National Organization of Life & Health Insurance Guaranty Associations

NCIGF National Conference of Insurance Guaranty Funds

February 18, 2014

JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING FDIC'S SINGLE POINT OF ENTRY RESOLUTION STRATEGY

The National Organization of Life and Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds respectfully submit their joint comments regarding the FDIC's Single Point of Entry Strategy (SPOE Strategy) for resolving systemically important financial institutions under Title II of Dodd-Frank. Our comments are limited to the application of the strategy to insurance holding companies.

NOLHGA and NCIGF were created to support the activities of their member guaranty associations, which were established by state legislatures to protect insurance policyholders whose insurance carriers become insolvent. NOLHGA's members are principally concerned with protecting consumers of failed life, annuity and health insurers, and NCIGF's members are principally concerned with protecting consumers of failed property and casualty insurers.

In its request for comment, the FDIC notes that, for the SPOE Strategy to be successful, the top-tiered holding company would need to maintain unsecured debt and equity sufficient to "absorb losses, recapitalize the operating subsidiaries, and allow establishment" of a NewCo.[1] We believe that any debt and equity requirements should vary with the entity and type of business involved and be limited to whatever amounts would be required to implement the SPOE Strategy.

If an insurance holding company is required to carry debt and equity that is not needed to effect the SPOE Strategy, such a requirement would be economically inefficient and poses a real prospect of reducing capital at the insurer level – where capital is most needed. Consequently, an optimal approach would be to establish any debt and equity requirements in a way that truly considers the different types of entities and their resolution requirements (for example, the differences in business models between insurers and banks[2]) and the differences from insurer to insurer. For example, if a SIFI insurance entity today were writing "naked" credit default swaps through a non-insurer subsidiary, it might need higher holding company funding reserves than one that did not.

That said, NOLHGA and NCIGF support the FDIC's decision to plan for potential resolutions that could take place under Title II and believe that the SPOE Strategy represents an important step in that planning. We offer these comments regarding additional planning that will be

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[1] See The Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy, 78 Fed. Reg. 76,614, at 76,623 (Federal Deposit Insurance Corporation 2014).

[2] As recognized by the Federal Insurance Office, insurers and banks have fundamentally different "business models, risk profiles and balance sheets." See How to Modernize and Improve the System of Insurance Regulation in the United States, p. 28 (Federal Insurance Office 2013).

necessary in the unlikely event that a Title II resolution may be required for any entity that has insurance company operations.

Application of SPOE Strategy to Insurance Holding Companies

Under Section 204(c)(3)of Dodd-Frank, the FDIC as receiver "shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries,[3] and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate." Internationally, the Financial Stability Board (FSB) requires that such consultation begin *prior to* any crisis through the development of Crisis Management Groups, which must include supervisory authorities and the guaranty system.[4]

Successful implementation of the SPOE Strategy in connection with an insurance SIFI would require significant communication and coordination among the FDIC, state insurance regulators and the guaranty system. NOLHGA and NCIGF believe that the affected parties should develop written protocols in advance of any resolution, as contemplated by the FSB's Key Attributes. Under Key Attribute 2.1, "Where there are multiple resolution authorities within a jurisdiction their respective mandates, roles and responsibilities should be clearly defined and coordinated." Furthermore,

> [s]uch arrangements should be properly documented. Evidence of "arrangements for cooperation and communication between the authorities" includes, typically, the existence of memoranda of understanding that provide for the type of information to be exchanged, confidential channels for communication and contact persons. If the arrangements provide for formal inter-agency committees, their mandate, objectives and operating rules should be clearly defined. Subject to appropriate confidentiality provisions, there should be no legal restrictions on exchanges between domestic authorities of information necessary for those authorities to carry out their functions in relation to recovery and resolution.[5]

In addition to complying with international standards, written protocols would facilitate seamless and effective deployment of the SPOE Strategy and minimize the possibility of a disorderly liquidation.

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[3] This would include any insurance company owned by a covered financial company. See Section 201(a)(9) of Dodd-Frank.
[4] See FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions, Key Attribute 8.1.
[5] See FSB's Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions, Explanatory Note 2.1 (b) (Consultative Document dated August 28, 2013).

The written protocols should address the following matters:

1. Confidentiality

The written protocols should establish appropriate confidentiality protections to facilitate the free flow of information.

2. Prior notice to domestic insurance regulator regarding the Title II resolution of the top-tiered holding company of the covered financial company

The written protocols should spell out what communication should occur before a Title II resolution is commenced. (The timing of such notice may depend on a number of circumstances, including how quickly events unfold.) The domestic regulator presumably will require some notice in order to develop a communications plan for policyholders and other constituencies. In addition, pre-resolution communication may facilitate the FDIC's enforcement of certain subsidiary and affiliate contracts under 12 C.F.R. § 380.12. In particular, the FDIC may want to consult with the domestic regulator regarding qualified financial contracts and other insurance company contracts that are linked to or supported by the covered financial company.

3. Sharing information about the insurance company and its subsidiaries, if any

The written protocols should require that the FDIC, domestic regulator, and guaranty system share information regarding the financial condition of the insurance company and its subsidiaries; the causes of its or their financial difficulties (if any); contractual and other relationships between the insurer and its affiliates; the applicability and extent of guaranty association coverage; and portions of the covered financial company's resolution plan that relate to the insurance company.

4. Consultation regarding possible liquidity support by the bridge financial company

The written protocols should address how funding decisions will be made with respect to operating subsidiaries that need liquidity support. In particular, what process will be followed, what factors will be considered, and who will participate in the discussion?

5. Continued operation of the insurance company

The written protocols should make clear that the insurance company's operations will remain subject to applicable state law, including those governing affiliate transactions, dividend payments and changes of control. In addition, assets owned by the insurance company or its subsidiaries (if any) should remain free from liens imposed by the FDIC, except as permitted by 12 C.F.R. § 380.6.

6. Decision to place insurance company or its subsidiaries into receivership

The written protocols should address the process for determining whether the insurance company or any of its subsidiaries should be placed in receivership, including what factors will be considered and who will participate in the discussion.

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