

December 15, 2008

Sent Via E-Mail to Eric Nordman

The Hon. Sean Dilweg
Office of the Commissioner of Insurance, State of Wisconsin
Chair, Climate Change and Global Warming (EX) Task Force
National Association of Insurance Commissioners (NAIC)
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE: *Insurer Climate Risk Disclosure Survey – November 26, 2008 Draft*

Dear Commissioner Dilweg:

On behalf of the National Association of Mutual Insurance Companies, I am writing to express NAMIC's opposition to the "Insurer Climate Risk Disclosure Survey" (hereinafter referred to as "Survey"), and to urge the Task Force not to adopt it in its current form.

Background

The Survey is the fourth version of a climate risk disclosure proposal whose first iteration was released last February. The Survey has been presented as a compromise that resulted from private negotiations between Ceres, Travelers, and the Reinsurance Association of America. It differs from previous versions of the proposal in several respects, the most significant of which is that it does not use the Annual Financial Statement as a reporting mechanism.

As you know, NAMIC has expressed strong opposition to each previous version of the proposal. We have consistently argued that insurance regulators should not require insurers to answer questions that wrongly assume insurers have the knowledge and ability to treat "climate change" as a discrete risk that can be independently analyzed and managed. Furthermore, we have argued that risk disclosure rules that arbitrarily intrude into areas that have nothing to do with risk or solvency, such as companies' efforts to reduce their facilities' greenhouse gas emissions, or their communication with "key constituencies on the topic of climate change," go well beyond the purview of insurance regulators. We have also argued against exposing insurers' responses to public scrutiny, as would have been the case under previous versions of the proposal that called for responses to most questions to be included in the Annual Financial Statement.

The November 26th draft Survey

The current Survey retains the types of questions to which we previously objected, and establishes that insurers would be required to answer each question. Moreover, the Survey

contemplates that insurer responses to all eight questions will be made available to the public. Thus, although the Survey is different in some respects from previous versions of the proposal, the changes that have been made do not fundamentally address our objections to previous versions of the proposal, and therefore provide us with no reason to alter our original position.

Furthermore, the Survey contains new features that give rise to new concerns. These include the remarkable opacity of the revised questions; the fact that the responses to the survey will be evaluated independently by different state insurance departments (which greatly adds to the uncertainty insurers would confront in trying to determine what constitutes an acceptable response, and what consequences might ensue if a response is judged to be inadequate, insufficient, or lacking “good faith”); and the fact that the Task Force has found it necessary to reappoint the Climate Risk Disclosure Working Group in 2009 in order to “complete work on the Climate Risk Disclosure Proposal.”¹

This last point is especially distressing. It was suggested at the December 5th Task Force meeting that the additional work to be undertaken by the Working Group in 2009 will consist of developing “guidance” to companies regarding their responses to the various questions. Presumably, the guidance will attempt to clarify the meaning and intent of the Survey’s eight vaguely-worded questions, and help insurers and regulators understand what is meant by the Survey’s requirement that insurers’ responses be “meaningful.” This guidance, it seems fair to say, will provide the details in which the disclosure devil resides. Right now, no one knows what those details will look like.

At the December 5th meeting, it was clear from presentations given by Messrs. Logan, Nutter, and Bell that the authors of the compromise have different ideas about what should become of the Survey if it is adopted. We were particularly struck by Mr. Logan’s testimony that Ceres regards the Survey as an “evolving” instrument that should be continuously revised to further intrude into the affairs of insurers and their policyholders. Mr. Nutter, for his part, seemed to balk at that prospect. The apparent lack of consensus even among the three drafters of the Survey regarding its ultimate design and purpose attests to the uncertainty and confusion that continue to surround the climate risk disclosure issue. It is obvious that the Survey is far from being a finished product. Thus, a critical question for Task Force members—including those who are sympathetic to the concept of insurer climate risk disclosure—is whether it is appropriate to adopt a new and entirely unprecedented type of regulation in the form of a mandatory survey that is, at most, half-baked.

In our view, the only way to overcome these difficulties and the objections we raised to previous versions of the climate risk disclosure proposal is to make the Survey voluntary. What makes the Survey so unusual and draconian, compared to climate risk reporting mechanisms such as the Carbon Disclosure Project (which the Survey purports to mimic), is that companies would be legally required to answer each question and submit their responses to government regulators, who in turn would expose the responses to public scrutiny. As Ceres’s Mr. Logan joyfully exclaimed at the December 5th Task Force meeting, the Survey “is the first mandatory climate risk disclosure in the world.”

¹ “Climate Change and Global Warming (EX) Task Force: 2009 Proposed Charges.”

Conclusion

After more than a year of debate on this issue, it remains a mystery to us why, out of all of the world's commercial enterprises, the American insurance industry should be singled out for mandatory climate risk disclosure regulation. The stated objective of the Task Force is to enable regulators to acquire "information about the risks posed by climate change to insurers and the actions insurers are taking in response to their understanding of climate change risks." To our knowledge, there has never been a serious discussion among Task Force members that considered whether this objective could be met by asking insurers to submit such information voluntarily. That approach, as Mr. Logan has helpfully reminded us, would be consistent with the approach taken everywhere else in the world with respect to every other industry.

Shouldn't the Task Force try voluntary climate risk disclosure before adding another layer of mandatory reporting to an industry already overburdened by data reporting requirements? Is it appropriate to impose upon U.S. insurers "the first mandatory climate risk disclosure in the world" when the proposed disclosure instrument is still a work in progress? We hope members of the Task Force will give some thought to these questions prior to their December 17th conference call.

Sincerely,

A handwritten signature in black ink that reads "Robert Detlefsen". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Robert Detlefsen, Ph.D.
Vice President, Public Policy