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April 30, 2012

Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: <u>Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies (FRS Docket No. 1438 & RIN 7100-AD-86)</u>

Dear Ms. Johnson:

TIAA-CREF writes to comment on the Notice issued by the Board of Governors of the Federal Reserve System ("Board") on January 5, 2012 regarding proposed rules to implement enhanced prudential standards under Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) and the early remediation requirements under section 166 of DFA ("Proposal"). We appreciate the opportunity to participate in the discussion concerning the development of enhanced prudential standards and early remediation requirements. As a savings and loan holding company (SLHC), we write to express our view that the Board does not have the authority to apply the Proposal's enhanced prudential standards and early remediation requirements to SLHCs unless an SLHC has been designated as systemically important by the Financial Stability Oversight Council (FSOC) under DFA Section 113. In addition, as we have stated in our prior letters to the Board and the FSOC, in devising enhanced prudential standards and early remediation requirements for nonbank financial companies, including SLHCs that have been designated as systemically important, the Board must take into account the differences between nonbank financial companies, including SLHCs, and bank holding companies (BHCs).[1] Not only is the Board required to do so by statute, the failure to take these differences into account will result in the development of inaccurate and misleading information, will likely result in harm to the insurance industry and the broader economy, and thus hinder the Board in its efforts to strengthen financial stability.

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[1] TIAA-CREF Response to ANPR Regarding Supervision and Regulation of Certain Nonbank Financial Companies, November 5, 2010 Letter from Brandon Becker to the Honorable Timothy Geithner; TIAA-CREF Response to NPR Regarding Supervision and Regulation of Certain Nonbank Financial Companies, February 25, 2011 Letter from Brandon Becker to the Honorable Timothy Geithner; TIAA-CREF Response to Notice of Intent to Apply Certain Supervisory Guidance to Savings and Loan Holding Companies, May 23, 2011 Letter from Brandon Becker to the Board.

I. Background

TIAA-CREF is a leading provider of retirement services in the academic, research, medical and cultural fields managing retirement assets on behalf of 3.7 million participants at more than 15,000 institutions nationwide. TIAA-CREF is an organization comprised of several distinct corporate entities whose overall assets under management or administration total $501 billion.[2] Teachers Insurance and Annuity Association of America ("TIAA") is a life insurance company domiciled in the State of New York which operates on a not-for-profit basis with net admitted general account assets of $209 billion. TIAA is a wholly-owned subsidiary of the TIAA Board of Overseers, a special purpose New York not-for-profit corporation. Based on their indirect ownership of TIAA-CREF Trust Company, FSB (total assets $496 million[3]), TIAA and the TIAA Board of Overseers are registered as SLHCs under the Home Owners' Loan Act ("HOLA") and currently are supervised by the Office of the Comptroller of the Currency (OCC) and the Board. The College Retirement Equity Fund ("CREF") issues variable annuities and is an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. TIAA-CREF also sponsors a family of equity and fixed-income mutual funds. TIAA-CREF's mission is "to aid and strengthen" the institutions we serve and provide financial products that best meet their specific needs. Our retirement plans offer a range of options to help meet the retirement plan administration obligations of institutions and the savings goals and income and wealth protection needs of individuals.

II. The Board Does Not Have the Authority to Impose the Proposal's Enhanced Prudential and Early Remediation Standards on SLHCs

In the Proposal, the Board states that as the primary supervisor for SLHCs under HOLA, it is appropriate to apply the enhanced prudential standards of the Proposal to SLHCs with substantial banking activity, defined as any SLHC that has total consolidated assets of $50 billion or more and has savings association subsidiaries which comprise 25% or more of such SLHC's total consolidated assets or controls one or more savings associations with total consolidated assets of $50 billion or more, to ensure the safety and soundness of the SLHC. The Board does not have the authority to "impose enhanced prudential standards and early remediation requirements on [SHLCs] with substantial banking activities once the Board has established risk-based capital requirements for [SHLCs]." Congress, in drafting the DFA, did not make SLHCs automatically subject to enhanced prudential standards. Instead, SLHCs only are subjected to such requirements upon designation under DFA Section 113 by a supermajority vote of the FSOC. Congress determined that only Section 165(i)(2)(a) regarding stress tests automatically would apply to SLHCs over $10 billion and delegated to the FSOC the authority to designate SLHCs as posing macroprudential risk and therefore subject to enhanced prudential standards. Thus, there was a deliberate decision by Congress to exclude SLHCs from the entities to which Section 165

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2 As of March 31, 2012.

3 As of December 31, 2011.

enhanced prudential standards and Section 166 early remediation requirements would apply unless such entities are designated as systemically important by the FSOC.

There can be no question that Congress was specifically aware of the unique characteristics of insurance companies and intended that the application of the DFA take into account these differences. Senator Collins specifically addressed the issue in a colloquy with Senator Dodd on the Senate floor stating, in part:

> Senator Collins: While I can envision circumstances where a company engaged in the business of insurance could be designated under section 113, I would not ordinarily expect insurance companies engaged in traditional insurance company activities to be designated by the council based on those activities alone. Rather, in considering a designation, I would expect the council to specifically take into account, among other risk factors, how the nature of insurance differs from that of other financial products, including how traditional insurance products differ from various off-balance-sheet and derivative contract exposures and how that different nature is reflected in the structure of traditional insurance companies.
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> Senator Collins: As the Senator knows, insurance companies are already heavily regulated by State regulators who impose their own, very different regulatory and capital requirements. The fact that those capital requirements are not the same as those imposed by section 171 should not increase the likelihood that the council will designate an insurer. Does the Senator agree?
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> Senator Dodd: Yes, I do not believe that the council should decide to designate an insurer simply based on whether the insurer would meet bank capital requirements.[4]

Thus, Congress did not intend for an entity to be designated as systemically important based on whether it could meet bank capital standards, nor did Congress intend for the Board or the FSOC to apply bank-centric metrics to insurance companies.

Congress specifically authorized the Board to examine and require reports from SLHCs for specific purposes[5] including threat to the stability of the financial system of the United States. Congress did not, however, make such macroprudential concerns a factor in clarifying the Board's authority to set capital standards for SLHCs. Indeed, Section 616 of DFA, which clarified the Board's authority to adopt capital standards for SLHCs, focuses solely on microprudential concerns and, in particular, requiring that a SLHC will act as a source of strength for its subsidiary thrift.

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[4] 115 Cong. Record 5902-03 (July 15, 2010).

[5] 12 U.S.C. §§ 1467a(b)(2), (b)(4).

The DFA plainly states that the power to apply enhanced prudential standards and early remediation provisions to nonbank financial institutions is predicated upon a finding by the FSOC that a nonbank financial institution is systemically important under Section 113 of the DFA. Sections 115, 165 and 166 of DFA state that they are applicable to nonbank financial companies supervised by the Board and large, interconnected BHCs. Sections 115, 165 and 166 of DFA further state that the purpose of enhanced prudential standards is "to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure or ongoing activities of large, interconnected financial institutions." Congress made it clear that enhanced prudential standards should be used to address risks to the financial system that may result from the activities of large, interconnected institutions. Imposing such standards on institutions not found by the FSOC as systemically significant under the guise of "safety and soundness" would be contrary to Congressional intent and an abuse of regulatory discretion.

While the Board has oversight over SHLCs, we respectfully submit that the Board does not have the authority to expand the scope of Section 165 and 166 as a proxy for safety and soundness supervision. There is a difference between microprudential oversight geared toward safety and soundness and macroprudential supervision to be accomplished through the enhanced prudential standards of the Proposal intended to prevent threats to "the stability of the financial system of the United States." The external impacts of the activities of BHCs and SLHCs support applying differing prudential standards. The largest BHCs are engaged heavily in many of the financial activities identified by Congress as posing significant risks to the financial system, including: (a) acting as primary dealers, (b) acting as derivatives and swaps dealers, (c) managing payment and clearing systems, (d) providing and conducting prime brokerage activities, (e) sponsoring, underwriting and dealing in structured products, and (f) various other market making and underwriting activities. SLHCs historically have not been significant participants in such activities and should not be supervised in the same manner as internationally active BHCs.

To the extent an SLHC might present a threat to the stability of the U.S. financial system, the risks presented are likely to be very different than those presented by BHCs. Section 165(b)(3) requires the Board to "to take into account the differences among nonbank financial companies supervised by the Board and BHCs" and we urge the Board to follow this statutory mandate when establishing prudential standards. The failure to take into account the differences between nonbank financial companies and BHCs are likely to lead to increased burdens on SLHCs without a commensurate macroprudential benefit. Indeed, we believe forcing bank-centric standards on nonbank financial companies generally, but particularly those that are SLHCs, or may include an insurance company (referred to throughout as "covered insurance enterprise") could lead to increased risk through the application of inappropriate metrics. In the case of covered insurance enterprises, a key concern is solvency and the ability to pay policyholders over long time frames in contrast to the short term liabilities of banks. Bank metrics will not capture covered insurance enterprise solvency.

More specifically, bank capital standards focus on equity capital and lending activities. Insurance companies generally do not have large lending portfolios and thus do not maintain loan loss reserves. Insurance companies do, however, maintain significant reserves against policyholder obligations which are taken into account in determining equity capital. Unless such differences are considered in calculating regulatory capital, the use of bank-centric standards will discourage conservative insurance company reserving in favor of higher bank-centric regulatory capital, an outcome that would have both negative safety and soundness and macroprudential consequences. For example, the use of bank-centric capital standards might cause a covered insurance enterprise to invest in short-term Treasury obligations which carry a 0% capital charge when the entity would be better served by investing in longer term instruments, such as mortgages, to better match the long term nature of its liabilities. The existing insurance company risk-based capital ("RBC") framework utilized by insurance supervisors accounts for these types of risks, whereas bank-centric capital standards do not.

III. Enhanced Prudential Standards Must Take Into Account the Business Model, Capital Structure and Risk Profile of Nonbank Financial Companies

Although the Preamble to the Proposal states that the Board intends to take into account the business model, capital structure and risk profile of nonbank financial companies in implementing enhanced prudential standards and early remediation requirements, the Proposal also makes plain that the Board intends to apply bank-centric standards to nonbank financial companies. The Board must develop separate capital, liquidity and leverage requirements for nonbank financial companies, including covered insurance enterprises, that properly assess the financial strength and risk profile of their predominant lines of business. The plain language of DFA requires the Board to account for differences in industries and reject a "one-size-fits all" approach to metrics. The rationale for this is clear – it is imperative that regulators utilize the correct yardsticks to measure capital, leverage and liquidity of nonbank financial companies to develop an accurate picture of the risks presented by such companies.

As we stated in our prior letters to the Board and the FSOC, the business of insurance differs fundamentally from other areas of the financial services sector. Insurance products allow consumers to transfer risk through products such as life insurance (the risk of dying too soon) and annuities (the risk of living too long), as opposed to taking on greater risk, as is often the case with other financial products such as stocks (market risk) and bonds (interest rate risk). Retirement and life insurance products generally require that policyholders pay premiums in exchange for a legal promise that is often due years in the future. Insurers are compelled to manage assets in a way that reflects the long-term nature of their obligations. This results in insurers that provide retirement products being less leveraged than other sectors of the financial services industry. In addition, life insurance and retirement liabilities tend to operate independent of the business cycle in that they are predetermined (e.g. annuities, term life) or randomly dispersed (natural disasters) so that the payout schedule is not a function of economic conditions. Insurers have the freedom in a financial crisis to choose when to sell assets rather than being forced to liquidate assets to satisfy short-term obligations.

Bank-centric metrics will not provide regulators with the information they need regarding the capital and long term solvency of covered insurance enterprises. Indeed, we believe the application of bank capital standards to the business of insurance is not relevant to the Board's macroprudential responsibilities and will likely lead to unintended and inappropriate results. RBC and life insurance enterprise risk management focus on the solvency of the insurer and the matching of assets to liabilities over the long term. Insurance reserves and bank deposits often have very different economic and risk characteristics. Unlike banks, life insurance company liabilities are generally not available to policyholders on demand. The RBC analysis requires insurers to conduct regular stress tests using conservative assumptions to test insurance company reserves in the context of insurer's long term liabilities. Bank-centric metrics focus on short term events and will not reflect an insurer's solvency. Just as one would not use a ruler to measure the volume of a container of water, one cannot use metrics that do not account for the fundamental economic characteristics of a particular industry and expect to arrive at an accurate portrayal of such firms' financial wellbeing and ability to withstand financial stress.

Regarding leverage ratios for covered insurance enterprises, the FSOC and federal financial regulatory agencies charged with implementing the Volcker rule have now recognized that the investing risks and benefits of life insurance company separate accounts are borne by and inure to policyholders and not the insurance company and thus separate accounts should be excluded from the calculation of an insurance company's leverage ratio.[6]

For all of these reasons, we believe that by expanding the reach of Sections 165 and 166 in the manner proposed in the Proposal, the Board is likely to weaken its ability to understand and address real risks in the economy. In order for enhanced prudential standards to be effective, they must be tailored in a manner to address the risks presented by an entity and must be sufficiently measured to avoid negative consequences in the broader economy. By requiring covered insurance enterprises to use bank-centric metrics, the Board may misinterpret key attributes and risks of these enterprises or create new risks which will have significant negative consequences for the companies involved and the broader economy. Indeed, we believe using a bank-centric model for covered insurance enterprise oversight ultimately will be less effective than an appropriately tailored model. Moreover, the impact of such errors will be magnified by the Board's intended public release of stress test results.

In this regard, it is important for the Board to recognize that insurance companies engaged in traditional insurance business were not the cause of the 2008 financial crisis. And, as the International Association of Insurance Supervisors (IAIS) noted "[t]he financial crisis of 2008/09 has shown that, in general, the insurance business model enabled the majority of insurers to withstand the financial crisis better than other financial institutions."[7] In fact, the IAIS concluded:

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[6] We believe the Board should view separate accounts of insurance companies as functionally equivalent to investment management accounts or collective investment funds maintained by a bank's fiduciary department. To the extent that the insurance company does not bear the risk of investment loss for the separate accounts, its separate accounts should receive the same treatment under the Board's capital adequacy standards as bank fiduciary accounts, including common trust funds and collective funds established pursuant to OCC fiduciary regulations. As required by Section 171 of DFA, such treatment would be consistent with the existing leverage and risk-based capital standards applicable to banks. Both a bank trust department and an insurance company's separate accounts have legal title to assets, yet statutory restrictions in both cases maintain a legal separation of these assets from the assets available to satisfy the general creditors of the insurer or bank. Accordingly, separate account assets of an insurance company generally should be excluded from leverage and risk-based capital ratio calculations.

[7] IAIS, Insurance and Financial Stability, November 2011, p.3 available at

> Insurers' investment portfolios, which are selected largely to match the underlying characteristics of insurance liabilities, were able to absorb sizeable losses. Similarly, the nature of insurance liabilities, and the fact that payments to policyholders generally require the occurrence of an insured event, makes it less likely for insurers engaged in traditional activities to suffer sudden cash runs that would drain liquidity. While impacted by the financial crisis, insurers engaged in traditional insurance activities were largely not a concern from a systemic risk perspective."[8]

Thus, there is no indication that the current system for evaluating insurance company capital, leverage and liquidity is inadequate and no basis to change to a set of rules that will fail to capture key information regarding the insurance industry.

IV. The Procedures Related To Liquidity Risk And Governance Are Too Rigid

The Board should propose liquidity requirements that are tailored to nonbank financial companies based on specific industries and types of business. In brief we believe using bank-centric standards for non-bank entities, especially covered insurance enterprises, will (1) misallocate Board and management resources from dealing with the real risks of insurance; (2) misallocate capital from the actual risks faced by covered insurance enterprises and (3) create greater macroprudential risk to the financial system. In addition, the procedural requirements that the Proposal will impose on risk management committees and boards of directors are unduly burdensome and would crowd out other important activities of such committees. The type of information required by the Proposal, including the frequency and nature of the board and risk committee reporting and the reviews required are inappropriate, particularly for life insurance companies that exhibit low levels of liquidity risk.

We are concerned that the governance aspects of the Proposal are so detailed and specific that they would prevent directors from exercising the necessary oversight over all areas of responsibility, including other areas of potential significant risk to a company. The Proposal would require directors to be involved in operational areas and day-to-day management of a company. This is contrary to a board of director's insurance oriented responsibilities to provide oversight and review of management actions and strategic direction to a company. Section 252.52 of the Proposal, specifying actions that must be taken by the board of directors in connection with liquidity risk management, is unusually detailed and prescriptive specifying, among other things, (i) which tasks must be undertaken by the board of directors as a whole and which may be delegated by the board of directors to the risk committee or by the risk committee to a subcommittee, (ii) the frequency with which the board of directors (or risk committee or a designated subcommittee) must conduct reviews, (iii) the precise items that must be reviewed and established and, in some cases, reviewed and approved, and (iv) that the risk committee or

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www.iaisweb.org/__temp/Insurance_and_financial_stability.pdf

[8] Id.

designated subcommittee must establish "procedures governing the content" of senior management reports.

As an insurance company, we are concerned that the amount of time proposed to be devoted to liquidity risk management will cause boards of directors to focus on an area that is less likely to present significant risks for covered insurance enterprises at the expense of consideration of other significant risks and growth strategies that are likely to be more impactful to the company. While banks primarily are funded through short-term financing activities such as savings accounts and certificates of deposit, insurance companies raise the funds they invest by taking on risk related to property and casualty exposure and mortality. While banks model liquidity needs based on interest rate exposure, insurance companies model liquidity based on conservatively calculated actuarial probabilities of claims unrelated to the capital markets – such as morbidity and mortality risk for insurance and annuities. Nevertheless, the Proposal would require a nonbank financial company to produce both comprehensive short-term cash flow projections on a daily basis, and long-term cash flow projections on a monthly basis, regardless of whether short-term cash flows are material to the nonbank financial company's business model.

Similarly, BHCs are engaged in many trading and market making activities that expose them to short-term market risk, while insurance companies invest for the long-term and are exposed to actuarial risks related to individual longevity and/or the probability of catastrophic events occurring. The liquidity risk management practices appropriate for a BHC engaged in market making in the foreign exchange market are not necessarily appropriate for a covered insurance enterprise engaged in long only purchases of corporate bonds for an insurance company's general account. One size fits all risk management standards clearly are inappropriate for entities facing such differing types of risks. Indeed, as former Governor Olson stated, "[a]n effective enterprise-wide compliance-risk management program is flexible to respond to change, and it is tailored to an organization's corporate strategies, business activities, and external environment."[9]

Requiring boards of directors to engage in tasks normally conducted by senior management raises its own risks. The goal of enterprise risk management is to "not solely lower risk but to more effectively manage risks on an enterprise-wide, holistic basis so that stakeholder value is preserved and grows over time. . . . ERM can assist management and the board in making better, more risk-informed strategic decisions."[10] In order to fulfill their role in an enterprise risk management framework, boards of directors must be free to engage in a broader examination of the strategic risks facing a company. Research in the field of enterprise risk management suggests that one of the greatest risks a company may face is to "fail to look beyond the traditional

[9] Governor Mark W. Olson, speech at the Fiduciary and Investment Risk Management Association's Twentieth Anniversary Training Conference, Washington, D.C. (Apr. 10, 2006).

[10] Effective Enterprise Risk Oversight – The Role of the Board of Directors (COSO 2009); RIMS Executive Report on Widely Used Standards and Guidelines, March 2012 available at www.rims.org/resources/ERM/Documents/RIMS%20Executive%20Report%20on%20Widely%20Used%20Standards%20and%20Guidelines%20March%202010.pdf

downside risks to their business to consider the upside risks, such as missed growth opportunities" and risk management programs may fail where risk management is "reduced to a box checking activity – an elaborate, expensive and resource-intensive compliance exercise."[11] Boards of directors must be free to evaluate broader strategic issues facing a company. These risks are likely to change depending on economic and market conditions. Limiting boards of directors to checklist type liquidity reviews will absorb enormous amounts of their time without providing commensurate benefits to their organizations.

V. Stress Tests Must Be Tailored for Nonbank Financial Companies

The Board must develop separate stress tests for nonbank financial companies, particularly covered insurance enterprises. Insurance companies are, as noted above, subject to very different risks than banks. Bank-centric stress tests do not appropriately account for the risks faced by nonbank financial companies and instead focus on bank-centric risks such as credit risk of commercial lending and "run-on-the bank" scenarios not relevant or useful in evaluating covered insurance enterprises' ability to withstand economic stress. Likewise, as Governor Tarullo noted,[12] bank stress tests do not even account for interest rate risk and thus would not have addressed the root cause of the savings and loan crisis of the 1980s.

Covered insurance enterprises have business models and risk characteristics that differ from globally active banks and the Board's existing stress testing approach is not designed to address such nonbank business models and risks. The Board should reconsider and revise its approach for stress testing nonbank activities. The results of the Comprehensive Capital Analysis and Review raise significant concerns that the business of insurance has not been appropriately addressed, as required by DFA Section 165(b)(3)(D), in the Board's current approach.

The Board is using certain proprietary models and methodologies to conduct the stress tests. Such an approach increases the likelihood of misunderstood results because it is not subject to peer review with public challenging of assumptions, calculations or inputs. The Board should periodically issue for public comment its methodologies for testing various asset classes and activities to both inform the public, as well as covered companies, regarding the significance of its findings (facts to put the results in context) and to provide the public an opportunity to improve the Board's approach. The Board's recently established Model Validation Council would benefit from input from other stakeholders beyond academia such as from rating agencies, nonbank financial companies, investors, consumers, and other regulatory agencies. We believe the proposed symposium on stress testing models is a positive step in this direction.

We believe that covered companies should have greater opportunity to both understand the results of the Board's stress testing and to challenge results before they are made public. Any

[11] Booz & Co., Risk Stewardship The Next Frontier In Building Shareholder Value, 2006, available at http://www.booz.com/media/uploads/Risk_Stewardship.pdf.

[12] Daniel K. Tarullo, Developing Tools for Dynamic Capital Supervision, Federal Reserve Bank of Chicago Annual Risk Conference, Chicago, Illinois (April 10, 2012).

process is subject to error and, without an opportunity for a covered company to effectively engage with the Board prior to the release of the stress test results, there would be an unnecessary risk that the Board could provide the financial markets with materially misleading information that would have an inappropriate market impact. Requiring nonbank financial companies to disclose misleading information regarding these important metrics will effect the financial markets and will result in reputational harm to the effected companies. That harm could result in negative consequences for the broader economy; the very result the Board is trying to prevent. In addition, we believe a formalized, confidential appeals process would enhance the accuracy of the stress test and reduce unintended consequences and should include consultation with the covered company's other supervisors.

In the context of nonbank financial companies, we believe that the disclaimers the Board and the company would provide upon making the results of the stress test public are not sufficient. As the Board stated in describing the purpose of the stress tests, "a full assessment of a company's capital adequacy must take into account a range of factors, including idiosyncratic aspects of individual companies that a standardized supervisory stress test applicable across companies cannot be expected to cover as sufficiently as the companies' internal stress testing practices."[13] We believe for covered insurance enterprises, the Board's disclaimer on public disclosure of the stress test results should echo this language of qualification.

VI. Risk Management

As discussed above, covered insurance enterprises face different risks than banks. Unlike banks, insurance companies are not funded through short-term financing activities. Instead, insurance companies raise the funds they invest by taking on risk related to property and casualty exposure and mortality. Enterprise risk management programs of insurance companies address different risks such as actuarial risks of mortality and morbidity, beyond banks' focus on credit, market and interest rate risk. One size fits all risk management standards for entities facing such differing types of risks is not appropriate and companies' risk management programs and their governance should be allowed to reflect these differences.

In particular, we disagree with the Board's Proposal that a board committee must be devoted solely to risk. It is important that a covered insurance enterprise be able to tailor its risk management to the particular risks faced by the company. At TIAA, we believe it is appropriate to combine financial management with risk management and that there are significant beneficial synergies from examining these areas together. A board of directors should be free to exercise its judgment to combine these or other committees as necessary to arrive at an enterprise-wide view of risk.[14]

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[13] 77 Fed. Reg. 626.

[14] See, e.g., Accenture Risk Management Industry Report: Insurance, 2011, p.10 (among the actions insurance companies can take to enhance their risk management capabilities and create competitive advantage is to integrate risk and finance management processes within the organization.) available at: www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Insurance-Industry-Report.pdf

VII. Early Remediation Requirements

The early remediation requirements set forth in the Proposal suffer from the same flaws as the enhanced prudential standards. That is, the requirements are based on bank-centric metrics and the triggers are based on bank-centric risk based capital and leverage rules. We believe that the early remediation requirements should take into account the risk-based capital rules and principles applicable to covered insurance enterprises. Each state has enacted a risk-based capital law that requires each insurer to file a uniform annual risk-based capital report, the form of which is maintained by the NAIC. The framework is similar to that of insured depository institutions – if an insurer's total adjusted capital begins to drop below each of the four designated risk-based capital levels, various levels of increased remedial action are required, ranging from the insurer preparing a plan proposing corrective actions it intends to take to eliminate the capital deficiency (which is subject to acceptance by the insurer's domestic state insurance regulator) to corrective actions imposed by order by the insurer's domestic state regulator. If an insurer's risk-based capital triggers a "mandatory control level event," the domestic state insurance regulator must seek to place the insurer into rehabilitation or liquidation (receivership). Most importantly, the calculation of insurer risk-based capital is specifically tailored to the business risks to which an insurer is exposed. In the case of a life insurer, these risks include asset risk (including risks associated with derivatives and reinsurance), insurance risk (the risk of underestimating liabilities from business already written or inadequately pricing business to be written), interest rate risk, market risk and other risks. The bank-centric early remediation framework simply is not appropriate for covered insurance enterprises.

VIII. Conclusion

The DFA requires the Board to take a tailored approach to the oversight of nonbank financial companies. Indeed, the DFA specifically rejects a "one-size-fits-all" regulatory approach. Moreover, using a uniform bank-centric model will prove less efficient and less effective in the oversight of SLHCs and nonbank financial companies. The Board needs to focus on the material risks to the economy presented by nonbank financial companies' business and activities. The business of insurance is fundamentally different than the business of banking especially in such areas as ownership structures, liability structure and duration, capital composition and reserving, the importance of actuarial modeling, liquidity risk management, and use of insurance company separate accounts.

We encourage the Board to consider the insurance company specific issues outlined in this letter and to rethink its approach for enhanced prudential and early remediation requirements for nonbank financial companies including SLHCs. We would welcome the opportunity to meet with

Board staff to further discuss our views and collaborate on the development of the Board's standards for covered insurance enterprises.

Very truly yours,

Brandon Becker

Brandon Becker
Executive Vice President and Chief Legal Officer

cc: Ben Bernanke, Chairman of the Board of Governors
Daniel K. Tarullo, Member of the Board of Governors
Michael McRaith, Director of the Federal Insurance Office