in the least costly manner consistent with the statutory mandate of the FDIC.

The National Association of Insurance Commissioners (NAIC) recently formed a Dodd-Frank Receivership Implementation Working Group. We understand the Working Group will, among other tasks, determine if state rehabilitation and receivership laws need to be updated in light of DFA and explore whether expedited procedures should be put in place to facilitate state action should a federal finding of systemic risk of an insurance company occur. Our view is that the current system has demonstrated its ability to handle simultaneous insolvencies of major life insurers; when faced with the failure of three nationally significant insurer failures (Executive Life Insurance Company of California, Mutual Benefit Life Insurance Company, and Confederation Life Insurance Company), plus a number of failures involving middle-tier and smaller companies in the early 1990s, the system met its obligations to consumers and we believe it is prepared to address any similar challenge today, including the potential failure of an insurer that has been identified as systemically important. For this reason, we urge the FDIC to coordinate its rulemaking effort with the NAIC deliberations in order to avoid unintentionally weakening what has proven to be a robust state regulatory system.

Recognition of Appropriate Accounting Procedures for Insurers

Question #2 of the preamble to the Proposed Rule asks: Is there a more appropriate definition of "applicable accounting standards" than that used in the Proposed Rule? We believe there is.

Subsection (3) of section 380.8(b) of the Proposed Rule provides a definition of the term "applicable accounting standards" as follows:

"The term "applicable accounting standards" means the accounting standards utilized by the company in the ordinary course of business in preparing its consolidated financial statements, provided that those standards are: (i) U.S. generally accepted accounting principles, (ii) International Financial Reporting Standards, or (iii) Such other accounting standards that the FDIC determines to be appropriate. "

ACLI urges the addition of a fourth category; "Statutory Accounting Principles" for the reasons set forth below.

Some insurance companies, including mutual and fraternal companies, prepare their financial statements in accordance with statutory accounting principles ("SAP") as required by state insurance law and regulation, and are not required to prepare consolidated financial statements based on generally accepted accounting principles ("GAAP"). Therefore, these insurance companies typically do not perform GAAP accounting and would not have the required financial statements. It is important to note that insurance companies that file SAP-based financial statements do so under the purview of robust state insurance legal and regulatory regimes. The rules governing SAP are developed by the NAIC, which promulgates comprehensive accounting guidelines that are then implemented under state law and state insurance regulation. Similar to the Financial Accounting Standards Board, the NAIC undertakes periodic reviews of, gives guidance on, and issues formal interpretations of its accounting rules. SAP-based accounting is generally more conservative than GAAP-based accounting. For these reasons, the ACLI requests that the FDIC separately recognize SAP as an appropriate basis of accounting for purposes of subsection (3) of section 380.8(b) for those companies that use SAP for reporting to their primary regulators or that in the ordinary course of their business do not prepare GAAP financial statements.

Application of FDIC Resolution should be limited to systemically important companies.

Question #6 of the preamble to the Proposed Rule asks: Section 380.8 of the Proposed Rule generally establishes the criteria for determining whether a company is predominately engaged in activities that are financial in nature or incidental thereto. Should Section 380.8 of the Proposed Rule be limited so that it only encompasses entities that, individually or on a consolidated basis, are eligible under Section 102 of the Dodd-Frank Act for designation of nonbank financial companies supervised by the Board of Governors? Question #7 of the Preamble to the Proposed Rule asks: Should §380.8 of the Proposed Rule be limited to companies that, individually or on a consolidated basis, are designated as systemically important under the Dodd-Frank Act?

ACLI believes it is both important and logical to maintain symmetry between Titles I and II of the DFA. There are a multitude of companies that are "predominately engaged in activities that are financial", but that are not going to be designated as systemically important. We believe it was not the intent of the drafters of the DFA that such companies would fall under the orderly liquidation authority. Doing so would introduce great uncertainty and cost with no corresponding public benefit. For these reasons, we believe Question #7 should be answered "Yes."

Finally, we wish to emphasize the importance of international coordination called for by section 210(a)(1)(N) of the Dodd-Frank Act. Section 210(a)(1)(N) requires the FDIC as receiver for a covered financial company to coordinate to the maximum extent possible with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States. We think that the coordination required by section 210(a)(1)(N) should also extend as applicable to coordination with the appropriate foreign financial authorities for any foreign parent company and other significant foreign affiliates of a covered financial company. Such coordination will assist both the actions required by the FDIC as receiver for the covered financial company and the actions required by the foreign financial authorities for the foreign parent company and the foreign affiliates. Such coordination is also consistent with the general principles of comity and with the general principles reflected in sections 113(g) and (i) of Title I of the Dodd-Frank Act.

Accordingly, ACLI urges the FDIC to closely coordinate its answers to these questions with other relevant regulatory interpretations. Such a course will promote clarity and consistency with other provisions of DFA. The Federal Reserve Board and the Financial Stability Oversight Council are yet to finalize several important definitions, and the FDIC should avoid rulemaking that would effectively preempt rulemaking on related issues by other federal agencies.

Thank you for the consideration of our comments and please let us know if there is any additional information that we can provide.

Sincerely,

David M. Leifer

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