

December 12, 2019

Ann Misback  
Secretary  
Board of Governors  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave. NW  
Washington, DC 20551

Re: Docket No. R-1673; RIN 7100-AF 56: Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities

Dear Ms. Misback:

On behalf of the nation's state insurance regulators, we write to commend the Federal Reserve Board on releasing its proposed rule implementing risk-based capital requirements for depository institution holding companies significantly engaged in insurance activities. The publication of this proposal and its eventual adoption as a final rule will provide certainty to Savings and Loan Holding Companies engaged in insurance activities and further buttress our collective work at the International Association of Insurance Supervisors (IAIS) to advocate for changes to the IAIS's insurance capital standard (ICS) and recognition of the aggregation method as a jurisdictional alternative during the upcoming ICS monitoring period. We have particularly appreciated the Federal Reserve's consultation with the NAIC throughout the development of this proposal and our development of our own Group Capital Calculation (GCC).

At this juncture and in recognition of our own ongoing deliberations regarding the development of a GCC, our concerns or questions are limited. We agree with the proposed framework for the rule, the Building Block Approach, as it is largely consistent with the framework of the GCC, and we look forward to continued consultations as the Federal Reserve moves towards finalizing the rule. However, we do have a few specific areas that we believe merit additional clarification and would like to discuss with you further as your work proceeds.

#### Treatment of Surplus Notes

First, the proposed rule indicates there will be limitations placed on the recognition of surplus notes as available capital starting November 2020. As you are undoubtedly aware, surplus notes are an important source of capital for mutual insurance groups and other non-stock companies, some of which are also Savings and Loan Holding Companies. The proposed limitations could require such companies to increase capital in other ways. However, given their structure, the primary alternative source of capital for these companies outside of issuing surplus notes is to raise premium rates. At bare minimum, this could have an adverse impact on policyholders, but could potentially also reduce the availability of certain insurance products. As the primary stewards of policyholder protection, our hope would be to avoid such outcomes. This limitation on surplus notes is also inconsistent with our proposed GCC.

Consequently, we would like to have a better understanding for the rationale for limiting the use of surplus notes as capital and also request that you reconsider such limitations.

### Interplay of Capital Distributions with the Capital Conservation Buffer

Second, the proposed rule includes a “capital conservation buffer” of 235% above the minimum requirement of 250% X Authorized Control Level (ACL) of state insurance risk-based capital requirements (RBC). Further, the proposed rule would limit capital distributions when available capital is 485% X ACL RBC. While we appreciate that the Federal Reserve would apply these rules and restrictions at the holding company level, we would like a more fulsome understanding as to how these rules and restrictions would work in concert with state insurance regulatory authorities that also provide for approval of capital distributions in cases where a mutual insurer or other non-stock company is the ultimate controlling party.<sup>1</sup>

### Treatment of Senior Debt

Last, as you are undoubtedly aware, it is sometimes the case when a stock non-insurance company is the ultimate controlling party its only functions are to be the holding company for insurance subsidiaries or other entities within the larger group and to issue debt to support the insurers within the group. In such instances, when the insurers are removed from the consolidated value of the holding company and reported on a stand-alone basis, the value of the top holding company may be negative or near zero due to the outstanding value of the debt. Further, there could be a further reduction in the value of the holding company when the consolidated GAAP value of the insurer is removed, and the stand-alone statutory value of the insurer is established. It is our understanding that under the proposal no adjustment is included that would recognize some value of senior debt as available capital. Absent any recognition of senior debt for such purposes, we would like to understand if the de-stacked value of the holding company will be brought into the capital ratio and if any capital charge would be assigned to the holding company. We are concerned that including negative values for the holding company may result in the capital ratio falling below the action thresholds, forcing the firm to raise capital, but at the same time foreclosing senior debt as a potential source of such capital. This in turn could force the firm to raise premiums and thereby have an adverse impact on policyholders. If our understanding of the treatment or impact are mistaken, we look forward to future discussions to clarify our understanding.

### Conclusion

Thank you for your consideration of these comments and questions. We look forward to scheduling further consultations as you move towards finalization of your proposal and we continue to move toward adoption of the GCC. Please don't hesitate to contact Ethan Sonnichsen, Managing Director, Government Relations at [esonnichsen@naic.org](mailto:esonnichsen@naic.org) or (202)471-3980 or Mark Sagat, Assistant Director, Financial Policy and Legislation at [msagat@naic.org](mailto:msagat@naic.org) or (202)471-3987 in the event you have any questions and to schedule further consultations.

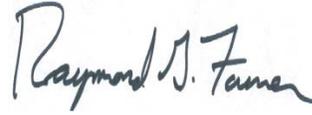
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<sup>1</sup> We recognize that the Bank Holding Company Act and the Policyholder Protection Act of 2015 (which was incorporated in the Consolidated Appropriations Act of 2016) provide specific procedures and safeguards in cases where an insurance company is a subsidiary or affiliate of a Bank Holding Company or Savings and Loan Holding Company. However, in cases where the insurer is also a depository institution holding company, the Federal Reserve and state insurance regulators have shared jurisdiction, albeit with some differences in regulatory objectives.

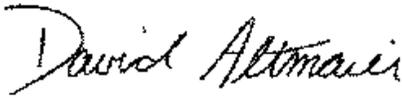
Sincerely,



Eric A. Cioppa  
NAIC President  
Superintendent  
Maine Bureau of Insurance



Raymond G. Farmer  
NAIC President-Elect  
Director  
South Carolina Department of Insurance



David Altmaier  
NAIC Vice President  
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Florida Office of Insurance Regulation



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