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BY ELECTRONIC MAIL (regs.comments@federalreserve.gov)

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Advance Notice of Proposed Rulemaking on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities (Docket No. R-1539 & RIN 7100 AE 53)

Dear Mr. Frierson:

The American Insurance Association (AIA) appreciates the opportunity to submit comments in response to the Advance Notice of Proposed Rulemaking on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities (Insurance Group Capital ANPR or ANPR), published in the June 14, 2016 Federal Register.[1] AIA represents approximately 325 major U.S. insurance companies that provide all lines of property-casualty insurance to U.S. consumers and businesses, writing more than $127 billion annually in premiums and approximately $225 billion annually in worldwide property-casualty premiums.

AIA's membership includes U.S. insurers that write insurance only within the U.S., U.S. insurers that write insurance inside and outside the U.S., and the U.S. subsidiaries of multi-national insurers. This diversity gives AIA the ability to analyze issues from many perspectives and enables us to draw on the global experience and expertise of our companies with many forms of insurance regulation.

AIA and its member companies have a substantial interest in the Insurance Group Capital ANPR. AIA's membership includes one domestic systemically important nonbank financial institution (insurance SIFI), a number of U.S.-based insurance firms that are either defined as

[1] "Advance Notice of Proposed Rulemaking on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities," 81 Fed. Reg. 38631 – 38637 (June 14, 2016).

"internationally active insurance groups" (IAIGs) or have multi-national insurance operations, and many more that do business solely in the U.S. and would look to a state insurance regulator as a source of group-wide supervision. For those member companies, their engagement and interest in the Insurance Group Capital ANPR is founded on: (1) precedential considerations, (2) the potential influence of the ANPR on the National Association of Insurance Commissioners (NAIC) group capital calculation discussions, and (3) the ongoing international insurance group capital initiatives of the International Association of Insurance Supervisors (IAIS).[2]

Further, it is worth noting that this submission aims to provide a U.S. property-casualty insurer perspective. AIA's submission does not purport to reflect or address the perspective of the insurance SIFIs. Our insurance SIFI member, American International Group, Inc. (AIG), has submitted separate comments on the application of the ANPR to its business, and we respect that submission and refer the Federal Reserve to it for a better understanding of AIG's view of the role of group capital in that context.

As discussed in further detail below, AIA's comments largely focus on the Federal Reserve's discussion of the Building Blocks Approach (BBA) due to its greater impact on U.S.-based insurance groups that are AIA members. In addition, as currently set forth in the ANPR, the Consolidated Approach (CA) is highly conceptual, making it both difficult to compare to the BBA, or to make specific observations about its utility in relation to the state-based insurance financial regulatory framework and accounting standards. To the extent that AIA's submission discusses the CA, we do so only to help further define the considerations that should govern application of the BBA.

Looking at the ANPR conceptually, in developing the approaches through the rulemaking process, the BBA starts from a capital perspective that captures all of the specific insurance risks throughout the enterprise and makes decisions on the level of insurance specificity in order to provide a group picture of capital, while the CA starts from a consolidated, enterprise-wide capital perspective and makes decisions on how that perspective must be adjusted to reflect the insurance risk in the various legal entities. Viewed in that context, and based on AIA's history of engagement in the various group supervision discussions and related capital initiatives, AIA supports the Federal Reserve's development of the BBA for U.S.-based insurance groups that fall under its prudential supervision because of their ownership of Federal Reserve-regulated insured depository institutions (insurance SLHCs).[3] The BBA would involve an aggregation of local jurisdiction regulatory capital standards and the calibration of those standards to U.S. Risk-Based Capital (RBC) to provide a level of comparability. In developing the BBA, AIA also supports a "seven-stage process" for developing the solvency ratio at the heart of the BBA, as that process is outlined in the American Council of Life Insurers (ACLI) submission on this ANPR (and outlined in AIA's submission as well). Those stages are:

[2] Please note that AIA organized a property-casualty insurance company leaders coordination group in May 2015 to discuss issues related to the development of a group capital standard. The coordination group includes AIA member companies and non-member companies. That group reviewed and provided input on this letter.
[3] As noted, AIA does not express a view on the capital approach that would apply to insurance SIFIs. The insurance SIFIs, including AIG, have submitted their own respective comments to the Federal Reserve on the ANPR.

1. Identification and inventory of legal entities, operational purpose classification and respective regulatory capital regimes;
2. Identification of affiliated reinsurance transactions, permitted and prescribed practices, and intragroup holdings and transactions;
3. Incorporation of appropriate adjustments;
4. Scalar development, calibration, and application;
5. Calculation of available capital;
6. Calculation of required capital; and
7. Calculation of a minimum aggregated group solvency ratio.[4]

This process will need to account for differences in the calibration of regulatory capital standards between life and property-casualty insurance, and AIA will be prepared to weigh in with the property-casualty insurance view as the BBA matures, In the meantime, in this submission, AIA highlights some of the issues of concern to the Federal Reserve, and how we would propose to address them. In short, although there are challenges to any approach, the BBA provides a platform for group capital that is based on existing risk-based capital standards and accounting regimes with which state-regulated insurers are familiar and infrastructure that already exists. While we believe we understand the concept that forms the basis for the CA, there are fewer details provided in the ANPR and it is difficult to provide thoughtful comments on that approach beyond a theoretical discussion.

Moreover, the BBA is consistent with the Dodd-Frank Act's approach and principled deference to state-based insurance regulation. In supporting the BBA for this class of prudentially-supervised firms, we should also stress that we are not advocating for an expansion of the Federal Reserve's prudential authority, nor are we arguing that the BBA is appropriate for insurance groups based outside the U.S. AIA hopes that our experience and considered deliberations on the insurance group capital standard will be of value as the Insurance Group Capital ANPR goes forward and for the Federal Reserve's involvement and engagement in other group capital initiatives on behalf of U.S. insurers.

BACKGROUND & DISCUSSION

I. <u>AIA Engagement on Group Capital Initiatives and Basis for Support of BBA Development.</u>

A. <u>AIA Group-Wide Supervision Principles and Application to IAIS Group Capital Initiative</u>.

Implementing effective and efficient group-wide supervision that employs the right balance of regulatory enforcement and recognition of a group's management of its own risk and business

[4] See Response of American Council of Life Insurers to the Advance Notice of Proposed Rulemaking on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities, Docket No. R-1539 & RIN 7100 AE 53, p. 12 (Sept. 15, 2016) (ACLI ANPR Response),

plan is a daunting challenge. The challenge is made even more difficult where multiple jurisdictions, lines of authority and regulatory approaches are involved, and where the prudential supervisor (in this instance, the Federal Reserve) must account for supervised insurance groups by virtue of their ownership of depository institutions, and for other groups because of their SIFI designation.

As the global, national and local regulatory discussions advanced post-crisis, AIA introduced a set of principles designed to help guide our policy positions in these intersecting forums as initiatives were being developed. Those principles are appended to this submission for informational purposes. In establishing these principles, AIA sought to ensure that any regulatory outcomes in the area of group-wide supervision be directed primarily at understanding the group-wide business model and perspective, preserving the ability of property-casualty insurance companies to compete effectively, and facilitating the growth of private markets. Perhaps more important, underlying those principles was a fundamental policy of constructive engagement by AIA in regulatory modernization discussions that would (and will) shape the ability of our member companies to conduct business in the United States and around the world.

As discussed in the AIA principles document, while there should be a clear recognition that the property-casualty insurance business model, regulatory framework, and company management and investment practices largely shield regulated property-casualty insurance companies from being a source of systemic risk (and thus dictate an equally clear distinction between the type and degree of supervision that is applied to financial firms that are designated as systemically important), AIA's principles "should not be construed as an attempt to constrain the ability of regulators to propose solutions that would mitigate or prevent unregulated products or activities from becoming a source of instability to the financial system."[5]

In brief, AIA's policy on group-wide supervision and development of an insurance group capital standard emphasizes the following points:

- Single Group Supervisor. Group-wide supervision of property-casualty insurance companies should be carried out by a single group-wide supervisor in a manner consistent with the business model, and all participating regulators (including the group-wide supervisor) should act within their respective spheres of authority. In other words, oversight of the group should not be subject to multiple regulators exercising that authority.

- Financial Regulation should Co-exist with Management and Exercise of Business Judgment, Protecting Sensitive Business Data. Assessment of a group's financial condition is a fundamental aspect of group-wide supervision, but regulatory oversight should not be undertaken in a way that undermines the business judgment exercised by the group in managing its risks, particularly decisions on how, when, and where to deploy capital.

[5] See Attachment "A" - AIA Principles on Group-Wide Supervision, p. 1.

Where sensitive business strategies and information are shared with a group's regulators, that information should be protected from public dissemination.

- Group Capital Adequacy Assessment is Inadequate if it relies on a Single Quantitative Tool. Group capital adequacy assessment is both a quantitative and qualitative process. Understanding the manner in which a group manages its risks and makes its capital decisions is critical, and the Own Risk and Solvency Assessment (ORSA) is an important aspect of achieving that understanding.

- An Insurance Group Capital Standard should be Transparent, in Harmony with Local Standards, and Appropriate for the Insurance Business Model. Development of an insurance group capital standard should be transparent in its operation, objective, definitions, scope and relationship to local jurisdictional standards. Additional capital charges determined to apply to systemically important designated groups should not be conflated with the capital standard identified with insurance risk. Conversely, where such designated groups no longer engage in systemically risky activities, any additional capital charges should not apply.

In June 2014, based on these principles, the accelerating IAIS global insurance group capital standard (ICS) discussions, and the overriding view that AIA be a productive part of those discussions, the AIA Board directed staff to work with member companies on an acceptable conceptual approach to the ICS, and report back to the Board on its progress the following November. While we started our internal discussions with a "group-wide" or consolidated construct of capital, we soon realized that, for U.S.-based insurance groups with multi-jurisdictional business, "starting from scratch" without reference to a familiar jurisdictional capital standard and accounting regime would be difficult and time-consuming, and would force companies and regulators into the politically challenging position of accepting a group-wide framework that might be different from, contradictory to, or inconsistent with their current regulatory and legal environments, as well as the corresponding accounting standards.

Equally important (and perhaps more compelling), establishing a new uniform, conceptual approach to insurance group capital would necessarily be less risk-sensitive and fail to account for product and jurisdictional variations. In other words, a consolidated approach would be more appropriate for homogenous products that did not vary by jurisdiction. In contrast, AIA believed that existing legal entity regulatory capital and accounting standards could be leveraged to provide an interim solution to group capital that took into account risk variations by product and by jurisdiction. Greater comparability in the short-term among U.S. IAIGs could be reflected through a calibration and scaling exercise that worked like a currency conversion system to equate other jurisdictional standards to U.S. Risk-Based Capital (RBC).

For these reasons, in October 2014, AIA recommended that the IAIS focus in the near team on developing an approach conceptually similar to the BBA to apply to U.S.-based lAIGs. That approach had several steps that we believe may be useful in further developing the BBA (and that reflect an early equivalent conceptual version of the seven-stage process proposed for the BBA):

1. Identify risk categories based on a legal entity listing for the group that describes all subsidiaries and affiliates of the insurance group.
2. Determine capital based on the aggregation of required capital for regulated entities and for risks not otherwise captured. That capital determination would include:
    a. An aggregation of regulatory capital (based on the standard for regulatory intervention) for all insurance subsidiaries based on each jurisdiction's requirements,
    b. An aggregation of required capital for all other regulated entities (e.g., bank capital), and
    c. A determination of required capital for risks that are not part of regulated entities, but that are not an external risk to the financial system.

    For jurisdictions that already employed a group capital standard, the aggregation would not be necessary, but the concept would be consistent with an approach that reflected capital across the enterprise.
3. Require each group to complete an ORSA based on management's view of the risks impacting (or potential impacting) the insurance group, with appropriate supplemental stress scenario testing employed to evaluate that view and to assess group capital.
4. Within the conceptual insurance group capital framework, provide for clear separation between the requirement applicable to lAIGs and other capital measures (e.g., Higher Loss Absorbency [HLA]) that were designed to address systemically risky activities of a global systemically important insurer (G-SII).

The considerations that drove AIA to recommend an aggregation approach on an interim basis to the IAIS for U.S.-based lAIGs and to propose the above 4-step process underlie our continued support for the development of the BBA by the Federal Reserve for prudentially supervised insurance groups not designated as SIFIs.

B. Constraints and Challenges to Any Group Capital Approach

Although we support the BBA, AIA recognizes that the path from concept to capital standard is evolutionary and that there are a number of challenges that will need to be discussed and worked through in order to refine the approach. Some of these constraints, initially identified in our October 2014 interim proposal to the IAIS, are more important for purposes of this ANPR, including (1) the lack of jurisdictional consensus on capital and accounting standards; (2) balancing local capital standards with a "consolidated," group-wide view; and (3) the need to determine an appropriate capital assessment approach for non-insurance/non-banking entities within a group that do not currently have any applicable regulatory capital standards. It will take time to work through these different challenges, or to determine whether there is a better way to resolve these concerns. But, they are not insurmountable and, in the case of the BBA, start from a familiar capital regime and accounting construct.

Equally important, similar (and perhaps more daunting) challenges also exist for the Consolidated Approach. In contrast to the BBA, the CA also will have to address the following constraints that are naturally worked out within the BBA:

1. Risk differentiation by product and by jurisdiction: Due to product construction and legal environment, similar products in different jurisdictions present different risks. While those are transparently presented during the aggregation process that occurs in the BBA, these risk variations will only be brought to light through more specific, detailed risk segmentation in the CA.
2. Fungibility of capital: The "top-down" capital process envisioned by the CA requires supervisors to determine capital fungibility. This is particularly difficult where the need for fungibility is governed by the regulatory objective for holding capital. For insurance-centric groups where policyholder protection is the regulatory focus, supervisors must address capital fungibility or lack thereof within the group, maintaining a balance of preserving adequate capital in the insurance and insurance-related entities to fund policyholder obligations, while simultaneously determining whether added capital at the holding company will serve as a source of strength to the enterprise or, conversely, draw capital away from policyholder protection, insurance availability, or the ability of the local insurance entity to compete.
3. Risk charges, diversification, and relationship between local and group capital requirements. Whereas the local jurisdictional risk charges are already known in a building blocks system that relies on aggregation, the CA would need to determine appropriate risk charges and an approach to risk diversification. In addition, the focus of the CA (as noted by the Federal Reserve) will be on how to increase the risk sensitivity of the approach to appropriately capture the activities of SIFIs and the degree to which those activities affect systemic

instability. Additionally, as a consolidated approach would be layered over existing local regulatory capital requirements, there will need to be a focus on defining the similarities and differences in the risk sensitivities of the group capital requirement relative to existing legal entity capital requirements and how the two should interact.

II. Overarching Prudential Considerations

The Insurance Group Capital ANPR raises a number of high-level issues that potentially affect the development of and degree to which the BBA would be applied. First, the Federal Reserve states that "[t]he strengths of the BBA would appear to be maximized and its weakness minimized were the BBA to be applied to insurance depository institution holding companies, which generally are less complex, less international, and not systemically important."[6] The Federal Reserve goes on to state specifically that it "is considering whether larger or more complex insurance depository institution holding companies should be subject to a regulatory capital framework other than the BBA."[7] Complexity of an institution should be clearly understood and well-defined when applying capital and other prudential measures, so as to focus on the nature of the firm's activities and whether those activities are a source of systemic instability. For U.S. insurance firms, the number of insurance affiliates is partially a by-product of the state-based regulatory system, which may make the firms seem more complex than the range of activities would suggest. Equally important, the nature of the state regulatory system may actually work to reduce the possibility of spillover effects from one jurisdiction to another, given the legal entity-based capital requirements and state guaranty fund system. In contrast, requiring a prudentially supervised insurance SLHC to hold additional capital outside the insurance affiliates may actually erode the regulatory objective of maintaining the affiliates in sound financial condition. Therefore, the capital standard(s) should provide transparency into the supervised institution's risks in order to properly evaluate the level of complexity on an activities basis and to determine the appropriate aggregated capital level.

Further, consideration of a supervised firm's asset size as a factor in determining whether or not to apply an approach other than the BBA is misplaced. If an institution is "large," the focus still should be on the nature of its activities and whether those activities are correlated with risks that could destabilize the financial system. Indeed, for firms engaged in insurance activities, size tends to be a diversification tool that works to strengthen, not erode, financial solvency. Consideration of size in relation to the type of financial activity or service is consistent with the development of the federal guidance accompanying the Dodd-Frank Act Section 113 rulemaking, which identified metrics in addition to total consolidated asset size as important factors during the Stage I "screening" process. The Federal Reserve's approach to a group capital rule should similarly not rely on size-related criteria.

[6] Insurance Group Capital ANPR, 81 Fed. Reg. at 38634.
[7] Id.

Second, the Federal Reserve implies that the BBA might not be appropriate for supervised firms that are international in scope. A firm's expansion of business beyond the U.S. into other jurisdictions should not result in categorizing that firm as "complex" or automatically subject to more stringent capital standards. As explained above, the aggregation that underlies the BBA allows insight into the different jurisdictional regulatory capital and accounting standards. Although the process of calibrating those different standards to provide a basis of comparison to U.S. RBC requires analysis, the reaction should not be to apply an unfamiliar consolidated approach that might result in stricter capital requirements for such firms,

Third, application of the appropriate capital rule to prudentially-supervised insurance groups should be consistent with the Dodd-Frank Act and implementing regulations. The structure of Titles I and II of the Dodd-Frank Act provides support for broad application of an insurance-oriented approach like the BBA to firms that engage in the business of insurance. Title I sets forth the prudential standards to be applied by the Federal Reserve to supervised firms (both insurance savings and loan holding companies and insurance SIFIs),[8] a process for the Financial Stability Oversight Council (FSOC) to determine whether firms meet the criteria for SIFI designation,[9] a mechanism for FSOC to recommend additional regulatory standards to primary federal or state regulators of a financial activity or practice where there is a perceived regulatory gap,[10] and the ability of the Federal Reserve to develop rules for exempting non-bank financial companies from national prudential supervision.[11]

As the Federal Reserve is abundantly aware, among those prudential standards is Section 171(c), which grants authority for the Federal Reserve to promulgate this insurance-differentiated ANPR. Similarly, the Section 113 SIFI determination standards (and regulatory guidance) make it clear that numerous factors must be considered when designating an insurance nonbank financial company as a SIFI, including factors that are less likely to be triggered for property-casualty insurance companies (or a group of companies that are significantly engaged in the business of insurance). As noted earlier, under the Dodd-Frank Act, the FSOC adopted a staged process that started with universally-applicable quantitative measures that aligned with its 'systemic risk' categories "of size, interconnectedness, leverage, and liquidity risk and maturity mismatch."[12] As explained in the final rule:

> "These thresholds were selected based on (1) their applicability to nonbank financial companies that operate in different types of financial markets and industries, (2) the meaningful initial assessment that such thresholds provide

[8] See Sections 165, 166 and 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. §§ 5365, 5366, and 5371).

[9] Section 113 of the Dodd-Frank Act (12 U.S.C. § 5323).

"Section 120 of the Dodd-Frank Act (12 U.S.C. § 5330).

11 Section 170 of the Dodd-Frank Act (12 U.S.C. § 5370). To date, no regulations have been proposed under this section.

12 Financial Stability Oversight Council (FSOC) Final Rule and Interpretive Guidance, "Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies," 12 C.F.R. Part 1310, RIN 4030-AA00, 77 Fed. Reg. 21637, 21660-21662(Apr. 11, 2012) (Final SIFI Designation Rule) (see, e.g., 77 Fed, Reg. at 21660).

> regarding the potential for a nonbank financial company to pose a threat to financial stability in diverse financial markets, and (3) the current availability of data."[13]

In some instances, the metric thresholds were also tested by determining whether they would have captured nonbank financial companies that were at the heart of the financial crisis. For example, one of the five metric thresholds (in addition to total consolidated asset size) includes a leverage ratio calculated as a minimum leverage ratio of total consolidated assets (excluding separate accounts) to total equity of 15 to 1. In establishing that leverage ratio threshold, the U.S. government (FSOC) explained that:

> "Measuring leverage in this manner benefits from simplicity, availability and comparability across industries. An analysis of the distribution of the historical leverage ratios of large financial institutions was used to identify the 15 to 1 threshold. <u>Historical testing of this threshold demonstrated that it would have captured the major nonbank financial companies that encountered material financial distress and posed a threat to U.S. financial stability during the financial crisis, including Bear Stearns, Countrywide, IndyMac Bancorp, and Lehman Brothers</u>."[14]

In short, Title I provides ample evidence for the Federal Reserve's pursuit of a capital approach like the BBA for insurance-centric groups under its prudential oversight. Indeed, the structure and interplay between these provisions argues for application of a regulatory exemption from prudential oversight for groups primarily engaged in the business of insurance.

Title II of the Dodd-Frank Act works in concert with Title I by providing a "back end" orderly liquidation process for certain prudentially supervised firms that are in danger of default. Title II establishes a procedure for the appointment of the Federal Deposit Insurance Corporation (FDIC) as receiver of a failing financial company that poses significant risk to the financial stability of the United States. Under this procedure, certain designated federal agencies would recommend to the Secretary of the Treasury (the "Secretary") that the Secretary, after consultation with the President, make a determination that grounds exist to appoint the FDIC as receiver of the company. The Federal Reserve Board and the Director of the Federal Insurance Office make the recommendation if the company or its largest subsidiary is an insurance company.

In order to deal with the uniqueness of the insurance industry, the Dodd-Frank Act has specific provisions that address the treatment of insurance companies under Title ll's orderly liquidation process. If a covered financial company is an insurance company, or if an insurance company is a subsidiary or an affiliate of a covered financial company, liquidation of the

[13] Final SIFI Designation Rule, 77 Fed, Reg. at 21660.
[14] *Id.* at 21661 (emphasis added).

insurance company is to be conducted in accordance with applicable state law.[15] The FDIC may step in to file an action in state court to place the company into liquidation only in the event that the appropriate state authority fails to initiate the required judicial action within 60 days of the determination. If the state authority files with the state court to place the company into liquidation, a receiver for the company will be appointed and its liquidation will proceed in accordance with state law.[16] There is nothing in section 203(e) or in the available legislative history of the Dodd-Frank Act that suggests that in the event the FDIC makes the required filing in state court, the court must appoint the FDIC as receiver. Absent such an appointment, the FDIC has no jurisdiction over the liquidation of the company in receivership. Therefore, reading Titles I and II together, the Federal Reserve should strive to apply an approach to front-end prudential supervision - in this instance, the promulgation of the Insurance Group Capital ANPR - in a manner that recognizes and accommodates state-based insurance regulation for insurance-oriented firms to the greatest extent possible.

Importantly, none of the applicable Dodd-Frank Act provisions qualify the accommodation based on the international scope of the firm's insurance business or undefined "complexity." While there are certainly provisions and rules governing the SIFI determination process and enhanced prudential measures for designated firms, the application of those provisions depends on the ability of a firm - through its financial activities - to affect stability of the financial system. Conversely, where a firm's activities do not generate risk to the financial system (whether because the risks are uncorrelated with financial events or the business model does not lend itself to a systemic impact), the Dodd-Frank Act provides the ability for the Federal Reserve to promulgate an exemption by rule. In light of the structure of Titles I and II and the deference afforded to institutions that are primarily subject to state-based insurance regulation, AIA urges the Federal Reserve to continue development of the BBA and to consider a Section 170 rulemaking process so that an appropriate "business of insurance" exemption is available.

III. <u>Strengths and Perceived Weaknesses of the BBA</u>

Turning to the ANPR's discussion of the pros and cons of the BBA, AIA notes that the Federal Reserve has outlined the following key strengths of the approach:

1. Leverages existing legal entity regulatory capital and accounting standards (and associated capital data);
2. Is capable of relatively swift implementation;
3. Could be implemented by supervised firms at low cost; and
4. Tailored to the specific risks of the group in each jurisdiction and line of business.[17]

[15] Section 203(e)(1) of the Dodd-Frank Act (12 U.S.C. § 5383(e)(1)).
[16] Section 203(e)(3) of the Dodd-Frank Act (12 U.S.C. § 5383(e)(3)).
[17] Insurance Group Capital ANPR, 81 Fed. Reg. at 38634.

AIA agrees with the Federal Reserve's assessment, which was part of the reason behind our October 2014 recommendation that the IAIS consider a form of the BBA as a ready-to-implement approach for the IAIS for U.S.-based property-casualty insurance groups defined as lAIGs.

In addition, AIA believes that there are other benefits to the BBA that have not been mentioned in the ANPR. First, the BBA provides for transparency of capital adequacy across legal entities, product lines, and jurisdictions. The aggregation and calibration of legal entity standards contemplated by the BBA allows insight into risks by legal entity and jurisdiction, providing a "ground up" perspective into jurisdictional differences in risks and capital standards that better informs the group perspective. As a result, this approach promotes heightened coordination among different financial services regulators, strengthens both the insurance regulatory objective of policyholder protection and the broader objective of promoting financial stability, and provides a vertical window on the group's legal entity capital that permits a better assessment of the horizontal need for and ability to have capital fungibility.

Second, the BBA also provides a complementary platform on which to couple the development of a quantitative tool with other tools for capital adequacy assessment, including existing insurance industry metrics, terminology and concepts; capital and leverage measurements established by state insurance authorities; financial surveillance; annual state filings; and risk management tools such as ORSA. These tools have been developed expressly for the insurance industry and reflect the appropriate manner in which insurers should be evaluated, including consideration of subordinated debt as a source of capital.

Third, because the BBA uses existing regulatory capital standards within its structure, ongoing maintenance of the most significant components of the BBA will be performed by the relevant jurisdiction that has regulatory oversight of the insurance institution. Therefore, the BBA provides for a largely automated capital model through the use of local capital standards that are regulatory monitored and updated.

As for the perceived weaknesses of the BBA, AIA believes that those weaknesses can be mitigated or avoided entirely. We will address each shortcoming in turn.

A. While Aggregation is Not Consolidation, the Application of Other Capital Adequacy Assessment Tools Allows the BBA to Inform Regulatory Views on the Consolidated Enterprise.

The Federal Reserve states that the BBA is inherently limited because it does not assess risk and the deployment of capital across the enterprise. While we agree with this statement in cases where there are homogeneous risks across legal entities and jurisdictions, the CA presents challenges in applying appropriate risk sensitivity in cases where there are heterogeneous risks spread across the enterprise. Fortunately, any perceived shortcomings of the BBA approach in this respect can be addressed and corrected through the use of other supervisory tools. This is similar to the approach that the major rating agencies take in assessment of the individual entities, as well as groups overall.

In addition, the BBA serves to address the challenges faced by the Federal Reserve in adopting a capital rule that is both consistent with the Dodd-Frank Act and is aligned with the different business operations presented by an insurance SLHC, including: (1) balancing multiple regulatory objectives for holding capital (i.e., policyholder protection and financial stability), (2) addressing the challenges of capital fungibility, and (3) assessing the line between operational and systemic risk. If one accepts the premise that regulation should follow the business model(s) and associated risk within a group, then multiple regulatory objectives can be reconciled and balanced, so that additional capital will be maintained where necessary to support an enterprise's risk and not held where it will diminish the ability to provide insurance or otherwise put the enterprise at a competitive disadvantage. We are confident that a properly-developed BBA will yield these benefits.

B. Far from Promoting Jurisdictional Arbitrage, the BBA can Assist Regulatory Oversight to Reduce Micro-Arbitrage.

The Federal Reserve notes that a major drawback of the BBA is that it does not discourage a firm from engaging in jurisdictional arbitrage, i.e., to pick and choose varying jurisdictional standards in order to mask financial deficiencies or move risks to jurisdictions having lower capital requirements. While AIA does not believe that property-casualty insurance groups (including those firms prudentially supervised by the Federal Reserve) generally engage in this type of forum shopping, effective disclosure of intercompany transactions within a group, coupled with appropriate adjustments to the applicable capital requirements, will reduce the ability to engage in such arbitrage and will in fact identify attempts at arbitrage. For example, accounting adjustments for U.S. insurance entities that eliminate state prescribed or permitted practices that differ from NAIC-prescribed statutory accounting practices (SAP) and conform the insurer's accounting to NAIC-prescribed SAP can mitigate jurisdictional arbitrage within the U.S. Additionally, elimination of the incentive to engage in such arbitrage would likely require elimination of the underlying, local regulatory capital requirements, It is not clear if this is achievable. As noted earlier, the BBA may allow more regulatory transparency into legal entity capital standards and financial condition, providing a window into the causes or incentives for local jurisdiction-level arbitrage.[18]

[18] It should also be noted that, due to lack of transparency into the fungibility (or lack of fungibility) of capital, the CA, without appropriate legal entity level stress testing, runs a risk of masking individual jurisdictional weaknesses and capital constraints.

C. While the BBA Requires an Adjustment Process to Handle Intra- and Inter-Company Transactions, It Also Provides an Opportunity for Appropriate Capital Treatment of those Transactions.

The Federal Reserve notes that the BBA will necessitate a process to deal with inter-company transactions, which would potentially require "extensive" adjustments. As explained later in this submission, AIA supports a process set forth in the ACLI submission to: (1) identify material entities within a group; (2) within the material entities, inventory affiliated reinsurance transactions, permitted and prescribed practices, and intra-group holdings and transactions; (3) make appropriate adjustments for affiliated reinsurance transactions involving reinsurers from "scalar incompatible" regimes, for permitted and prescribed practices that depart from NAIC Statutory Accounting Principles (SAP), and for intra-group transactions to eliminate the capital impact from aggregation.

In connection with the concern over such transactions, the Federal Reserve has also identified the potential for the BBA to result in "double leveraging." Again, adjustments for intra-company transactions, in the manner described above, would address this problem. Indeed, an important benefit of the transparency and jurisdictional perspective provided by the aggregation and calibration process of the BBA can be seen through the consideration of subordinated debt as a capital resource. For both the BBA and CA, the Federal Reserve will need to address the issue of how to treat holding company debt as part of the determination of available or qualifying capital. The BBA's transparency aids these decisions. While the CA may not properly reflect the treatment of subordinated debt in insurance groups that are regulated by jurisdictions with highly enforced structural subordination, the BBA does account for this factor. The BBA also properly reflects subordinated debt for insurance groups that are regulated by jurisdictions that do not highly enforce structural subordination. Thus, under the BBA, U.S. subordinated debt instruments, such as surplus notes, hybrid debt, and senior notes, would be considered qualifying capital resources.

In the U.S., this debt is contractually and structurally subordinated to policyholder obligations, which must be paid before bondholders receive payments. Proceeds from holding company debt are typically contributed to its operating insurance subsidiaries and cannot be returned to the holding company without notice to, and often, prior approval of the insurer's regulators. Those conditions are strictly enforced by state insurance regulators in the U.S.[19] In addition, because debt is an efficient way to raise capital and given the bias in favor of the policyholder, debt issuance is a common source of capital in the U.S. This is true for both stock and mutual companies (although for mutual insurers debt may be the only major source of capital other than retained earnings).

[19] In the IAIS context (Basic Capital Requirement or BCR), those instruments meet key criteria for policyholder protection: subordination and the availability of capital to absorb losses under *both* liquidation and going concern scenarios. (BCR Technical Specifications p. 35, paragraph 3; "The key characteristics of capital instruments that qualify as additional capital are subordination and availability to absorb losses in winding-up.")

Regulatory approaches to debt outside the U.S. that may apply to insurers doing business in those jurisdictions vary. As a result, those regimes may treat subordinated debt differently from a regulatory standard and frequently do not strictly enforce structural subordination. It is not necessary to debate whether the capital treatment or regulatory enforcement in those local regimes is sound as a matter of public policy. However, the BBA would appropriately recognize the local jurisdiction's legal and regulatory treatment of debt and, as a result, preserves subordinated debt as a valued capital resource for U.S. insurers and their policyholders.

D. Calibration can be managed and will be needed for both the BBA and CA.

The Federal Reserve has expressed concern that the BBA will involve extensive federal regulatory judgment of other jurisdictions' capital regimes. However, judgment about the quality or enforcement of other jurisdictions' standards is inherently part of the Federal Reserve's prudential supervisory role, where it is assessing the capital adequacy of a U.S.-based group with insurance operations in multiple jurisdictions. Moreover, as AIA has noted, calibration is critical for property-casualty insurers, as there will be product and jurisdictional differences in risk that must be considered.

The calibration process does not need to be as extensive as suggested. We agree with the total balance sheet-based calibration process that has been set forth in the ACLI's comment letter. This process would involve for each jurisdiction (regime):

1. Identification of the capital trigger at which regulators mandate similar actions;
2. Measurement of the average capital ratios for similar companies in each jurisdiction; and
3. Calculation of the ratio of excess capital (i.e., additional capital above regulatory trigger) to required capital, and comparison of the ratios in each jurisdiction to determine the appropriate scalar.[20]

Whether calibration is done explicitly through a scalar determination (BBA) or implicitly through development and application of risk factors appropriate for different jurisdictions (CA), bringing non-homogeneous risks together under a similar standard will require the group-wide regulator to make judgments regarding other jurisdictions' capital regimes.

E. Supplemental Stress Testing, Coupled with an Effective Insurance-Oriented Group Capital Standard, can Enhance Capital Adequacy Assessment for Prudentially-Supervised Firms.

The Federal Reserve maintains that the BBA would require legal-entity stress testing, which would present challenges to accurate reflection of diversification and inter-company transactions. AIA believes that applying stress testing to a Consolidated Approach would present the greater risk of providing an incorrect impression that applied stresses have an equal effect on underlying differing jurisdictional capital requirements that directly impact the

[20] ACLI ANPR Response at pp. 17-18.

fungibility of capital among the underlying jurisdictions. Further, a quantitative metric such as the BBA is just one of numerous regulatory tools to assess group capital adequacy and to maintain effective and efficient group supervision. The Federal Reserve should use the BBA, as appropriate, to obtain a baseline understanding of a supervised institution's group capital and how that capital is deployed on an enterprise and legal entity level.

Moreover, through a combination of tools, the Federal Reserve will be able to assess a broader insurance industry impact on stability risk within the broader financial system. As noted earlier, AIA has, for a while, suggested that the Federal Reserve consider appropriate supplemental stress scenario testing as a foundational element of insurer capital adequacy assessment and risk (if any) within the system, leveraging ORSA and engaging the industry in the discussion.

F. Risk Diversification can be evaluated as Part of the BBA.

With respect to the impact on consideration of risk diversification, risk diversification is partially covered by the existing regulatory entity-specific capital frameworks, such as U.S. RBC, and should also be specifically considered during the aggregation process. Amassing data at the local jurisdictional level actually enables better identification of risk concentrations in the legal entities of a group and better evaluation of the extent to which diversification is appropriate. Coupled with supplemental tools like stress testing, the BBA allows for a better understanding of diversification and concentration of risk.

IV. Additional Process, Structural and BBA Development Issues

A. Timeline for Development and Implementation

One of the strengths of the BBA, acknowledged by the Federal Reserve, is that it builds from existing capital requirements and accounting standards that are utilized by U.S.-based insurance groups prudentially supervised by the Federal Reserve, which accelerates the implementation process. While we agree with that assessment, AIA supports a deliberative timeline for the Federal Reserve to construct an appropriate insurance-differentiated rule, which balances and "gets right" the adjustments and calibration needed for different jurisdictions and different lines of business and the establishment of a workable capital level, while adhering to the provisions of the Dodd-Frank Act. Development of the rule, particularly if the Federal Reserve chooses to continue down a bifurcated path, should be accompanied by a quantitative impact study that will allow an understanding of how the adjustments and calibration will work in practice for the prudentially-supervised firms.

Equally important, once developed, the Federal Reserve should provide an appropriate post-rule implementation period to allow prudentially-supervised firms to come into compliance. AIA would support a 12-month post-rule, implementation period.

B. Identification of Scalar-Incompatible Jurisdictions

One of the fundamental issues to completing the calibration component is identifying whether or not a jurisdiction with a capital framework is "compatible" with U.S. RBC and other risk-sensitive capital regimes. To determine whether a jurisdiction is capital compatible, it must possess the following characteristics: (1) risk sensitivity, (2) clear triggers for regulatory action/intervention that are utilized, and (3) transparent reserving and capital standards. If a jurisdiction's capital framework does not possess these characteristics, it should be considered incompatible and restated using a methodology similar to the closest capital regime.[21]

C. Classification of Entities within a Group and Inclusion

In addition to identifying legal entities within the group for purposes of applying a BBA, it is critical to classify those entities based on their activities and relationship to other functionally regulated companies within the group. For regulated insurance companies and entities that operate on behalf of or for the benefit of an insurance company ("insurance-related" entities), the appropriate scalar-compatible insurance capital standard should be used. For insured depository institutions, the federal bank capital standard should prevail. With respect to "non-insurance, non-bank" entities that are also not insurance-related entities, the Federal Reserve would need to determine the appropriate capital charge. It will be important to maintain a clear definitional distinction between "non-insurance, non-bank" entities and otherwise unregulated entities that support or are related to insurance firms so that an inappropriate capital charge is not applied to insurance-servicing entities.

Further, the Federal Reserve should consider applying materiality and exclusion tests to determine how and whether to include entities in the scope of the BBA. Like ACLI has suggested, AIA would define an entity as "immaterial" if that entity (a) is not a regulated insurer or depository institution, (b) has fewer than 0.5 percent of the supervised group's total aggregated assets and total revenue, and (c) has no recourse to the group. The entity could be excluded from the BBA calculation entirely if it holds less than $100 million in total aggregated assets or less than $50 million in revenue, and otherwise meets the "immateriality" standards above. "Immaterial" entities would rely on the parent's insurance capital ratio.[22]

D. Calculation of Available/Qualifying and Required Capital

The proposed ratio of aggregate qualifying capital to aggregate required capital is reasonable and consistent with many regulatory capital assessment frameworks, including U.S. RBC. However, for both the BBA and CA, several key issues must be addressed and resolved:

[21] External third-party evaluations of capital regimes are available to use as a guide to whether a jurisdiction meets the enumerated factors. See ACLI ANPR Response at p. 18 (listing, e.g., the IMF FSAP determinations, Solvency II equivalence determinations by the European Commission, and the NAIC Qualified Jurisdiction List).
[22] See ACLI ANPR Response at pp. 13-14 (outlining substantially similar materiality and exclusion tests),

1. The role of debt within the available or qualifying capital. As discussed earlier, significant consideration must be given to the U.S. treatment of subordinated and structurally subordinated debt, as well as that treatment for non-US jurisdictions.
2. Treatment of various assets such as goodwill, deferred acquisition costs and deferred income tax will need to be determined (and possibly stress tests designed to properly address those assets). Depending on the approach, the treatment of these assets may need to be different.
3. Consistent treatment of assets and liabilities in the overall approach.

The list above is not meant to be exhaustive, but the three items listed are of paramount importance to developing an effective capital assessment.

E. Establishment of "Minimum" Group Solvency Ratio

The baseline capital requirement should be set to the appropriate regulatory intervention level for U.S. insurers, which would be Company Action Level RBC. The use of existing "scalar compatible" capital regimes along with appropriate scalars, adjustments, calibration techniques and aggregation will result in a aggregated ratio that should provide a reasonable group capital adequacy measure.

CONCLUSION

AIA greatly appreciates the opportunity provided by the Federal Reserve to provide the property-casualty insurer perspective in response to the Insurance Group Capital ANPR. While we respect views regarding the application of a Consolidated Approach, that approach - at present - is only a concept for the AIA members that are neither SIFIs nor subject to the Federal Reserve's prudential supervision, but are interested in the ANPR because of its potential impact on other domestic and international group capital initiatives. Without a working model, it is impossible to gauge the impacts and unintended consequences on business operations such an approach would entail. For this reason and the others detailed in our submission, AIA believes that the BBA approach is the most practical solution for insurance SLHCs. We look forward to continuing engagement on the ANPR in the future.

Respectfully submitted,

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GROUP-WIDE SUPERVISION

This document sets forth principles that will guide the American Insurance Association's (AIA) policy on financial regulation and supervision of insurance groups. The process for determining the nature and extent of group-wide supervision is both evolutionary and dynamic. As a result, AIA expects the principles to evolve over time as concepts and terms such as "group-wide supervision" and "functional regulation" become more clearly defined.

The principles should not be construed as an attempt to constrain the ability of regulators to propose solutions that would mitigate or prevent unregulated products or activities from becoming a source of instability to the financial system. Neither AIA nor its member insurers have any interest in protecting or promoting the ability of companies - whether engaged in insurance or any other type of financial product or service - to conduct business that is not transparent to regulators or the financial markets. At the same time, the principles should not be confused with the distinct concept of determining and regulating systemically important financial institutions, as we continue to believe the property-casualty insurance business model, regulatory framework, and company management and investment practices largely shield regulated property-casualty insurance companies from being a source of systemic risk. Moreover, it is important to ensure that any regulatory outcomes in the area of group-wide supervision be directed primarily at understanding the group-wide business model and perspective, and preserve the ability of insurance companies to compete effectively and facilitate the growth of private markets.

The principles in this document are organized into three broad categories: (1) the purpose, scope and structure of regulation and supervision (principles 1 - 7); (2) capital assessment and other measures applied to property-casualty insurance companies (principles 8 - 10); and (3) financial reporting and confidentiality of company data (principles 11 - 17). For purposes of this document, "regulation" refers to the execution and enforcement of applicable insurance laws within a jurisdiction, while "supervision" contemplates appropriate non-regulatory governmental oversight and access to information regarding companies that are part of a group. Neither term anticipates or includes the exercise of governmental authority in place of the business judgment and management of private companies undertaken by employees and officers of those companies.[1]

1. **Objective of Group-Wide Supervision.** Group-wide supervision as it is applied to insurance groups should primarily focus on understanding the business model and perspective of the group, as well as its enterprise risk. Group-wide supervision should not strive to compare one insurance group to another, or to adopt new regulatory requirements to apply to insurance groups. In particular, group-wide supervision should not result in competitive disadvantage to the group.

[1] Insurance regulation in the United States is carried out consistently with our use of these terms.

2. **Functional Regulation.** The exercise of authority by a governmental agency empowered to regulate insurance companies should be confined to companies engaged in the business of insurance, and only those companies over which an agency has direct regulatory authority. Consistent with the scope of authority, any regulations, standards, principles, or guidance must be authorized by the law of the jurisdiction in which the insurer operates.

3. **Supervisory Coordination among Functional Regulators.** For diversified financial institutions that include property-casualty insurance companies, formal and facilitated coordination among multiple functional financial regulators should exist so that property-casualty insurance companies are not subject to inappropriate or multiple regulatory standards or inconsistent application of a single standard. In addition, different functional financial regulators should coordinate their individual sector responsibilities and information on activities within those sectors so that there is effective monitoring of diversified financial firms in the context of group-wide supervision without compromising the primary authority of those functional regulators. In this context, insurance regulators - acting within their scope of authority - should be able to evaluate non-insurance affiliates of a property-casualty insurance company, but should not regulate those non-insurance entities. Likewise, non-insurance regulators should be able to appropriately evaluate the property-casualty insurance affiliates of diversified financial institutions, but should not be able to regulate those insurance affiliates, nor should they apply non-insurance regulatory standards to insurance affiliates.

4. **Group-Wide Supervisor.** All group-wide supervision of insurance should be exercised only by a governmental agency consistent with, and no broader than, the legal authority under which the agency acts. Supervisory roles and responsibilities should be non-duplicative, and should not be confused with regulatory enforcement authority that may be exercised by individual regulators with respect to legal entities operating within their respective jurisdictions. Consistent with that principle, although there may be a number of legal entity regulators for different companies within an insurance group, there should be only one group-wide supervisor.

5. **Transparency and Clear Delineation of Group-Wide Supervisory Responsibilities.** The process for designating the group-wide supervisor should be clearly established and understood by regulated insurance companies. Regulators should define those areas where close coordination among various regulators of entities in a group is appropriate and reach agreement with other jurisdictions on who should take the responsibility for leading efforts at coordination, cooperation, and supervision of the group. Coordination should occur through the group-wide supervisor, with an emphasis on regulatory efficiency. For example, the coordination of participating jurisdictions in a financial examination of insurance subsidiaries of a U.S.-based insurance group is more appropriately assigned to a U.S.-based group-wide supervisor in a state of domicile. Likewise, for a non-U.S. - based insurance group, the group-wide supervisor for a financial examination of insurance subsidiaries of that insurance group is appropriately assigned to the jurisdiction where the lead or primary insurance company is based. Other factors may determine the group-wide supervisor, but

those factors should be discussed among all stakeholders with an aim towards consensus. The insurance group should play a principal role in determining the group-wide supervisor as part of the stakeholder process. In any event, the process and delineation of regulatory and supervisory responsibilities should minimize any overlap or inconsistency, and not increase the potential for conflict. Recognizing that the process and delineation of responsibilities should not cause regulatory conflict, it should also show due respect for those jurisdictions that have an authoritative basis for the establishment or designation of the group-wide supervisor. In cases where there is no stakeholder consensus or there is a conflict among two or more regulators as to who should exercise group-wide supervision, a transparent process for obtaining consensus or resolving the conflict should be established in advance.

6. **Group Financial Supervision is not Systemic Risk Regulation.** Insurance group supervision should not be confused with enhanced regulation that may be applied to diversified nonbank financial companies that are determined to be systemically important financial institutions (SIFIs). The SIFI designation process is based on an assessment of quantitative and qualitative risk-related considerations designed to identify only those activities of nonbank financial companies that are a threat to financial stability of the U.S. for domestic SIFI determinations, or more broadly, for "global" SIFI determinations.

7. **Role of Regulatory Principles in an Outcomes-based Evaluation of Regulation.** Determinations regarding the adequacy of supervising property-casualty insurance companies on a group-wide basis should focus on whether or not the regulatory result is a healthy competitive private insurance marketplace that protects policyholders and yields financially-sound property-casualty insurance companies. Regulatory principles can play a role in facilitating that evaluation, so long as the principles respect different regulatory approaches to insurance capital and different legal environments and cultures in which property-casualty insurance companies must operate.

8. **Group Capital Assessment and ORSA.** Evaluation of capital adequacy is fundamentally a matter that takes into account the risks arising from the business written by the insurer, its investment strategy, structure, and importance of the insurance affiliates to the parent. Supervisors should be careful to ensure that the assessment of capital adequacy does not become a regulatory substitute for management's exercise of business judgment. In this context, sound financial regulation should embrace voluntary internal assessments by property-casualty insurance companies of their financial condition and enterprise risk, and incorporate such assessments into the existing regulatory architecture, while not compromising the confidential nature of such assessments. An insurance group's Own Risk and Solvency Assessment (ORSA) should be a primary vehicle by which the group-wide supervisor assesses group capital.

9. **Application of Quantitative Standards.** While there are quantitative aspects of group-wide supervision, it is also a qualitative exercise that is reliant on an understanding of the group. Metrics can be useful in defining risk-based capital levels that trigger regulatory action (e.g.,

minimum regulatory capital requirements, as opposed to a company's economic capital or target capital), so long as the metrics utilized provide a transparent measurement of insurance companies operating in different regulatory environments under different accounting standards. Any metrics utilized in group capital assessment, however, must be grounded in or permitted by the applicable law of the jurisdiction where the group operates, and not be used to compare groups to each other, particularly where the groups operate under different legal or accounting standards, or are engaged in non-insurance financial services,

10. **Treatment of Additional Capital.** Additional non-regulatory capital retained by property-casualty insurers at the group level for internal reasons, competitive pressures, or meeting expectations of credit rating agency standards should be recognized as working capital of the holding company. Economic assessment should also appropriately credit the availability of excess capital to support insurance affiliates within a group and to protect policyholders.

11. **Accounting Standards.** Even prior to the recent financial crisis, there has been a movement toward greater global accounting convergence and the development of a uniform accounting standard. However, these discussions should respect different sovereign legal environments and allow for appropriate accounting standards that align with those different legal, regulatory, and market structures. Equally important, accounting principles should not be applied to property-casualty insurance companies where those principles do not align with the industry business model.

12. **Regulatory Reporting of Company Information.** Prudent financial regulation contemplates laws requiring periodic submission of insurance subsidiary financial reports and data to insurance regulators and consolidated financial reports prepared in accordance with generally accepted accounting principles to securities regulators for public reporting companies. These reports provide important information that can aid the regulator's understanding of the company's financial condition and material risks. Public disclosure of periodic financial statements and filings with securities regulators enable investors, creditors, policyholders and other stakeholders to make informed investment and business decisions.

13. **Balancing Disclosure Benefit against Regulatory Burden.** While reporting and disclosure obligations can assist in financial regulation and supervision of property-casualty insurance companies, such requirements should be careful not to add undue costs and burdens on companies that outweigh the regulatory, supervisory and public benefits, and have unacceptable potential for competitive harm.

14. **Supplemental Reporting and Disclosure.** In addition to laws and regulations requiring the submission of company information to regulators, private entities such as credit rating agencies utilize available financial data and apply their own standards to assess and report on the creditworthiness of property-casualty insurance companies on a legal entity and

group-wide basis. As a result, these supplemental reports and disclosure of pertinent information impose market discipline that reinforces the goals of sound financial regulation.

15. **Confidentiality.** Where information is collected and shared among different jurisdictional or functional regulators, confidentiality and privilege protections that attach to that data must be preserved. In some instances, these confidentiality protections must extend to the work papers that are created by the jurisdictional or functional regulators in the course of their analyses and examination of company data and to third parties that may have been contracted to assist those regulators/supervisors. In addition, regulators should strive to use existing data sources to the extent possible when gathering information in order to avoid the burden and expense of multiple data collections, In this respect, data calls should be a last resort, not an initial or frequent regulatory tool.

16. **Application of Confidentiality and Extent of Confidentiality Agreements.** Principles of confidentiality should also extend to any data provided to or shared with a third party acting for or on behalf of an insurance regulator. Consistent with the foregoing, confidentiality agreements entered into as part of a group-wide supervisory process should be binding on all recipients of confidential information. In order to promote full and interactive communication with supervisors, the protection of company confidential information and trade secrets cannot be open to any doubt, debate or question, These agreements must obligate all supervisors or other individuals or entities that hold protected data to preserve confidentiality according to the highest applicable legal standard or, at minimum, to the standard that would apply in the jurisdiction where the data originates.

17. **Limitations on Regulatory Access and Rights of Insurers.** Data confidentiality standards and all confidentiality agreements that are part of group-wide supervision should explicitly recognize, respect and protect the rights of insurance groups as the owners of the information. Maintaining confidentiality protection pursuant to a confidentiality agreement is consistent with the legitimate expectations of the insurance group providing the data. It is also consistent with the way in which data is protected under the Dodd-Frank Act when the Federal Insurance Office obtains information pursuant to its Title V authority. Any supervisor or other proposed recipient of confidential data that cannot or will not protect the data according to the laws of the jurisdiction of origin or the highest applicable legal standard should not be given access to such data.