April 14, 2017

The Honorable Mike Crapo
Chair
Senate Committee on Banking, Housing
and Urban Affairs
534 Dirksen Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Building
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

I write on behalf of The Insurance Coalition, a group of federally supervised insurance companies and interested parties. We share a common interest in federal regulations that apply to insurance savings and loan holding companies ("ISLHCs") and insurers that have been designated as systemically important nonbank financial institutions ("insurance SIFIs"). In this case, we write because as federally supervised insurers and/or capital market participants, Insurance Coalition members have been directly affected by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[1] We appreciate the opportunity to provide our legislative proposals to increase economic growth.

We greatly appreciate your leadership on financial regulatory issues and your public service in the U.S. Senate. As insurers whose core mission is policyholder protection, we are deeply committed to ensuring that the financial sector is well regulated. We appreciate the opportunity to provide input and are eager to engage further on this matter as the process moves forward.

**Executive Summary**

We support legislation to repeal the Financial Stability Oversight Council's ("FSOC") authority to designate nonbank financial companies as systemically important financial institutions ("SIFIs"). FSOC's designation of insurers as SIFIs has generally been exercised inappropriately and should be discontinued, because the business of insurance does not pose systemic risk and holding-company level supervision of insurance companies is not an appropriate way to address activities of perceived systemic concern.

We support legislation to provide for a holdover in the term of the independent insurance expert on FSOC before his term expires in September. We also support legislation to provide the state insurance commissioner representative on the FSOC with the authority to vote on FSOC recommendations under Section 120 of Dodd-Frank. We believe that these legislative proposals reflect the importance of insurance expertise on FSOC and that

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

enhancing the authority of the state insurance representative to FSOC acknowledges the critical role of the state insurance regime as the primary regulators of insurance.

Additionally, we support legislation to right-size the Federal Reserve Board's (the "Board's") supervision of ISLHCs to better reflect the fact that these institutions are already subject to a robust set of state insurance laws, regulations and supervisory standards on a group-wide basis. Specifically, we support legislation that would further ensure that the Board is relying on existing functional regulators to the greatest extent possible and maximizing efforts to avoid duplicative examination activities and information requests.

We have developed a proposal to provide the Board with standby authority to regulate ISHLCs so long as they are in sound financial and operating condition, as determined by meeting certain solvency standards. Absent a failure to meet such standards, ISHLCs would continue to be supervised and regulated by state insurance departments, and their subsidiary thrifts by the Office of the Comptroller of the Currency (the "OCC"); however, these functionally regulated companies would not be subject to additional onsite examinations or duplicative information requests from the Board. Additionally, our proposal would permit the Board to obtain information directly from the state insurance departments and other functional regulators to monitor the operating financial and operating condition of the ISLHCs. In addition, it would provide the Board with authority to request certain financial information and data directly from the ISLHC and material subsidiaries to ensure that they do not impact the ability of the ISLHC to serve as a source of strength to their insured depository institutions ("IDI"). We feel that this approach better accommodates the business of insurance while ensuring that insurance policyholders and bank customers are well protected.

Finally, we support legislation to better tailor derivatives rules to better reflect the insurance business model and the use of derivatives by insurers for hedging purposes in compliance with state law.

**Specific Legislation**

**I. Repeal FSOC authority to designate insurance companies as SIFIs.**

As you know, under the Dodd-Frank Act, the FSOC has the authority to designate nonbank financial companies as SIFIs and three insurance companies have received that designation to date.[2] In our view, this authority has been inappropriately and inconsistently exercised and should be repealed. Fundamentally, the business of insurance and several other activities insurers engage in do not pose systemic risk. Federal supervision of a few insurance companies is not an appropriate and an efficient way to address concerns regarding systemic risk in the sector.

Specifically, we do not believe that FSOC designation of insurance companies as nonbank SIFIs and the resulting supervision and regulation by the Federal Reserve decreases

[2] *Id.*

systemic risk. First, we agree with other commenters that the FSOC designation process, however well-intentioned, violates due process norms. Because of its lack of transparency, it also does not afford companies the opportunity to take steps to avoid designation by reducing activities perceived as systemically risky. Additionally, under the current process companies do not have a clear path to exit designation status once conferred and the annual review process continues to be a "black box." It has proven to be a punitive approach for enhanced regulation and is wholly inconsistent with the measures FSOC has applied for other financial services sectors, notably for asset management, where it has relied upon issuing recommendations to primary financial regulators for implementation.

However, even if the FSOC process were fully transparent and provided a clear mechanism for companies to avoid designation and exit nonbank SIFI status, designation of a few insurers is not an effective mechanism for addressing perceived systemic risk in the insurance sector. In our view, it is quite the contrary.

Insurance companies are subject to a comprehensive and robust state insurance regulatory regime. The FSOC itself acknowledges that any systemic risk concerns about those insurance companies designated as SIFIs are associated not with the insurance business model, but with specific activities or practices.[3] Given that insurance is already well regulated at the state level, and that FSOC does not identify insurance activity itself as a source of risk, designation and prudential regulation by the Federal Reserve is not the most effective means of dealing with perceived risks in the insurance sector. Rather, we believe that FSOC should leverage its existing authority for recommending appropriate changes in regulatory standards to primary regulators, including insurance regulators.

The FSOC has an important role and responsibility in identifying macro-prudential risks to U.S. financial stability and recommending policy measures to address them. Those recommendations should be implemented by the primary financial regulatory agencies, which for insurance are the state legislatures and departments of insurance, who are best placed to enforce them and make sure they are effective. Identifying appropriate changes to insurance regulatory standards is a natural shift from the current entity-focused approach and supports a more effective identification and management of potential systemic activity in the insurance sector. FSOC designation results in an unnecessarily high level of intrusion by the Federal Reserve not just into holding company activities, but ultimately into the day-to-day business of insurance.

## II. Insurance Expertise at FSOC

As you know, Dodd-Frank provides for a Senate-confirmed independent insurance voting expert at FSOC with a six-year term. Absent a legislative change, the current voting expert's term will expire in September and Dodd-Frank does not provide for a hold-over

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[3] Basis for the Financial Stability Oversight Council's Final Determination Regarding MetLife, Inc. (Dec. 18, 2014); Basis for the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc. (July 8, 2013); Basis for the Financial Stability Oversight Council's Final Determination Regarding General Electric Capital Corporation, Inc. (July 8, 2013); Basis for the Financial Stability Oversight Council's Final Determination Regarding Prudential Financial, Inc. (Sep. 19, 2013);

mechanism to avoid the seat remaining vacant. Thus, without congressional action, the FSOC will experience a significant loss of insurance expertise. The legislative fix to this issue is simple and noncontroversial. We urge you to enact legislation as soon as possible to provide for a holdover in the term of the FSOC insurance voting expert until the Senate confirms his successor.

We also support legislation that allows the FSOC insurance commissioner representative member to vote on FSOC recommendations under Section 120 of the Dodd-Frank Act related to insurance companies and their activities. As the primary regulator of insurance with detailed knowledge and oversight of the business of insurance, state insurance regulators (through their designee on FSOC) should have a clear voice on FSOC recommendations, one which properly reflects the role of the states in insurance regulation.

## III. Federal Reserve Supervision of Insurance Savings and Loan Holding Companies.

As described above, states remain the primary prudential regulators of all insurance groups. Pursuant to the Dodd-Frank Act, ISLHCs are also supervised at the federal level by the Board, and their subsidiary IDIs are supervised by the OCC. Board supervision of ISLHCs is to ensure that they are operating in a safe and sound manner and can serve as a source of strength to their IDIs.

In the five years since the Board began supervising ISLHCs, we have observed that the Board pays little deference to the supervision and regulation to which ISLHCs are subject by the state insurance departments on a group-wide basis. This includes, but is not limited to state financial condition examinations; risk management and own risk and solvency assessments; risk-based capital standards and corrective measures; enterprise risk reporting; supervisory colleges; requirements for annual independent audits, audit committees, and internal audit functions; regulatory approval requirements for material intercompany transactions and extraordinary dividends; among many others. In addition, the Board is using the fact that insurance SLHCs have substantial insurance operations to conclude that they are large "banking" organizations thereby subjecting them to the same supervisory framework as similarly-sized bank holding companies. Such an approach results in the imposition of a supervisory regime that is wholly disproportionate to the risk that ISLHCs pose to the stability of the U.S. financial system and to their ability to support their IDIs.

In short, we support legislation that appropriately scales the Board's supervisory regime for insurance SLHCs by maximizing its reliance on the work already being performed by the state insurance departments to the greatest extent possible, which the Board is currently required to do by statute. We believe the Board's supervisory approach for insurance SLHCs should be to cover potential "gaps" in supervision of insurance SLHCs so long as the ISLHC continues to be in sound operating and financial condition as determined by application of certain solvency standards; however, it should not attempt supplant the time-tested supervisory framework of the state insurance departments with their own framework designed to cover banks.

Under our proposal, the states would continue to supervise and regulate all insurers, including ISLHCs, while preserving the Board's ability to monitor the ISLHCs' financial and operating condition through information obtained directly from the state insurance departments and other functional regulators. In addition, the OCC would continue to supervise and regulate ISLHCs' subsidiary IDIs. Finally, the Board would have the authority to examine any material subsidiaries of the ISLHC that are not otherwise subject to functional regulation. However, the Board would not have the authority to act as the day-to-day supervisors of ISLHCs unless they failed to meet certain solvency standards. To ensure that these solvency standards were being met and monitor material subsidiaries, the Board would have the ability to obtain certain financial information directly from the ISLHC. This regime would enable the Board to monitor an ISLHC's safety and soundness and its ability to support its IDI.

In addition to the legislative change described above, our proposal would require that any regulations issued by the Federal Reserve that apply to ISLHCs supervised by the Board must be designed to appropriately accommodate and not interfere with the business of insurance. In our view, the Board should be required to explain in any final rule extending to ISLHCs how that rule appropriately accommodates and does not interfere with the business of insurance, the process of collaboration with insurance commissioners, and how such rule is not duplicative of existing state insurance laws and regulations.

## IV. Derivatives Regulation

Dodd-Frank's Title VII introduced several positive reforms in the derivatives markets to mitigate systemic risk and reduce counterparty credit risk. We support these efforts but also offer suggestions regarding modest tweaks to these rules to avoid unintended consequences that could negatively affect the liquidity in these markets.

*Initial Margin Requirements.* In our view, all end users should not be subject to punitive initial margin requirements on uncleared swaps. Rules implementing Title VII of the Dodd-Frank Act will require insurers to post initial margin on uncleared swaps beginning in 2020. Given that there are existing variation margin requirements for uncleared swaps, the Dodd-Frank Act should be amended to ensure that calculation methods used for initial margin are appropriately calibrated to the risk associated with the trading activity and credit quality of insurers. Insurers' estimates of the future required initial margin amounts, compared to current clearinghouse requirements, indicate that these requirements will be disproportionate to the nature and risk of trades implicated.

*Public Reporting of Derivatives Trades.* We support relief for insurance companies, as well as other end users, from public reporting of swaps activity. The information generated by real-time reporting requirements is useful to regulators to monitor the markets and be aware of activity that could be harmful to the markets, but the large amounts of data that are being publicly disseminated are not helpful to end-users. Instead, immediate public dissemination harms the ability of end-users to execute trades in the most cost-efficient manner by compromising anonymity. Reporting on swaps trading should no longer be publicly disseminated on a real-time basis, but instead should be reported on a delayed basis.

## V. Conclusion

As described above, the years since Dodd-Frank have afforded us with valuable experience regarding the most efficient and effective regulation of insurance and insurance activities. In our view, the 115th Congress has a unique opportunity to better tailor regulations and implement legislation affecting insurers to protect consumers while promoting economic growth and efficiency. We look forward to working with you on these legislative and regulatory initiatives in the weeks and months ahead. Please do not hesitate to reach out to me at [bridget@cypressgroupdc.com](mailto:bridget@cypressgroupdc.com) or phone (571-212-2036) to discuss our perspective further.

Sincerely,

Bridget Hagan
Executive Director, The Insurance Coalition