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December 14, 2011

United States Department of the Treasury
Federal Insurance Office, MT 1001
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

RE: Comments on Report to Congress on How to Modernize and Improve the System of Insurance Regulation in the United States

Dear Director McRaith:

On behalf of the Risk and Insurance Management Society, Inc. (RIMS), I am pleased to offer our comments to selected questions published in the Federal Register as part of the Department's solicitation as required by Section 313(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203).

RIMS is the preeminent organization dedicated to advancing the practice of risk management and comprised of more than 3,500 industrial, service, nonprofit, charitable and government entities globally. While RIMS membership spans the entire insurance and economic spectrum, we are predominantly consumers of commercial property and casualty insurance. As commercial consumers of insurance, RIMS members purchase commercial excess liability, commercial general liability, multi-peril, automobile liability, Directors and Officers liability, and employments practices liability insurance for their organizations. RIMS members' ability to readily and affordably purchase these lines of insurance contributes to their organizations' overall financial stability and well being, thus promoting greater stability for the United States' economy.

4. The degree of national uniformity of State insurance regulation, including the identification of, and methods for assessing excessive, duplicative or outdated insurance regulation or regulatory licensing process.



Currently there is very little uniformity of regulation of insurance as is evidenced by the state-by-state patchwork of laws related to new product approval, self-insurer requirements, collateral requirements, solvency requirements, state licensing requirements and reinsurance requirements. There is an inherent weakness in the state-based system where states have the ability to legislate variances to national standards or model laws or simply apply or interpret these standards in a manner that diverges from any national standard. This state by state disparity is compounded by the fact that the National Association of Insurance Commissioners (NAIC) is a private entity with little or no enforcement powers over the various states, except through its state accreditation program.

For example, insurers are subjected to redundant filing approval requirements that create significant barriers to entry into new markets and make it difficult to launch new and innovative products, all to the detriment of consumers. Also, examples abound, not just of duplication, but sometime conflicting state requirements. For example, states vary greatly in the amount of prior notice required to non-renew or amend policy provisions ranging from 30 to 90 days. The result is that these differences hurt consumers by adding costs and unnecessary complexity to the insurance products they purchase. Not only do these variances create inefficiencies, but also importantly, the disparities under the current system raise questions of fairness and transparency.

The most recent example of this weakness in the current state-based system is the apparent inability of states to coordinate amongst themselves and through the National Association of Insurance Commissioners (NAIC) to follow clear Congressional intent and legislative history in implementing the Nonadmitted and Reinsurance Reform Act (NRRA), part of the Dodd-Frank Act.

While Congress directed the states to come up with a uniform system to streamline the regulatory and tax payment process by June 21, 2011, the result has been a hodgepodge of at least three different systems of premium tax allocation that makes compliance far more complex and expensive than prior to the law's enactment. Despite the clear intent of the NRRA, the states have not yet adopted nationwide uniform requirements, forms and procedures that provide for the reporting, payment and collection and allocation of premium taxes for nonadmitted insurance. Additional Congressional action or pressure may be necessary. Toward this end, RIMS requests that the Director's report to Congress recommend greater uniformity and Congressional action clarifying its intent for the states to adopt uniform standards. It has also come to our attention that captives may be pulled into the NRRA in its implementation. We also hope your report will recommend clarification of this issue.

For years, RIMS overarching policy objective regarding reform or modernization of insurance regulation has been in favor of greater federal regulation to achieve national uniformity. RIMS strongly supported the creation of the Federal Insurance Office as a first step toward needed federal regulation and expertise. However, considering the multitude of sweeping changes brought about by Dodd-Frank, the move toward

greater immediate federal regulation is impractical and should be slowed. While we remain supportive of an optional federal charter as embodied in bipartisan legislation introduced most recently in the last Congress by the former Rep. Melissa Bean (D-IL) and Rep. Ed Royce (R-CA), there are many interim steps toward greater federal uniformity that are more realistic in the short term.

The Bean/Royce legislation last Congress was H.R. 1880. Some desirable features of that legislation are that any federal system would parallel the current dual compliance banking system so that the state system would remain largely intact. Under H.R. 1880, insurance producers for life and property and casualty insurance would have the option to be regulated at the federal level. RIMS supports greater federal uniformity under a federal charter or an alternative system because greater uniformity of regulation would foster economies of scale and open or competitive markets. Once again, we suggest that the Director's report to Congress recommend greater uniformity amongst the states as an interim measure or precursor to an optional federal charter (OFC).

5. The regulation of insurance companies and affiliates on a consolidated basis.

Insurance subsidiaries of groups that are internationally active could be subject to multiple regulatory regimes that are at odds with each other, for example, where a non-U.S. parent company regulator treats capital differently from a U.S. parent company regulator. This disparate treatment could mean varying capital requirements which work to the disadvantage of one company. RIMS believes that credit should be given to the capital held at the subsidiary level and that capital requirements should be the same. Disparate regulations could lead to a lower credit rating and higher borrowing costs for the international group. Also, the result could lead to an increase in capital requirements which would affect capacity and therefore increase costs of insurance to consumers.

This potential inequity underscores the need for regulators to set policy with the objective of setting a level playing field that treats insurers that are part of international groups fairly in relation to purely U.S. domestic insurance groups. The authority provided to the FIO in Dodd-Frank appears to address this scenario by giving the FIO Director the authority to preempt state laws which treat non-U.S. insurers domiciled in foreign jurisdictions less favorably.

6. & 10. International coordination of insurance regulation and the impact that developments in insurance regulation in foreign jurisdictions have on potential Federal regulation.

The FIO Director, in coordination with the Treasury Secretary and U.S. Trade Representative must play an important role as a lead voice in representing United States insurers and commercial consumers as policy holders' purchasing needs are manifested outside the United States.



For RIMS' members, international uniformity is just as important as national uniformity, and, for much the same reasons. It is vital that United States insurers or producers be recognized by foreign entities and there must be a level playing field for domestic and international insurers when policies are issued in foreign countries. Commercial insurers, producers and policyholders will benefit from consistency in terms and conditions when insurance is purchased from a single insurer. Oftentimes, United States consumers might prefer to deal with United States insurers/producers whose credentials and ratings are familiar and understandable. Additionally, administrative matters such as claims processing and policy issues may be more easily resolved when dealing with a familiar insurer. Finally, dealing with one insurer/broker who are able to meet all a business' needs would eliminate any potential for duplicative costs and administrative burdens of dealing with multiple brokers for services.

Just as barriers to market entry are bad for United States consumers, to the extent they exist in other countries, these barriers are bad for U.S. insurers and consumers doing business overseas. Brazil may serve as but one example. In Brazil, the Instituto de Resseguros do Brasil (IRB) had a closed insurance system which required all insurance policies to be purchased through the IRB. A few years ago, they announced an opening of the market to all foreign insurance companies and brokers to become licensed to issue policies in order to meet economic growth and development there. Unfortunately, Brazil reversed itself in regulations and imposed a requirement on commercial insurance purchasers that 40% of reinsurance must be placed locally. Just recently, the government of Brazil has loosened up this requirement acknowledging that the additional layers of bureaucracy to the insurance transaction were ultimately borne in the form of higher costs to consumers. Despite the apparent loosening of the regulation, the uncertainty and regulatory instability have added direct and indirect costs to United States insurance buyers. RIMS recommends that the FIO work with local regulators there so that they have a clear understanding of the global implications of their actions.

7. The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

As underscored in #4 and #5, the state system of regulation is inefficient, redundant and increases costs to consumers. There is no uniformity in licensing requirements, new product entry requirements, or terms and conditions, without any sound policy justification for differences. When this happens, insurers must make 51 different applications and the costs associated with these 51 filings are passed on to consumers. Where insurers are subject to redundant filing approval requirements it creates significant barriers to entry into the market.

RIMS argues that greater federal regulation such as that envisioned by an optional federal charter would increase uniformity for those companies which choose a national charter and would reduce redundancy for those aspects of regulation that the federal charter would preempt.

Under H.R. 1880, national insurers would be licensed to write life insurance, property and casualty insurance or reinsurance of life and property and casualty insurance. National insurers would receive a federal license from a federal regulator such as the FIO with (regulatory authority) and could write business nationally.

The ability to achieve national treatment or more uniformity amongst the states would enable an insurer/producer to do business in all states and avoid higher costs of state regulation due to the need to comply with 51 state regulators. The eventual creation of a federal regulatory body would result in greater oversight but also foster increased competition so as to facilitate a greater supply of insurance at a lower cost to consumers.

8. The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

Currently, the banking system is bifurcated and has not suffered in any way related to its dual regulatory structure. More than likely, some insurance products lend themselves to federal regulation while others, such as workers' compensation, are more suitable to remain under state regulation.

RIMS comments pertaining to the desirability of an OFC are limited to commercial property and casualty lines of insurance and reinsurance purchased by our members. The commercial insurance market is very competitive (low level of concentration) and has a high degree of substitutability which makes it feasible for federal regulation. Additionally, as consumers of commercial property insurance for their organizations, our members are more likely to be experienced or sophisticated so that the policy rationale for maintaining state protections for individual consumer lines might not necessarily adhere to commercial purchasers.

9. The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

Today, there are 51 state systems of regulation. Insurers already have the right to change their place of domicile and move to another state where regulations may be more favorable. With one strong federal regulator, RIMS has every confidence that a federal system would be at least as strong as any state regulator. Also, we do not believe businesses make decisions that are costly, time consuming and disruptive on such an ad hoc basis. Legislation could also impose monetary penalties for companies which clearly engage in "forum shopping".

11. The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.



Most studies related to imposition of greater federal regulation and increased uniformity demonstrate that consumers benefit from a regulatory scheme in the form of lower prices where strong solvency oversight is maintained. Consumers would be protected against insolvencies by extending current state-based guaranty mechanism to national insurers and policyholders.

OFC proposals ensure the financial stability of national insurers by requiring adherence to statutory accounting principles that are more stringent than GAAP. Previous OFC legislation duplicates the stringent investment standards, risk based capital requirements, and quarterly reporting requirements currently under state law.

Under an OFC, consumers will enjoy uniform and consistent protections and the same availability of products and services in all 51 states. Consumers will also benefit from uniform rules relating to sales and marketing practices of companies and agents and for the first time consumer issues of national importance will receive direct attention from a federal regulator.

Once again, I want to thank you for the opportunity to provide comments on issues related to insurance modernization. Please do not hesitate to contact Kathy Doddridge, RIMS Government Affairs Director at kdoddridge@rims.org if you have questions or require additional information about the Society's position.

Best regards,

A handwritten signature in black ink, appearing to read "Scott B. Clark", written in a cursive style.

Scott B. Clark, AAI
RIMS 2011 President and Director
Risk & Benefits Officer
Miami-Dade County Public Schools