March 4, 2011

Andrew Stolfi (IL)
Chair, Corporate Governance (EX) Working Group
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE: International Corporate Governance Standards

Dear Mr. Stolfi:

The American Council of Life Insurers ("ACLI")[1] appreciates this opportunity to comment on your Working Group's *Summary of International Corporate Governance Standards* (Attachment B) as you begin to draft corporate governance principles for the United States.

As we have previously stated to this and other working groups of the Solvency Modernization Initiative (EX) Task Force, there are already well-established, robust and effective corporate governance laws (both statutory and case law) in the U.S. that clearly and appropriately spell out the duties and responsibilities of an insurer's board of directors and senior management. Therefore, we do not believe there is any impending need to modify existing corporate governance laws, especially since specific deficiencies or shortcomings with such laws have not been clearly identified.

We realize that the Financial Sector Assessment Program will include insurance core principles (ICPs) and standards that have been adopted, or are in the process of being adopted, by the International Association of Insurance Supervisors (IAIS), including those relating to suitability (ICP 5), corporate governance (ICP 7) and risk management and internal controls (ICP 8). Our comments will, therefore, focus on these three proposed ICPs and related standards and highlight ways in which they should be addressed within the context of existing law for purposes of the NAIC's development of proposed standards.

We would also like to express our agreement with the comments submitted by America's Health Insurance Plans (AHIP).

ICP 5 - Suitability:

General Comments:

We certainly support the notion that an insurer's board of directors and senior management must meet certain qualifications (e.g., suitability standards). However, we do have several concerns.

First, the senior managers who would be subject to these standards should be limited to the highest tier of employees who are most vital to the organization (e.g, president, chief executive officer, chief financial officer, chief information officer). It should not apply broadly to all senior managers (e.g., head of personnel,

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[1] *The ACLI is the primary trade association of the life insurance industry, representing more than 300 legal reserve life insurer and fraternal benefit society member companies that account for over 90% of the assets and premiums of the U.S. life insurance and annuity industry.*

head of research), as an insurer may have dozens of such staff. The suitability of junior staff for their positions is and should remain the responsibility of senior management.

Second, while determining the suitability of a particular individual, an appropriate balance must be struck between the need for certain information (e.g., its relevancy) and intrusiveness. Background checks should be limited in scope in order to determine whether the person meets the basic qualifications for the particular job. Overly-intrusive background checks, akin to those performed by certain federal government agencies, are not only unnecessary but could discourage competent individuals from applying for such positions.

Third, information that is not publicly available but obtained by an insurance department during its evaluation of whether an individual is qualified for a particular position should remain confidential. The department must have certain procedures in place to ensure such confidentiality.

ICP 7 – Corporate Governance:

General Comments:

The corporate governance principles being developed by the NAIC need to take into account well-established state corporate governance requirements and widely-accepted industry practices, particularly those relating to the role and duties of a board of directors and management. For example, a core element of corporate law in the U.S. is the "business judgment rule" in which officers, directors, managers and other agents of a corporation, including an insurer, are not personally liable for losses incurred in corporate transactions and related actions, if the activity was within their authority and where there is sufficient evidence demonstrating that the decisions reached were made in good faith, including the exercise of reasonable skill and prudence under the circumstances.

While the focus of this standard is properly on a regulator's expectations regarding an insurer's board of directors and management, it is in the interest of both regulators and insurers that it not result in a material increase in a board's or management's exposure to liability from shareholders or outside parties.

Specific Comments on Certain Proposed Standards:

(1) Duties of the Board:

The supervisor must require the insurer's Board to set, and oversee the implementation of the insurer's business objectives and strategies for achieving those objectives, including its risk strategy, risk appetite and risk tolerance levels, in line with the insurer's long term interests and viability.

- *Objectives and strategies are reviewed at least annually.*
- *Clear and objective performance goals and indicators should be set.*

The Board must ensure that there is an appropriate separation of the oversight function and management. responsibilities, with clearly defined roles. Adequate oversight must be provided to Senior Management.
The supervisor must require the insurer's Board to provide oversight in respect of the design and implementation of sound risk management, compliance and internal control systems and functions.

ACLI Response:

While boards are responsible for overseeing the implementation of an insurer's business objectives and related strategies, they do not necessarily "set" all of the strategies – that is often the role of management. A board does not necessarily establish performance goals and measures for its company and senior management, but may oversee the establishment of these goals.

This standard does not take into account holding company systems that are commonly used in the U.S. and elsewhere. It is, therefore, unclear if the "separation" requirement would require independent boards for just the parent company or for each insurer within a holding company system. Parent companies typically already have independent boards, so any new requirement would be duplicative and unnecessary.

In addition, this, as well as other, IAIS proposed standards require boards of directors to "ensure" certain actions, outcomes or results. If read literally, such a requirement would make a board essentially the guarantor of certain outcomes or results which would be inconsistent with existing standards for boards in this country (e.g., "business judgment rule"). Consequently, we recommend that the preamble to any NAIC-proposed principles and standards include an explanation of the use of the word "ensure" that will avoid this interpretation (e.g., "the board is expected to oversee the implementation of various policies and procedures, not to guarantee certain outcomes or results) or that the word be replaced with a more appropriate word or term (e.g., "oversee").

(2) Duties of Board Members:

The supervisor must require the individual members of the Board to:

- *Act in good faith;*
- *Exercise the degree of due care, diligence and skill that a reasonably prudent person would exercise;*
- *Act in the best interests of the insurer and policyholders;*
- *Exercise independent judgment and objectivity in decision making, taking due account of the interests of the insurer and policyholders; and*
- *Not use his/her position to gain undue advantage or cause any detriment to the insurer.*

ACLI Response:

This standard appears to put the supervisor in the role of standard setter, judge and jury in terms of determining the duties of board members and whether they are being fulfilled. In the U.S., boards generally owe fiduciary duties of good faith, due care and loyalty to the company and its shareholders (and policyholders of mutual companies) and these duties are governed by existing case law and statute. Therefore, there is no need to re-write these duties in order to be in compliance with the spirit and intended purpose of this element of the ICP.

Consequently, any NAIC-proposed principle relating to duties of board members should clearly state that it is not meant to amend, modify, replace, supersede, or be in addition to, existing corporate governance laws or court rulings (including the "business judgment rule"). It should also appropriately reflect to whom a board's duties are owed. It is also unclear whether the prohibition against gaining an "undue advantage" applies to individual board members or to the insurer. We believe it should only apply to board members.

(3) Duties of Senior Management:

The supervisor must require the Senior Management of the insurer to:

- *Carry out the day-to-day operations of the insurer effectively and in accordance with the strategies, policies and procedures approved by the Board;*
- *Promote a corporate culture of sound risk management and compliance;*
- *Provide to the Board adequate and timely information to enable the Board to carry out its duties; and*
- *Provide to the relevant stakeholders the information required to satisfy the legal and other obligations applicable to the insurer or the senior management.*

ACLI Response:

As mentioned above, boards should oversee these duties but should not be required to ensure, or guaranty, the successful implementation of them. In addition, the information referred to in the fourth bullet need only be communicated to shareholders, therefore, the word "stakeholders" should be replaced with "shareholders" in any NAIC-proposed principle relating to duties of senior management.

(4) Duties of Senior Managers:

The supervisor must require the individuals in Senior Management of the insurer to meet the same requirements of individual Board Members listed above.

ACLI Response:

As with the standard relating to duties of board members, this proposed standard appears to put the supervisor in the role of standard setter, judge and jury in terms of determining the duties of senior managers and whether they are being fulfilled. In the U.S., it is the boards who are typically responsible for determining the general performance standards for senior managers and whether they are being met. Consequently, any NAIC-proposed principle relating to duties of senior managers should clearly state that it is not meant to amend, modify, replace, supersede, or be in addition to, existing corporate governance laws or court rulings (including the "business judgment rule").

(5) Transparency in Reporting:

The supervisor must require the insurer's Board to ensure there is a reliable and transparent financial reporting process for both public and supervisory purposes, which is supported by clearly defined roles and responsibilities of the Board, Senior Management and the external auditor.

The supervisor must require the insurer's Board to ensure that the insurer has adequate policies and procedures for promoting appropriate, timely and effective communications with the supervisor and stakeholders on the governance of the insurer.

The supervisor must also require the insurer's Board to ensure that appropriate and timely information, on the governance of the insurer, are made publicly available, including information on remuneration.

ACLI Response:

Existing requirements in the U.S. achieve the objective of this element of the ICP; therefore, any NAIC-proposed principle relating to reporting should clearly state that its provisions are not intended to amend, modify, replace, supersede, or be in addition to, existing U.S. reporting requirements, including those in the *Sarbanes-Oxley Act of 2002* and the NAIC's *Model Audit Rule*. In addition, certain information, including that relating to detailed corporate governance and remuneration information, need only be communicated to shareholders and not to all "stakeholders" or the public-at-large.

(6) Remuneration:

The supervisor must require the insurer's Board to adopt and oversee the effective implementation of a remuneration policy. The policy should:

- *Not induce excessive risk taking;*
- *Be in line with the identified risk appetite, risk tolerance levels and long-term interests of the insurer;*
- *Have proper regard to the interests of its stakeholders; and*

- *Ensure that members of the Board, Senior Management, Key Persons in Control Functions and other risk taking employees are covered.*

ACLI Response:

Any NAIC-proposed principle relating to remuneration should appropriately limit a board's involvement to setting overall compensation policies. Implementation of these policies is properly the role of management. Importantly, it would not be appropriate for a regulator to substitute its judgment for the informed judgment of a board as to whether a compensation policy conforms to these standards. Any principle should also make it clear that the board's determination regarding the appropriateness of such a policy is protected by the "business judgment rule".

In addition, the word "stakeholders" is vague and should be clearly defined to refer to the company and its shareholders.

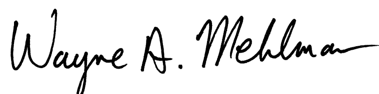
ICP 8 – Internal Controls:

General Comments:

The standards and guidance on risk management within this ICP are too detailed and too prescriptive to be useful to all jurisdictions. In particular, the NAIC's principles should expressly incorporate the principle of "proportionality" as well as provide general guidance to supervisors vis-à-vis small and medium-sized enterprises. Furthermore, many of the comments above relating to boards of directors (e.g., use of the word "ensure", its duties and responsibilities versus those of senior management) also apply to many of the standards in this ICP, and we ask that you take them into account as you draft your own principles in this area.

Thank you for this opportunity to comment, and we look forward to continuing this dialogue when the proposed principles are available for public comment. Feel free to contact me if you have any questions.

Sincerely,



Wayne Mehlman
Senior Counsel, Insurance Regulation

Cc: Jim Everett (NY), Vice Chair, Corporate Governance (EX) Working Group

VIA E-MAIL

03 March 2011

Mr. Andrew Stolfi
Illinois Department of Insurance
320 W. Washington St., 4th Floor
Springfield, Illinois 62767-0001

Re: Corporate Governance Standards

Dear Mr. Stolfi:

We write on behalf of America's Health Insurance Plans (AHIP) and the Blue Cross Blue Shield Association (BCBSA). AHIP is the nation's trade association representing nearly 1300 member companies providing health, long-term care, dental, disability and supplemental coverage to more than 200 million Americans. The Blue Cross and Blue Shield Association is a national federation of 39 independent, community-based and locally operated Blue Cross and Blue Shield companies that collectively provide healthcare coverage for nearly 98 million members - one-in-three Americans.

We appreciate the opportunity to provide our input and thoughts regarding the appropriate standards for corporate governance in the United States, and thank the Corporate Governance Working Group for reaching out and requesting these comments.

In its January 24 memorandum, the Working Group requested specific comments on the appropriate principles and standards that should be considered for use in the U.S. insurance market, and specifically what general considerations U.S. regulators should take into account in developing corporate governance standards. Provided along with the memorandum was a matrix, attached as Attachment B outlining the Insurance Core Principles (ICPs) applicable to corporate governance developed by the International Association of Insurance Supervisors (IAIS), and an analysis of how a number of other jurisdictions (Australia, Canada, Switzerland and the United Kingdom) meet or exceed those standards. Missing from that matrix is an analysis of the United States' existing system of governance. It is critical that the NAIC fully analyze our existing system of governance before attempting to devise "principles and standards … [that] should be considered for use in U.S. insurance regulation."

We have taken the opportunity to provide our specific comments in the attached matrix and to address what we believe is the imperative question, that is, in what respects does the United

States system of corporate governance need to be amended. You will see that we have adopted the format used in the Working Group's Attachment B. We outline the appropriate ICP and the standard's provisions and then add two new columns, one for specific U.S. requirements that we suggest meet or exceed the standard and then a last column with our comments.

As a preliminary comment, we applaud the Working Group for withholding judgment on whether to draft a model law or regulation. As explained more fully in the attached matrix, we believe that the United States corporate oversight system is one about which the regulatory community should be confident and is one which we believe in almost all respects meets or exceeds the IAIS standards.

We also agree with the notion, incorporated into a number of the ICP standards, of proportionality, and suggest that this is a key consideration for any undertaking by the Working Group. Particularly in the United States, the breadth and depth of variety between insurer business models is tremendous. Large multinational corporations that have insurer and non-insurer subsidiaries operating in a variety of markets can not be governed by the same inflexible rules as do small closely-held family operations. Insurers in the United States may be for profit, not-for profit, stock, mutual, publicly owned, privately owned, single state, multi-state, national and international. Any rules developed must take into account each type of business model and must not favor one form of operation over another.

For those carriers that are part of holding company systems, one overarching question that must be answered is where the responsibility for governance, and at what level the oversight responsibility, will lie. Many of the ICP standards are couched in terms of the supervisor requiring "the insurer" to take certain actions or have certain systems in place. We urge a careful review of each of these standards to ensure that there is appropriate flexibility to recognize that governance may take place at a variety of corporate levels within a holding company system. We urge as well that the regulatory community incorporate the critical concept of domestic regulatory deference to lead states for holding company groups. Duplicative examinations and reporting requirements will not provide better regulatory oversight, but instead will create a patchwork of burdensome and ultimately less meaningful information that will not enhance the overall review of an insurance enterprise.

Thank you for your consideration of our comments and we look forward to discussing these with you. If you need any further information, please do not hesitate to contact the undersigned.

Sincerely

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STANDARDS FOR CORPORATE GOVERNANCE

AHIP/BCBSA COMMENTS
March 2011

GENERAL TOPIC	IAIS STANDARD	Existing U.S. requirements	AHIP Comments
Suitability Legislation	Legislation must identify which persons must meet suitability requirements	There are extensive reporting requirements already built into state insurance codes. All states have extensive biographical information requirements, primarily based on the NAIC biographical affidavit.	Many companies also have suitability provisions in their bylaws. States should not supplant these internal judgments, but should provide adequate flexibility for carriers to make these judgments within appropriate parameters.
Qualifications	The supervisor must require that in order to be suitable, Board Members, Senior Management and Key Persons in Control Functions possess integrity and competence to fulfill their roles	Here, too, state insurance codes require extensive biographical information for all individuals included on the jurat page, including key officers and directors.	Determinations of integrity and competence are precisely the judgments that shareholders, boards and board committees are expected to exercise. Suitability is a matter of judgment, and each company must be permitted and encouraged to develop its own standards. With few exceptions, subjective determinations of integrity and competence should not be made by regulators second-guessing the judgment of shareholders, experienced board members and management. While we do not object to the existence of objective standards, troubling questions arise regarding who should be responsible for setting those standards and for determining whether individuals meet, or do not meet them. We suggest that the objective standards outlined in the NAIC biographical affidavits should be sufficient for regulatory oversight.
Significant Owners	Significant Owners are required to have the financial soundness and integrity required to fulfill their roles	All states have existing financial requirements, ranging from overarching RBC requirements, to start up requirements, to capital and surplus requirements. In addition, all states conduct in-depth detailed	The "significant owner" concept is not meaningful. In the case of mutual carriers and non-profit, non-stock companies, there are no individuals who can be deemed "significant owners" and in the case of public companies,

		financial examinations not only of the company but of all significant owners at time of startup. Thereafter the company itself receives significant financial oversight and scrutiny on a periodic and routine basis. In addition, we note that ownership, including presumptive ownership, is governed by terms of the Holding Company Act and for publicly traded companies, all 5% owners are required to file disclosure information with the SEC.	there is a significant body of law regarding the appropriateness of stock transactions. Owners who have designated "roles" may be relevant in the case of startup companies but it is highly unlikely that there would be specific individuals who would generally have an impact on the operations of the company beyond that point. There may be some relevance to this concept for closely held corporations but not in other instances of which we are aware.
Demonstration of Suitability	The insurer must be required to demonstrate the suitability of key persons and significant owners	We suggest that this is the same concept as "qualifications" above	See comments to "qualifications" above.
Notification of Changes	Supervisors must require notification of any changes or circumstances effecting suitability	Existing state laws require notification of changes or circumstances impacting suitability. Form A filings and amendments to biographical affidavits currently provide this information in detail. In addition, SEC Section 16 requires similar disclosures from every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security or who is a director or an officer of the issuer of such security	Again, materiality is a key concept. A requirement for notification of "any" changes that may effect suitability is overly broad and unnecessary. We suggest that the information required by item #11 in the NAIC biographical affidavits should suffice for appropriate regulatory oversight. This item requires extensive disclosure of any actions, criminal charges, guilty pleas, administrative actions, suspensions, etc. and should provide sufficient information regarding any material changes in circumstances impacting suitability. In addition, there needs to be recognition that there may not be a way to guarantee that the company has actual knowledge of actions impacting individuals who do not voluntarily provide that information to the company. Any standard, therefore, should be careful to avoid imposing strict liability.
Appropriate Action	Supervisors must have the authority to take appropriate action when requirements are not met	Existing state insurance laws and regulations.	We suggest that in all instances in which there is an objective regulatory or legislative standard, U.S. insurance regulators have authority to take

			appropriate, proportional actions.
Information Exchange	Supervisors must be able to exchange information with other jurisdictions where necessary to check the suitability of persons	U.S. regulators have a plethora of information exchange mechanisms. The following is an incomplete list of NAIC databases and existing mechanisms that facilitate information exchange: RIRS – Regulatory Information Retrieval System SAD –Special Activities Database SBS – State Based System database CDS – Complaint Database Various Producer licensing databases Financial Analysis Work Group	We suggest that in the United States, supervisors already have significant ability to exchange information with other jurisdictions under existing law. We also note that recent changes to the Holding Company models expand this ability to share information with international supervisors directly and through supervisory colleges.
Duties of Board	The supervisor must require the insurer's Board to set, and oversee the implementation of the insurer's business objectives and strategies for achieving those objectives, including its risk strategy, risk appetite and risk tolerance levels, in line with the insurer's long term interests and viability. ** Objectives and strategies are reviewed at least annually. ** Clear and objective performance goals and indicators should be set. The Board must ensure that there is an appropriate separation of the oversight function and mgmt responsibilities, with clearly defined roles. Adequate oversight must be provided to Senior Management.	There is a significant body of law in the United States requiring boards and management to exercise their duties of care and of loyalty, subject to the protections afforded by the business judgment rule. In addition, there are many existing requirements, such as the Sarbanes-Oxley Act and the Model Audit Rule requirements for appropriate board independence. Regulation S-K, section 407 also contains detailed director independence requirements.	This standard will very likely create conflicts with the established state corporate law applicable to the insurer. In addition, the language of the IAIS standard highlights the differences that exist between United States companies and their European counterparts. This European standard requires the board to "set and oversee the implementation" of certain objectives and strategies. This IAIS standard references the European board structure, not the United States'. In the EU companies there generally are two boards. There is the Management board and the Supervisory board. The differences between them may be loosely described thus: **Role of the European "Board of Management"** In principle, the Management board is responsible for determining the company's

	The supervisor must require the insurer's Board to provide oversight in respect of the design and implementation of sound risk management, compliance and internal control systems and functions.		business strategy and should coordinate all operations of the company. The primary legal responsibilities are to manage and control the day-to-day decision-making of the company. In doing so, the management should take into account the interests of all stakeholders (shareholders, employees, etc.) of the company. **"Role of the European Supervisory Board"** The Supervisory board is responsible for supervising the Management Board and the general course of affairs of the company and its related enterprise and supporting the Management Board with advice. The Supervisory Board is guided in the performance of its task by the interests of the Company and its related entities. The "Management board" then is akin to, and has responsibilities similar to, U.S. senior management and the "Supervisory board" is akin to U.S. boards of directors. Therefore, when European counterparts speak of "Board" responsibility it may or may not be equivalent to the structure appropriate to U.S. companies. The NAIC must exercise all caution not to create a requirement for insurers that will conflict with well established U.S. corporate governance principles. Boards, therefore, in the United States should be required to ensure that appropriate processes are in place and to ensure that management implements the appropriate policies and objectives. They should not be tasked to carry out the actual operational implementation. In addition to the above caution, we question how this standard will overlay the operations of

			United States and international holding company systems. The standard is written in terms of “insurers” yet in many instances, the setting of corporate direction, objectives and strategies are accomplished at a very different level within the holding company system. Some groups will push this responsibility rather far down into the corporate structure while others maintain it at the ultimate controlling parent company level. The standards articulated must permit significant flexibility and should not attempt to demand that decision making take place at only one level within the corporate structure. In addition, once again we strongly urge that proportionality be made a key consideration. Risk management takes place in all companies, but how a carrier manages its risk will depend significantly on the size and structure of the carrier and its holding company system. We assume throughout this document that where “Board” action is contemplated, unless specifically stated otherwise, that action by a committee of the board will be accepted.
Board Structure	The supervisor must require the Board to have, on an on-going basis: ** An appropriate number and mix of individuals to ensure that there is an adequate level of knowledge, skills and expertise at the Board level commensurate with the nature, scale and complexity of the insurer’s business; ** Appropriate internal governance practices and procedures to	The United States insurance regulatory regime has a robust oversight process, which includes the collection of significant personal and professional data through the biographical affidavits and the Form A process that will permit regulators to review board selections. In addition, the risk-focused examination process focuses heavily on subjective reviews of management and board members.	Care must be taken in setting standards as many states have requirements about who can or must serve on a board, and how many directors a company must have, particularly with respect to health carriers. In addition, it is the shareholders and the Board who need to exercise judgment about the expertise that is needed for the Board and for management. This responsibility should not be second-guessed by the regulatory community. We note that generally while it is the

	support the work of the Board in a manner that promotes the efficient, objective and independent judgment and decision making by the Board; and ** Adequate powers and resources to be able to discharge its duties fully and effectively.		responsibility of a Board nominating committee to provide a roster of individuals suitable to fill vacancies, it is, for the most part, not the Board who actually fills those vacancies. Board members are elected by shareholders in the case of publicly traded companies and by members in the case of mutual companies. Non-profit companies often do have either a board or corporate member who will elect Directors. In many cases, the company's articles of incorporation and by-laws will outline the powers and resources of the Board and its committees; these are available to the regulator for inspection. During state triennial financial examinations, a strong focus is put on the adequacy of the company's corporate governance process.
Board Committees	To support the effective discharge of the responsibilities of the Board, the Board should assess whether the establishment of committees of the Board is appropriate. Committees that a Board may commonly establish, depending on the nature, scale and complexity of operations of the insurer, include the audit, remuneration, ethics, compliance and nomination committees.	The NAIC's Model Audit Rule requires that companies have an audit committee, as do both the Sarbanes-Oxley Act and the New York Stock Exchange listing rules. In addition, Company by-laws will contain these requirements, and will be available to the regulator for inspection. Various state corporate laws also contain these requirements. See, e.g., Del.G.C.L. Sec. 141.	Proportionality is a key concern. Depending on the nature of the carrier's business, not all companies will want or need specific board committees. Flexibility to ensure that the company's needs are being served appropriately is a key consideration, rather than the development of a rigid set of committees.
Duties of Board Members	The supervisor must require the individual members of the Board to: ** Act in good faith; ** Exercise the degree of due care, diligence and skill that a reasonably prudent person would exercise;	See NAIC Exhibit A, state corporate law regarding: * Duty of Care * Duty of Loyalty	This standard will create conflicts with the established state corporate law applicable to the insurer. For example, the U.S legal system currently requires that individual members of a board exercise these duties owed to shareholders. It is unclear from the standards articulated here, however, to whom these duties

	** Act in the best interests of the insurer and policyholders; ** Exercise independent judgment and objectivity in decision making, taking due account of the interests of the insurer and policyholders; and ** Not use his/her position to gain undue advantage or cause any detriment to the insurer.		will be owed in all circumstances.
Duties of Senior Mgmt	The supervisor must require the Senior Management of the insurer to: ** Carry out the day-to-day operations of the insurer effectively and in accordance with the strategies, policies and procedures approved by the Board; ** Promote a corporate culture of sound risk management and compliance; ** Provide to the Board adequate and timely information to enable the Board to carry out its duties; and ** Provide to the relevant stakeholders the information required to satisfy the legal and other obligations applicable to the insurer or the senior management.	State corporate law	This standard will create conflicts with the established state corporate law applicable to the insurer. The requirement that senior management act "in accordance with the strategies, policies and procedures approved by the Board" is overly broad. Its plain language presupposes that all day-to-day operations of the insurer are in accordance with policies and procedures "approved by the Board," which is not always the case. In the United States, Senior management is responsible for the day-to-day management of a company. The Board's responsibility, apart from selecting and evaluating either the CEO or the CEO and the management team, is to oversee management. The discharge of this responsibility is determined by reference to the corporate laws of the state of the company's incorporation or formation. Management is generally given broad discretion. It is frequently the case, then, that management is not, strictly speaking, acting in accordance with procedures "approved by the Board." The last standard, articulated in paragraph 5 is ambiguous. Rather than create an ambiguous

			responsibility for senior management, we suggest it would be more appropriate to hold the Board of Directors responsible for appropriate oversight of management as the managers carry out their duties, which is what existing state corporate law requires and adequately addresses. In addition to the ambiguity of the draft standard, we note that in the United States, there is already a fiduciary duty imposed not only on boards of directors, but also of corporate officers, to act in the best interests of the company, and therefore of shareholders. *See, e.g., In Re Walt Disney Company Derivative Litigation,* 825 A.2d 275 (20032004 Del. Ch. LEXIS 132 (2004).
Duties of Senior Managers	The supervisor must require the individual in Senior Management of the insurer to meet the same requirements of individual Board Members listed above.	See: Duties of Senior Management	See: Duties of Senior Management
Supervisor Authority over Corporate Governance	The supervisor must have the power to require the insurer to demonstrate the adequacy and effectiveness of its corporate governance framework. Where failures or inadequacies are identified, the supervisor must have the power, and exercise that power, to require the insurer to take appropriate remedial action. For this purpose the supervisor should assess whether the insurer's overall corporate governance framework is effectively implemented and remains adequate	The NAIC's risk-focused examination procedures, the provisions of the NAIC's Model Audit Rule and the recently adopted revisions to the Holding Company models all provide for significant regulatory authority over corporate governance.	Under the new risk-focused examination procedures, the U.S. supervisors have the power to require the insurer to demonstrate the adequacy and effectiveness of its corporate governance framework. The new examination procedures encourage regulators to focus significant time and attention to the corporate structure, and how the insurer's governance procedures operate. These examination procedures include multiple elements of the corporate governance structure requirements including the new elements in Schedule M, as an example. Therefore, we suggest that regulators have ample opportunity to critique management.

	by undertaking periodic on-site inspections and/or other (including off-site) reviews as appropriate to the nature, scale and complexity of the insurer's business and its risk profile.		In addition to the above, there are a myriad of standards throughout the insurance regulatory regime that require carriers to seek approval for material transactions within holding company structures, and regardless of holding company structures, that have a material impact on the financial condition of the insurer. These requirements, at least, "bake in" the oversight of board decisions and include real-time regulatory review of significant transactions.
Transparency in Reporting	The supervisor must require the insurer's Board to ensure there is a reliable and transparent financial reporting process for both public and supervisory purposes, which is supported by clearly defined roles and responsibilities of the Board, Senior Management and the external auditor. The supervisor must require the insurer's Board to ensure that the insurer has adequate policies and procedures for promoting appropriate, timely and effective communications with the supervisor and stakeholders on the governance of the insurer. The supervisor must also require the insurer's Board to ensure that appropriate and timely information, on the governance of the insurer, are made publicly available, including information on remuneration.	There are many existing requirements for transparency in corporate financial disclosures and reporting, including: * State insurance financial reporting rules * Form 990 reporting requirements * Annual audited financial reports * Sarbanes-Oxley audit committee requirements * SEC Regulation S-K, Section 407 * Annual Statement Supplemental Compensation Exhibits *Model Audit Rule	We seek clarification regarding the standard in paragraph 1, and question the meaning of the phrase "which is supported by clearly defined roles and responsibilities of the Board, Senior Management and the external auditor." We note that in the United States there tends to be a bright line distinction between the duties of boards and management – a distinction referenced above. In the European corporate structure, however, as we noted above, this distinction is less clear. To the extent the IAIS participant countries feel the need to have clearly defined roles and responsibilities for Boards and management, we suggest that the United States system should be the model. In addition to the existing distinction between board and management responsibilities, we note that the NAIC's Model Audit Rule already includes the standards in paragraph 1 of this section. As we noted in our comment to both the NAIC and the IAIS with respect to ICP-7, it is unclear what the transparency requirement is intended to encourage until there is a clear definition of who the stakeholders are. Public companies are

			already subject to significant "transparency" requirements to shareholders and to investors. There is no real understanding, however to whom a non-public company would be communicating. For those carriers, we suggest that the regulator stands in the shoes of the "consumers" with respect to financial solvency protection and oversight, and so communications with regulators should be sufficient to meet the transparency requirements of this standard. With respect to the last paragraph of this standard regarding remuneration, we note that many boards of subsidiary companies are not "paid" except through their positions with parent companies. In those circumstances, it is unclear what kind of disclosure and to who would be appropriate.
Remuneration	The supervisor must require the insurer's Board to adopt and oversee the effective implementation of a remuneration policy. The policy should: ** Not induce excessive risk taking ** Be in line with the identified risk appetite, risk tolerance levels and long term interests of the insurer ** Have proper regard to the interests of its stakeholders; and ** Ensure that members of the Board, Senior Management, Key Persons in Control Functions and other risk taking employees are covered.	The Internal Revenue Service has reasonableness requirements for non-profit companies. In addition, the NAIC Annual Statement requires public reporting through the Supplemental Compensation Exhibits, and many state legislatures have also required these disclosures.	Proportionality is a critical consideration here. Any overarching rule must consider the differences in management and oversight needs of small, as opposed to large, insurers. We question, at the outset, the level of subjectivity of this standard. In many respects it is consistent with the existing standards of due care already owed by Boards to their companies in the course of the normal fulfillment of their fiduciary duties. As we have noted frequently above the working group should not presume that U.S. governance requirements are being written on a blank slate. We have a large and deep body of existing law requiring that Boards exercise their responsibilities faithfully, that they act as fiduciaries, and that they carry out their responsibilities honestly and without self-dealing. We urge the NAIC to take the

			opportunity to fully explain our current system, which, we suggest not only meets but exceeds the standards outlined by the IAIS.
Risk Management System	The Supervisor requires an insurer to establish and operate within an effective system of risk management and risk management of internal control. An adequate and effective risk management system includes, at least, the following: ** A clearly defined and well documented risk management strategy. ** A clearly defined risk appetite/risk tolerance approved by the Board. ** Appropriate written policies that include a definition and categorization of the material risks and the levels of acceptable risk. ** Appropriate processes and tools to identify, measure, manage, monitor, test and report the risks. ** Appropriate controls for ensuring that policies and procedures are operating effectively. ** Regular reviews of the ERM framework for modifications and improvements	There are a number of existing requirements for risk-management and internal controls, including: *Model Audit Rule *Sarbanes-Oxley * SEC 10K reporting of significant risk events * Enterprise risk report that will be required under amendments to the Model Holding Company Act	The working group must carefully consider and coordinate with the activities of the other NAIC working groups and committees studying the need for ORSA requirements in the U.S. In addition, we suggest that many of these issues have been addressed in the context of the Holding Company Model amendments. Coordination among NAIC groups, particularly when the subject is corporate governance, is of critical importance. For example, risk focused examinations already review a company's enterprise risk management. There is no need for a separate standard for ERM at this point, particularly given the lack of an objective definition of what an effective risk management strategy should be. Given the wide variation between business models in the U.S. insurance system, and the even wider variety in business risks, we suggest that this kind of a standard would be difficult, if not impossible, to develop in a way that would not disadvantage one model over another. Proportionality in oversight requirements is critical. In addition, we question at what level within the corporate structure these requirements are intended to apply. Rules for groups of insurers will need to be considered.
Control Functions/Internal control system	The Supervisor requires the insurer to have control functions for risk management, compliance, actuarial matters, and internal audit, in each	Model Audit Rule PCAOB Triennial examinations	Many of these requirements are included in the Model Audit Rule requirements. We caution against the development of yet one more layer of requirements that will significantly add to the

	case appropriate to the nature, scale, and complexity of the insurer's business, risks and obligations and with the necessary authority, independence and resources. The authority and responsibilities of each control function are set out in a written charter. Each control function has the necessary independence from management. The Board of Directors ensures that the head of each control function has the authority and responsibility to report periodically to it or one of its committees. In addition to personal qualities of integrity, members of each control function should possess the necessary experience, skills, and knowledge required for the specific position they exercise and meet any applicable professional qualifications or certifications. The board of Directors is ultimately responsible for ensuring that management has in place an adequate and effective internal controls system for the insurer. The Internal Control System (ICS) must be designed and operated to		burden of financial oversight, with out a clearly articulated rationale for their implementation. We question how this standard will be implemented within a holding company structure. It is frequently the case that many of these control functions do not take place at the legal entity level. We also question what the phrase "each control function has the necessary independence from management" means. In many cases, it will be the management that will implement the requirement.

	provide reasonable assurance over (a) the insurer's key business, IT, and financial policies and processes, particularly but not only in respect of financial reporting, and (b) the related risk management and compliance measures in place.		
Risk Management Function	The Supervisor requires the insurer to have a risk management function appropriate to the nature, scale, and complexity of the insurer's business, risks and obligations. The risk management function establishes, implements and maintains appropriate strategies, policies, procedures, controls and communication to: ** identify the risks the insurer faces and assess, aggregate, monitor and help manage and address them effectively; ** gain and maintain an enterprise-wide view of the risk profile of the insurer; ** evaluate the internal and external risk environment in order to identify and assess risks as early as possible; ** conduct regular stress testing and scenario analyses; ** regularly report to Senior Management, key persons in control functions and the Board; ** conduct regular assessments of the risk management function	Triennial examinations	We agree with the language in the first paragraph of the standard, recognizing that proportionality is a key consideration. The risk management function standards are adequate and accurate, but we urge the NAIC to refrain from requiring a specific method of either managing risk or performing stress testing. Companies must be free to determine which method is best for their specific business model and must be permitted to determine at what level within the holding company structure that analysis and testing is done. There appears to be a recognition that risk management needs to be at the enterprise level, by the requirement that there be an "enterprise-wide view" of the risk profile, but that undertaking also must be done at the enterprise-wide level. We urge that some specific recognition of the enterprise-wide-nature of this review be included in the standard. We also note that there are instances in which different lines of business may have discrete risk profiles and so risk analysis may not be appropriate at the enterprise level. These wide variations in business models underscore the need for regulatory flexibility. We suggest that defining the parameters of what will be considered "regular" and "effective" is important.

	and incorporate needed improvements.		
Internal Audit Function	The supervisor requires the insurer to have an internal audit function appropriate to the nature, scale and complexity of the insurer's business, risks and obligations. This function provides independent assurance to the Board of Directors in respect of matters such as: ** Fraud prevention; ** Financial reporting and management information systems; ** IT systems; ** Risk management and compliance systems; and ** The design and operational effectiveness of control in respect of the above matters, as well as the totality of such controls. The internal audit function should be fully independent and should report to the Board or Audit Committee with sufficient frequency and depth.	Triennial examinations Standards for the Professional Practice of Internal Auditing	We agree with the language in the first paragraph of the standard, recognizing that proportionality is a key consideration. We question what the concept of "independence" entails in this standard, and in particular question the use of the phrase "fully independent." There are many companies with very robust audit functions that use only internal auditors; we do not believe that this language is intended to imply that all carriers must use outside audit firms. Given that, we suggest that Standard 1100 of the Standards for the Professional Practice of Internal Auditing (the "standards") addresses the standards outlined by the IAIS. The term "independent" has a common definition with the internal audit profession; we urge the NAIC to reference those standards, rather than create new ones. [1] We do agree, however, that for most carriers it is important that the chief internal auditor does not report directly to management. However, again, there are some companies that are so small that even this requirement would be unfair, unnecessary and unjust and so, again, the concept of proportionality must override all concrete rules.

[1] Standard 1100 of the Standards for the Professional Practice of Internal Auditing reads as follows:
Standard: The internal audit activity must be independent, and internal auditors must be objective in performing their work.
Interpretation: Independence is the freedom from conditions that threaten the ability of the internal audit activity to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity, the chief audit executive has direct and unrestricted access to senior management and the board. This can be achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional, and organizational levels.

			Some carriers will have auditors report to board committees other than the audit committee, so any requirement must not be unnecessarily prescriptive. For example, in some circumstances, and for some issues, auditors may report to the executive committee, the compensation committee, compliance committee, or any of a number of other committees established by the particular company. Flexibility is a key consideration. The requirements for audit functions should be expressed with the same level of flexibility as for the compliance function. It should be based on the risks identified by the company, which can change over time and must be flexible enough to respond to changing circumstances. We also repeat and incorporate our comments outlined under risk management, above.
Compliance Function	The supervisor requires the insurer to have a compliance function appropriate to the nature, scale and complexity of the insurer's business, risks and obligations. The head of the compliance function should have the authority and responsibility to report periodically to the Board of Directors or one of its committees. Such reporting should be of sufficient frequency and depth.	Triennial examinations	The "sufficient frequency" standard is vague and should be revised to include the concept of "appropriateness to the organization."
Actuarial Function	The supervisor requires the insurer to have an actuarial function appropriate to the nature, scale and complexity of the insurer's	Annual financial statements Rate and form review Model Audit Rule Code of Professional Conduct	The standard should reflect existing actuarial standards of practice. In addition, we question what "other resources" are contemplated by this standard. If it entails unfettered access to

	business, risks and obligations. The person performing the actuarial function must be free of influences that may compromise his or her ability to undertake actuarial work in a fair and objective manner. The actuarial function determines or provides an opinion in respect of the appropriate technical provisions or reserves. The supervisor should have access to actuarial resources, or other resources, that enable the supervisor to critically assess the work of an insurer's actuary or those performing the actuarial function.		software, we note that many software systems are either proprietary or are accessed by the company on a contractual basis only and often are not able to be made available. We also think it important to be clear precisely as to what information regulators believe they do not have access through financial examinations, market conduct examinations, holding company reports, audited financial statements, or any other reporting or examination process.

Motil Consulting Inc.
Columbus, Ohio

August, 25, 2010

Mr. Andrew Stolfi, Illinois
Chair
Corporate Governance (EX) Working Group
National Association of Insurance Commissioners
Via e-mail: BJenson@naic.org

Re: High Level Corporate Governance Principles

Dear Mr. Stolfi,

I wish to submit this comment letter as an Interested Party (IP) to facilitate the deliberations of the Corporate Governance (EX) Working Group. By way of brief background, I have been involved in state insurance solvency regulation at the state and national levels for over 35 years. A career consisting of 33 years with the Ohio Department of Insurance and 2 years of providing regulatory services to various state insurance departments and the NAIC accreditation program. During these years I've dealt with Boards and management in many varied situations, and as a result I believe that there are four (4) primary principles that a Board must understand and embody, in order for it to effectively and efficiently develop a framework of rules and practices that are typically described as corporate governance activities.

The primary Board principles are:

I. The Board are the Trustees of the corporation's capital and surplus

> This fiduciary principle requires the duty of care and duty of loyalty, together with a suitable blend of financial, business, consumer and independent backgrounds and experience for the Board to responsibly attend to shareholder values and oversight of consumer and regulatory confidence that is in keeping with the insurer's complexity and business risk environment. The capital and surplus represent the current state of the insurer's financial vitality and wealth gained from past efforts that is currently entrusted to the Board to oversee its continued growth or preservation.

II. Unyielding insistence by the Board of ethical conduct and compliance to corporate policies, internal controls and compliance to jurisdictional laws and regulations by all Board Members, officers, employees and agents of the insurer

As the Board members are held to a fiduciary standard of care, loyalty and trust over the insurer's net assets, then a similar sense of corporate conduct and organizational responsibility must be imparted to the organization's members and insisted upon by management and all others. The Board needs periodic positive assurance that conduct, controls and compliance requirements are being imparted and achieved, to include financial reporting as well as all non-financial reporting functions. Significant non-compliance events need to be promptly reported to the Board.

III. Management serves at the pleasure and behest of the Board to develop, carry out and report upon the initiatives and affairs of the insurer through the informed consent and established limits of the Board and in recognition of the Board's responsibility as Trustee of the insurer's capital and surplus

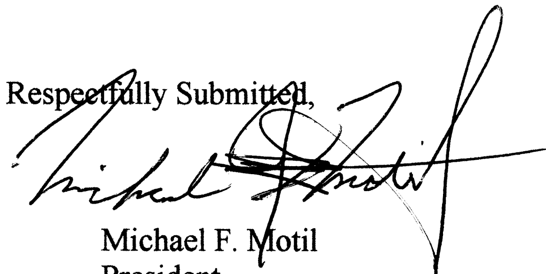
This principle stresses the need for utmost transparency, honesty and timely communication between these two groups. Management compensation should be driven by the accomplishment of this principle, as much as by the achievement of certain financial results.

IV. The Board is a self-governing entity

The Board must comprise and organize itself in a manner whereby it can accomplish the satisfaction of the above three principles. The Board must have the fortitude and self-obligation to conduct periodic self-assessments of its conduct and performance.

It is not my intention to exhaustively discuss each of these principles, but rather to demonstrate their inherent importance. With such principles in place the discussion of building a corporate governance framework of rules and practices should hopefully, move more smoothly and be flexible to differing insurers' business structures, size and risk environments. Please feel free to utilize these comments into ICP5 as you may desire.

Respectfully Submitted,



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March 4, 2011

Bruce Jenson, CPA
Financial Examination Manager
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri 64108-2662

Re: Corporate Governance Working Group/international corporate governance standards

Dear Mr. Jenson:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to respond to Mr. Stolfi and Mr. Everett's request for comment memorandum dated Jan. 24, 2011, pertaining to "Exposure of international corporate governance standards."

We understand that draft principles are in the process of being prepared, and will be exposed for discussion at the NAIC national meeting in Austin later this month and for written comments thereafter. We believe any detailed substantive comments regarding which, if any, principles are appropriate will be more efficiently offered when the draft is exposed.

At this time, therefore, we offer these brief conceptual observations:

We question the necessity for the NAIC to address corporate governance as a stand-alone issue in this manner. We note that the working group is part of the Executive Committee, and thus not tethered to the substantive committees which oversee ongoing regulatory processes—committees which have made significant strides in modernizing regulation in recent years, including with respect to corporate governance.

For instance:

- The NAIC/AICPA Working Group, reporting to the Financial Condition (E) Committee, recently put forth a substantial rewrite of the Model Audit Rule which NAIC has adopted. That Working Group's web page describes these changes thusly: "The revisions relate to auditor independence, **corporate governance**, and internal control over financial reporting." (Emphasis added.)
- The Financial Condition (E) Committee also recently oversaw a significant overhaul to the NAIC Financial Examiners Handbook, with the implementation of the risk-focused examination. Under the heading "Overview of risk-focused surveillance process," the introduction to the Handbook explicitly identifies corporate governance as its leading reform measure: "The enhancements included in the risk-focused surveillance process

intend to provide the following benefits: 1. Strengthen regulatory understanding of the insurer's corporate governance function...." It then goes on to explain: "Risk-Focused Examinations: ... The process should generally include a determination of the quality and reliability of the corporate governance structure and risk management programs." The Handbook throughout provides comprehensive guidance to the examiners for evaluating the strength of the examinee's corporate governance structure and practices.

- The Handbook's progress regarding corporate governance was recognized in the NAIC's Consultation Paper on the Own Risk and Solvency Assessment (ORSA) for the Solvency Modernization Initiative, which explained that, in the Handbook, "Exhibit M contains information for review of an insurer's governance (e.g. board of directors, senior management, organizational structure, risk management function)."

- The NAIC in December, 2010, adopted significant amendments to the Insurance Holding Company System Regulatory Act. According to a recent NAIC webinar announcement, "corporate governance" requirements were one of the six main elements of the revised Act. The new Model requires a statement that the board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's senior management has approved and implemented and is maintaining and monitoring corporate governance and internal control procedures.

- The NAIC Market Regulation Handbook, promulgated under the auspices of the Market Regulation and Consumer Affairs (D) Committee, also mandates an evaluation of corporate governance. For instance, examiners are instructed to review board of directors' records to "ensure the board has proper oversight of the company's operations and activities."

NAIC's recent corporate governance initiatives have thus been particularly robust. The NAIC would be well served to give these measures time to be implemented and evaluated before launching a comprehensive attempt to establish corporate governance principles. Indeed, some effort to evaluate the effectiveness of these proposed new standards seems to be required. We realize that no model law has yet been proposed, but we fear that eventuality underlies the instant effort. We suggest, then, that the threshold question here is whether any such addition to corporate governance standards is needed or rational.

We also note the crucial fact that the standards and processes mentioned above have been developed within the framework of basic regulatory functions. We submit that this is the most efficient and effective way to implement corporate governance reforms: by tying them directly to, and letting them grow naturally from, actual regulatory processes.

By contrast, separating out corporate governance—and treating it as an independent regulatory goal instead of a tool to be used in support of specific regulatory goals—is an artificial construct not properly grounded in the very purposes of the insurance code and the implementation thereof. The core function of NAIC's members is insurance law, not corporations law.

With that in mind, we respectfully suggest that, at worst, this project has the potential to be harmful and inappropriate. All insurers are subject to a well-developed body of corporate

governance law that has developed in the United States for well over a century. Importing comprehensive corporate governance standards from foreign jurisdictions may well materially clash with basic U.S. law and public policy and in doing so place directors and management in an untenable position between the expectations of corporate law and those of insurance law.

For instance, a cursory review of the materials provided on the foreign corporate governance standards reveals a qualitatively different approach to board structure and the role of the board in the day-to-day affairs of the company that could potentially conflict with core standards governing U.S. directors' conduct such as the business judgment rule.

As mutual companies, our members also would like to express concern that the NAIC proceed with care and follow a nuanced approach that avoids a one-size-fits-all result. The core mission and responsibilities of the mutual company is fundamentally different than one owned by public shareholders. Because the structure of the company, the incentives of the board and management, etc., are distinguishable, the resulting corporate governance norms can be quite different as well.

For instance, mutuals tend to be much more conservatively run because they do not need to manage to short run expectations, their boards and management do not have compensation tied to share price, and they do not have access to the public to raise capital. No mutual companies needed or sought government assistance during the 2008 financial crisis; instead these companies were a source of stability in the system. Corporate governance standards designed in reaction to, and to reign in, risky behavior are of less consequence for mutual companies and instead may expose them to unnecessary second-guessing.

We think that it may be particularly inapposite to overlay European insurance governance standards over United States insurance regulatory policy. Mutuals do not have nearly the penetration by premium volume in Europe that they do in the U.S., and thus European insurance regulators and policy makers have designed their processes for a different market with different needs.

We urge NAIC to carefully consider the implications of these differences on several levels: the substance of any principles it considers; the prominence that should be paid to principles of proportionality; and the havoc that could be wreaked by an attempt to codify corporate governance standards into a model law as opposed to recommended guidelines.

We therefore look forward to a dialog about this project at the NAIC that not only addresses the substance of corporate governance principles, but the necessity and appropriateness of seeking to compile such a list outside the context of the development of specific regulatory processes.

Sincerely,

Neil Alldredge

Senior Vice President – State & Policy Affair

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February 15, 2011

Via Email

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RE: Corporate Governance Working Group Exposure of Study of International Corporate Governance & Risk Management Standards and Bermuda Insurance Code of Conduct

Dear Mr. Jenson:

The Reinsurance Association of America (RAA) appreciates the opportunity to comment to the NAIC Corporate Governance Working Group on its Study of International Corporate Governance & Risk Management Standards and the Bermuda Monetary Authority's Insurance Code of Conduct. We understand that there will be another opportunity for interested parties to comment when the Working Group releases draft corporate governance principles.

The RAA is the leading trade association of property and casualty reinsurers doing business in the United States. The RAA also has fifteen affiliate companies, who are reinsurance intermediaries and life and health reinsurers. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis.

We offer the following general comments:

1. We understand that the Working Group has been charged by the NAIC Solvency Modernization Initiative (EX) Task Force with developing corporate governance principles for use in U.S. insurance regulation. However, existing corporate governance standards, including officer and director duties, are robust and well established, and in many instances have over a hundred years of court case interpretation and precedents. Publicly traded companies are also subject to further corporate responsibility regulation by the U.S. Securities and Exchange Commission and the Sarbanes-Oxley Act. Absent a significant rationale that is material to a specific regulatory need related to insurance, these existing standards should be solely relied upon. Regulators should identify those precise areas or aspects of corporate governance that raise a concern and target only those areas for possible change. We would also urge regulators to review existing applicable corporate governance standards to determine whether the issue has been addressed before proposing any additional requirements on insurers.

2. The NAIC should make clear which regulator will have the authority to apply and enforce any new corporate governance requirements. We believe this should be the regulator for the jurisdiction in which the insurer is incorporated or organized. Empowering other jurisdictions in which the company operates to apply new corporate governance standards would be unnecessarily onerous and would potentially subject insurers to conflicting or duplicative standards.

3. Any additional regulatory duties or responsibilities imposed upon an insurer or its officers and directors must be sufficiently defined so that the affected party has a clear understanding of how to meet such duty or responsibility. Even greater clarity is needed when criminal penalties are attached to conduct (many states provide that certain violations of insurance codes are misdemeanor criminal code violations). Vague standards that can result in imposition of penalties on insurers may violate due process requirements and should be avoided.

4. When establishing obligations to demonstrate compliance with standards or other requirements, due process protections should be taken into account. For example, assigning a duty on an insurer to show compliance imposes a burden of proof upon the insurer. In that case, there should be countervailing requirements that the regulator use a reasonably prudent person standard and administrative procedures for determining if the compliance demonstration is sufficient. The regulator should not have unfettered discretion to make such determinations. In addition, the regulator should have the responsibility to articulate in sufficient detail any allegation of wrongdoing on the part of the company, so that the insurer has a clear understanding of the rationale supporting the regulator's finding of non-compliance.

5. There should be a clear separation of the responsibilities of management and boards. For example, board members cannot be expected to be involved in the day to day risk management of the company, which is the appropriate role of management.

6. The distinctions between the different legal forms of organizations (e.g., corporations vs. LLCs) and shareholder structures should be recognized and addressed.

7. To the extent the NAIC looks to other jurisdictions for corporate governance standards, we note that the proportionality principle in the Bermuda Monetary Authority's Insurance Code of Conduct should be evaluated.

The RAA appreciates the opportunity to comment. We look forward to continuing discussions with the Working Group as it considers any additional corporate governance principles for use in U.S. insurance regulation.

Sincerely,

Tracey W. Laws
Senior Vice President & General Counsel