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COMPETITIVENESS.

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Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Dear Secretary Misback:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the Notice of Proposed Rulemaking on Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities (the "Proposed Rule" or "NPR") issued by the Board of Governors of the Federal Reserve System (the "Board" or "Federal Reserve")

Our diverse membership includes purely domestic, as well as international and globally active insurance companies headquartered both in and outside of the United States. Perhaps more importantly, we have both member companies that rely on insurance products and members that rely on the larger role insurers play as investors in our global economy. Therefore, we are broadly supportive of the goal of safeguarding our financial system.

The Chamber welcomes the Proposed Rule and appreciates the Board's decision to leverage U.S. risk-based capital requirements but believes there are a number of opportunities to enhance the framework. Notably, the Chamber believes the NPR remains biased towards the Board's longstanding bank-centric approach to regulating insurance firms that subjects them to inappropriate regulation and may overlap or conflict with state regulatory requirements despite limitations sought by

Congress to avoid such outcomes. The Chamber is pleased to provide a number of recommendations to improve the Proposed Rule that fall into the following topics:

- **I. Covered Firms**
- **II. International Considerations**
- **III. Building Block Approach**
- **IV. Qualifying Capital**
- **V. Sec. 171 Minimum-Risk Based Capital Requirement**
- **VI. Considerations for the Economic Analysis**
- **VII. Scalar Approach**

The Proposed Rule would apply a risk-based capital framework, termed the Building Block Approach ("BBA"), which aggregates existing legal entity capital requirements, with certain proposed adjustments, to determine an enterprise-wide capital requirement. A capital buffer is applied on top of the enterprise-wide capital requirement to determine the overall minimum level of capital adequacy that must be maintained to avoid limitations on capital distributions and discretionary bonus payments. A separate risk-based capital requirement that must be calculated in parallel with the BBA, which is based on the Board's banking framework, is also outlined in the Proposed Rule. Finally, the Proposed Rule would revise reporting requirements for depository institution holding companies significantly engaged in insurance activities.

I. Covered Firms

The Proposed Rule imposes a group capital regime for depository institutions with an insurance underwriting company, a depository institution holding company when the subsidiaries hold 25% or more of total consolidated assets in an insurance underwriting subsidiary, or as otherwise designated by the Federal Reserve. Thus, the Proposed Rule is currently applicable to eight firms.[1]

The Chamber believes the Board should focus on ensuring the Proposed Rule is appropriate for covered firms. However, as noted by the Federal Reserve, the Proposed Rule has informed the Board's collaborative work with the National Association of Insurance Commissioners ("NAIC"), which is developing its own aggregation-based Group Capital Calculation ("GCC") and the International

[1] Federal Reserve Board invites public comment on proposal to establish capital requirements for certain insurance companies supervised by the Board (September 6, 2019), available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190906a.htm

Association of Insurance Supervisors ("IAIS") on efforts to develop the Risk-based Global Insurance Capital Standard ("ICS").[2] Because of the broader context within which the Proposed Rule is being developed, the Chamber believes consideration must also be given to the influential effect it could have on the GCC, which will apply to a broader scope of insurers, and the ICS. The Chamber commends the Board's effort to achieve consistency between the BBA and GCC where possible and the attempt to minimize burdens upon firms that may be subject to both frameworks. We believe further work on this front is warranted and greater efforts should be made by the Federal Reserve to align the Proposed Rule with the GCC, as discussed in this letter, to enhance regulatory consistency and leverage the state-based system of insurance supervision to the greatest extent possible.

The Federal Reserve should also be conscious of U.S. objectives to secure global acceptance of the Aggregation Method when developing the BBA. The Chamber commends and continues to support efforts of "Team USA" (The U.S. Department of the Treasury, the NAIC, and the Federal Reserve) to secure an approach to the ICS that works for the U.S. insurance market. Given the Proposed Rule's narrow application to only eight firms we believe it is important to avoid a scenario where policymakers outside of the U.S. inappropriately interpret the BBA as Team USA's interpretation of the Aggregation Method.

More broadly, the Proposed Rule notes the Board's desire to have a "continuing emphasis on adopting a tailored approach to supervision and regulation in a manner that streamlines implementation burden."[3] The Chamber has consistently argued against "one-size-fits-all" regulatory approaches and believes the Proposed Rule would benefit from additional tailoring to ensure it can accommodate different organizational structures and capital adequacy risk that supervised firms may present. Such flexibility would help account for the likelihood that the business mix, corporate structures, and risk exposures of firms subject to the rule will evolve over time.

[2] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57245 (October 24, 2019). "In participating in this [ICS] process, the Board remains committed to advocating, collaboratively with the NAIC, state insurance regulators, and the Federal Insurance Office, positions that are appropriate for the United States."

[3] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57245 (October 24, 2019).

II. International Considerations

Question 1 of the NPR notes that the IAIS is currently pursuing a Market Adjusted Valuation ("MAV") approach for the ICS, in contrast to the aggregation approach in the BBA, which has similarities to the Aggregation Method Team USA is developing at the global level.

The Chamber believes the Aggregation Method has a number of strengths from a supervisory and market perspective that make it more appropriate than the MAV approach. In September 2019, the U.S. Chamber of Commerce published a report titled, "Insurance Capital Standards and the Aggregation Method" which analyzes different approaches to group capital in the context of local insurance markets. The report discusses several attractive attributes of the Aggregation Method:[4]

- **Leverage of existing solvency frameworks.** The Aggregation Method leverages existing jurisdictional solvency frameworks and capital requirements (e.g., risk-based capital in the U.S., Solvency II for the EU, etc.) that are already tailored to market specificities (e.g., risks, consumer needs, public policy frameworks/goals, etc.) in each jurisdiction and thus would avoid disrupting stable markets. As a result, the framework would present lower incremental costs and avoid introducing volatility and pro-cyclicality that would inhibit the ability of insurers to provide long duration liabilities and could adversely impact financial stability.
- **Alignment with regulatory authority.** Insurance entities are regulated by authorities within their local jurisdictions, thus the Aggregation Method is naturally aligned with the scope of regulatory authority and triggers. In contrast, a consolidated approach and metric may be of limited use to local regulators given their narrow scope of authority and focus.
- **Transparency.** The Aggregation Method provides supervisors with information at the entity level within broader insurance groups. This provides supervisors visibility into the capital position of specific entities in various jurisdictions within an insurer—allowing a more granular perspective of solvency than a "consolidated" approach that has a more limited view of component parts of the aggregated group and assumes fungibility across a group when it may not be available in practice
- **Comparability across entities within a group.** Scalars can be employed to enable comparison of entities within the group.

[4] U.S. Chamber of Commerce. Insurance Capital Standards and the Aggregation Method (Summer 2019), available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/09/CCMC_InsurancePaper2_v4-DIGITAL.pdf

More broadly, the report finds that the Aggregation Method would more appropriately balance the goal of delivering a common language on group solvency for supervisory discussions with the need to respect the bespoke nature of insurance markets around the world. In practice, this would preserve the ability of the insurance industry to play a number of critical roles in economies worldwide including providing products that allow society to manage exposure to low-frequency, high-severity risks and providing a key source of investments in the real economy.

III. Building Block Approach

At the enterprise level, the ratio of the amount of available capital to the amount of capital required, termed the Building Block Approach Ratio ("BBA ratio"), is comprised of a required minimum and buffer, with a proposed minimum of 250% and a proposed total buffer of 235% for a total required BBA ratio of 485%. The Proposed Rule notes, "Based on the Board's preliminary review, the Board does not anticipate that any currently supervised insurance depository institution holding company will initially need to raise capital to meet the requirements of the BBA."[5] If the Board does not intend covered firms to raise capital then it should provide additional flexibility for determining "qualifying capital."

The Chamber has concerns with the Board's proposal to establish a minimum required ratio of 250% as it appears to include a significant margin of conservatism to what banking entities must comply with. Converting the 8% of Risk Weighted Assets ("RWA") requirement from the banking sector using the Board's derived scalars produces a minimum requirement of 160%. The Proposed Rule explains this uplift as an "added margin of conservatism to account for factors including any potential data or model parameter uncertainty in determining scaling parameters and an adequate degree of confidence in the stringency of the requirement."[6] However, the accompanying rationale for the magnitude appears to have been arbitrarily determined based on the convenient relation to existing solvency measures in the RBC framework: The Board notes that the proposed minimum ratio, 250%, "aligns with the midpoint between two prominent, existing state insurance supervisory

[5] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57246 (October 24, 2019).
[6] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57261 (October 24, 2019).

intervention points, the 'company action level' and 'trend test level' under state insurance RBC requirements."[7]

While the Chamber supports and encourages the Board to leverage the state regulatory system as the basis of the BBA we believe greater support is needed to justify including the recommended margin of conservatism, especially given other aspects of the Proposed Rule that will introduce conservatism beyond that in the RBC framework (e.g. treatment of capital resources and potential effect of other adjustments being contemplated). We therefore ask the Board to employ a minimum that is transparent and based on the analysis the Board has embraced for scaling banking and insurance operations. To the extent the Board has lingering concerns with the analysis it published, the scalars could be refined through ongoing study with adjustments incorporated into the rule over time.

The capital conservation buffer would limit capital distributions and discretionary bonus payments for insurance depository institution holding companies that do not hold a specified amount of available capital at the level of a top-tier parent or other depository institution holding company, in addition to the amount that is necessary to meet the minimum risk-based capital requirement proposed under the BBA. Inclusion of the buffer appears to draw from a requirement applied to certain banks supervised by the Board that are required to hold 2.5% of risk-weighted assets (RWA) consisting of Common Equity Tier 1 capital.

The Chamber believes it is inappropriate for the Board to apply a macro-prudential standard, such as a capital conservation buffer, to an insurance group. The application of a countercyclical buffer suggests covered firms pose systemic risk despite this being inconsistent with their business model and no established evidence that such risk exists. The Chamber has consistently argued against the application of bank-like requirements, including macro-prudential requirements, to insurance firms. The capital conservation buffer disregards the relatively long-term, low-risk balance sheet of insurance firms by applying a bank-like standard designed for a financial firm with relatively higher liquidity risk.

The Chamber stressed in its response to the Board's Advanced Notice of Proposed Rulemaking that, "it is important for the Federal Reserve to continue following Congress' clear intent that insurance capital standards should not be based

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[7] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57261 (October 24, 2019).

on bank capital standards."[8] We believe inclusion of the buffer exceeds the Board's authority to promulgate rules so the insurance group serves as a source of strength to any subsidiary depository institutions. Further, restricting capital distributions would actually increase, not decrease, the riskiness of the insurance group and could make it harder for the insurance group to raise equity capital, thereby inhibiting managements' ability to respond to stress. The NAIC has also identified the inclusion of the buffer as a point of concern given its potential conflict with state insurance regulatory authorities that provide for approval of capital distributions – the Chamber shares the concerns the NAIC raised on this point.[9] For these reasons, the Chamber believes the Board should eliminate the capital conservation buffer.

With regard to the total proposed minimum requirement, the Chamber supports the analysis submitted by the American Council of Life Insurers and the Insurance Coalition which demonstrates that the proposal would impose significantly higher capital requirements on an Insurance Savings and Loan Holding Company ("ISHLCs") than for banks. While the approach taken by the Board to calibrate the requirements has provided very important information to help guide regulators, the degree of conservatism is not necessary. If the Board determines to move forward with a final rule without engaging in additional analysis, the Chamber believes that the total of all capital requirements should not exceed 395%.

Finally, the BBA proposes several significant adjustments to the state requirements for required and available capital. For example, the Board proposes to reverse the effects of state permitted and prescribed practices. It also proposes to make adjustments for grandfathering and transitional measures. The NPR raises unanswered questions about the potential scope and impact of the proposed adjustments and provides insufficient detail on how insurers would be expected to implement the adjustments in practice. For example, the NPR lacks a clear definition or consistent application of grandfathering, nor is it clear what the Board considers a transitional measure. It is also not clear how the proposed adjustments would apply to non-U.S. regimes.

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[8] Letter from Tom Quaadman, Center for Capital Markets Competitiveness, to the Board of Governors of the Federal Reserve System (Feb 2, 2015) (offering comments on Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities, RIN 7100-AE 53, Docket No. R-1539), available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/01/CCMC-Sept-2016-Comment-Letter.pdf?#

[9] NAIC December 12, 2019 comment letter. https://www.federalreserve.gov/SECRS/2019/December/20191213/R-1673/R-1673_121219_137115_528729109977_1.pdf

In general, these adjustments could be significant, costly and influence strategic business decisions. These business realities underscore the concerns many of our members have expressed regarding the advancement of conflicting state, federal, and international standards governing insurance companies. To avoid such unintended consequences, the Board should avoid deviations from the state based regulatory system and state regulator approved practices. The Chamber recognizes that the GCC, which remains under development but is expected to be final in its design by August 2020, is contemplating the inclusion of similar adjustments, as proposed in the NPR. To the extent that both the Board and NAIC proceed with including such adjustments the Chamber believes the Board's approach should align with that employed by the NAIC to ensure regulatory consistency for U.S. insurers.

IV. Qualifying Capital

The Chamber believes the Federal Reserve should revise the definition of qualifying capital for purposes of the BBA to permit recognition of senior debt. The Proposed Rule permits surplus notes to be treated as qualifying capital subject to certain limitations. Senior debt is structurally subordinate to policyholders, similar to the use of surplus notes. Publicly traded institutions rely on senior debt in a way that is similar to the use of surplus notes by mutual companies. As noted by the NAIC, this new limitation on stock nonoperating insurance holding companies could cause them to raise premium rates, which could have an adverse impact on policyholders.[10]

We believe that senior debt should be treated as qualifying capital at the insurance company level under the BBA because of its loss-absorbing qualities for such subsidiaries. Under the NPR, senior debt issued by an Insurance Savings and Loan Holding Companies (ISLHC) would not be "qualifying capital" for purposes of the BBA because it would not be subordinated to general creditors. Moreover, the NPR would require a building block parent to deduct any investments in its subsidiary building block parent capital instruments from its own available capital, resulting in the elimination of any so-called double leverage. Consequently, a non-operating holding company that raised senior debt that is used to support capital needs of its subsidiary insurance underwriting companies would not be able to recognize the benefit of the senior debt as qualifying capital under the BBA.

[10] NAIC December 12, 2019 comment letter.
https://www.federalreserve.gov/SECRS/2019/December/20191213/R-1673/R-1673_121219_137115_528729109977_1.pdf

The NAIC in their current efforts to develop a GCC has recognized that structural subordination can achieve comparable outcomes in terms of loss absorbency. These features are particularly relevant in a "going concern" stress context because they provide clarity to creditors, avoiding the lengthy and highly technical legal parsing of contracts in order to determine the stability of the firm's capital base.

Structural subordination has been enforced in judicial forums with significant case law. Correspondingly, the capital markets respect structural subordination, via treatment from credit ratings agencies and commensurate pricing of non-operating holding company capital instruments (credit ratings for U.S. stock ISLHCs are typically below the financial strength rating of their core insurance company underwriting subsidiaries). By qualifying long-term senior debt on a more equivalent basis to insurance entity surplus notes,[11] the Board would reduce disincentives for "clean" insurance holding companies from entering into banking, thereby helping to advance the provision of savings and loan products by enterprises that are already familiar with financial services regulation, compliance, and capital management anchored in safety and soundness.

For all these reasons, the Chamber believes disallowing or dramatically altering senior debt and the economic recognition of structural subordination would be unduly disruptive to the capital markets and significantly raise the cost of capital for publicly traded ISLHCs. The Chamber supports recognition of senior debt in the final rule. As the method for doing so, we propose to allow reducing the deduction for an ISLHC top-tier building block parent's investments in the capital instruments of a subsidiary building block holding company whose applicable capital framework is NAIC RBC by the amount of long-term senior debt issued by the top-tier parent. Additionally, the Board should increase the limit (currently proposed as 62.5% of the parents' available capital) of Tier 2 capital and provide the additional category of Additional Tier 1 Capital, similar to the definitional and quantitative limit framework for those instruments that is set forward for banking organizations.

V. Sec. 171 Minimum-Risk Based Capital Requirement

The Proposed Rule also includes applying a minimum risk-based capital requirement to the enterprise. The Proposed Rule notes, any capital requirements the

[11] In the context of a holding company having issued senior debt, the state review requirement for a subsidiary insurer's dividends effectively mirrors the regulatory approval requirement for payments on surplus notes issued by an insurer.

Board may establish for SLHCs are subject to minimum capital standards under Section 171 of the Dodd-Frank Act. And that, "the minimum risk-based and leverage capital requirements for depository institution holding companies must not be less than the capital requirements established by the Federal banking agencies to apply to insured depository institutions, nor quantitatively lower than the capital requirements that applied to IDIs [insured depository institutions] when the Dodd-Frank Act was enacted." The Section 171 calculation is not consistent with Congressional intent and should be eliminated. Congress amended Sec. 171 in 2014 to clarify the Board should not impose bank-like capital requirements on insurance entities when developing consolidated capital requirements for holding companies.

The Chamber opposes the application of macro-prudential standards, intended for systemically important financial institutions, to SLHCs. We take issue with the Proposed Rule's assertion that Section 10(g) of the Home Owners' Loan Act can be broadly interpreted to apply any regulation the Board deems necessary so that the SLHC can serve as a source of strength to an insured depository institution. The Chamber recently argued to the Board that this "would appear to contradict existing law given that more general statutory provisions, such as HOLA § 10(g), do not confer the same authority to an agency where Congress separately provides the authority 'explicitly and set[s] forth the relevant procedures in considerable detail."[12] SLHCs are not Bank Holding Companies (BHC) and the Federal Reserve may not treat them as systemically important financial institutions unless designated by the Financial Stability Oversight Council (FSOC).

The Chamber also disagrees with the Proposed Rule's assertion that the Dodd-Frank Act was intended to "…ensure fair and appropriate supervision of depository institutions without regard to the size or type of charter…"[13]. For example, the Dodd-Frank Act included a clear delineation for application of supervisory requirements by the Board to BHCs with less than $50 billion in assets and excluded ISLHCs from this statutory determination for application of macro-prudential requirements. This asset threshold was recently increased to $250 billion, at the direction of Congress, and the Board tailored supervisory requirements based on both asset size and risk profile.[14]

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[12] Letter from Tom Quaadman, Center for Capital Markets Competitiveness, to the Board of Governors of the Federal Reserve System (January 22, 2019). Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies – Docket No. R-1627 and RIN 7100-AF20, available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/01/1.22.19-Comments_ApplicabilityThresholds_OCC.Fed_.FDIC_.pdf?#

[13] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57241 (October 24, 2019).

[14] https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20181031a3.pdf

Governor Quarles, Vice-Chair for Supervision of the Board, has noted the importance of tailoring requirements for financial institutions in public remarks in a number of forums. For example, in testimony before the House Financial Services, he stated, "… the tailoring of supervision to the character and risk of particular institutions is something that I completely agree extends along the spectrum of institutions from the smallest to the largest."[15]

VI. Economic Analysis

The Chamber strongly believes that the federal regulators should conduct a rigorous economic analysis as they develop rules, as required under the Administrative Procedure Act (APA) and Executive Orders. The Federal Reserve is an independent agency, but it has avowed that it follows policies consistent with Executive Order 13563.[16] Consistent with this approach, the Federal Reserve has stated that it "continues to believe that [its] regulatory efforts should be designed to minimize regulatory burden consistent with the effective implementation of [its] statutory responsibilities."[17] To that end, the Chamber supports the Board's commitment to conduct a robust economic impact assessment.[18] The Board should complete this analysis and publish it to give stakeholders the opportunity to review and comment upon the analysis before the rule is finalized.

a. Capital Markets and Investment

The insurance sector is an integral provider of capital to the U.S. economy and the global economy. Inappropriately structured regulation for the insurance sector, including policy tools intended to address systemic risk, could have a significant impact on the ability of many public and private entities to access stable capital.

[15] United States, Congress, "Semi-Annual Testimony on the Federal Reserve's Supervision and Regulation of the Financial System." Semi-Annual Testimony on the Federal Reserve's Supervision and Regulation of the Financial System. https://republicans-financialservices.house.gov/uploadedfiles/115-86.pdf
[16] Letter from Scott G. Alvarez, Gen. Counsel, Bd. of Governors of the Fed. Reserve Sys., to A. Nicole Clowers, Dir., Fin. Mkts. and Cmty. Inv., Gov't Accountability Office (Oct. 24, 2011), reprinted in GAO-12-151, Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination 39 (Nov. 2011).
[17] Letter from Ben Bernanke, Chairman, Bd. of Governors of the Fed. Reserve Sys., to Cass Sunstein, Administrator, Office of Info. And Regulatory Affairs, Office of Mgmt. and Budget (Nov. 8, 2011), available at https://www.federalreserve.gov/foia/files/regulatory-burden-reduction-111115.pdf
[18] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57270 (October 24, 2019).

The Chamber of Commerce issued a report in March 2019 describing how the insurance sector invests in the U.S. economy.[19] The report finds that U.S. insurance assets totaled approximately $5.8 trillion as of December 2017. These investments are particularly important in certain asset classes that meet criteria necessary to achieve investment goals of insurers.

Insurance companies invest in a unique set of assets as a direct result of their business model. Therefore, U.S. insurance companies invest for different purposes than other institutional investors. They are primarily concerned with matching long-term liabilities and, as a result, hold the appropriate assets to achieve this. The unique investment strategy of insurance companies results in tangible, long-term projects being financed by these firms and, indirectly, by policyholders.

This investment includes a 21% share of all corporate bonds, approximately $1.9 trillion, which fund the growth and operations from a myriad of businesses in all corners of the U.S. economy. For example, life insurers' public corporate bond investments alone funded about $120 billion of business investment in needed plants, equipment, and other capital expenditures in 2017. Investments made by all types of insurance companies are essential to a robust and competitive capital markets that U.S. businesses depend on as a stable source of financing.

The investment also includes 20% of all municipal bonds outstanding, approximately $800 billion, which helps fund the activities of state and local governments, including infrastructure investment. For example, the industry's investments in education projects through municipal bond purchases could build about 1,000 elementary schools every year. Likewise, its annual investments in municipal bonds for transportation projects could build a road from Washington, D.C., to Los Angeles every year.

b. Product Availability

The insurance industry plays a number of critical roles in economies worldwide. First, insurance products allow policyholders to better manage risks. This can vary from short-term property and casualty (P&C) products that protect against liability and catastrophe risks, to longer-term life and annuity products that ensure a stable income through old age and household mortality. In order to fulfill these

[19] U.S. Chamber of Commerce. The Role of Insurance Investments in the U.S. Economy (Winter 2019), available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/03/CCMC_InsurancePaper_v2.pdf

important societal objectives, effective regulatory frameworks are critical to the insurance business model. Effective regulatory frameworks ensure policyholder protection while creating appropriate conditions for insurers to provide a robust range of products.

The type and availability of products can be impacted by capital standards. If a firm is required to hold more capital than necessary to avoid failure then it is not maximizing its ability to provide insurance products to the market. The Chamber appreciates the recognition of such concerns in the NPR, which states, "Any initial and ongoing costs of complying with the standard, if adopted as proposed, could nominally affect the premiums and fees that the insurance depository institution holding companies charge, since insurance products are priced to allow insurers to recover their costs and earn a fair rate of return on their capital." A capital requirement like the BBA, if adopted as proposed, could also affect the cost of capital borne by the insurance depository institution holding company, which in turn could affect premiums and an insurer's borrowing cost. In the long run, costs of providing a policy may be borne by policyholders."[20] The Board can avoid these costs by not adjusting the existing state level legal entity framework.

c. Compliance Costs

The Chamber supports the economic analysis considering initial and ongoing costs to comply with the Proposed Rule. An aggregated approach without adjustments to legal entity requirements should have relatively low implements costs. As the Chamber found, "the AM leverages existing solvency measures and existing jurisdictional frameworks and may impose lower costs of implementation."[21]

The NPR notes, "The BBA builds on existing legal entity capital requirements and, as a result, minimizes the amount of additional systems infrastructure development beyond what is already done by the insurance depository institution holding company to comply with its entity-level regulatory requirements. Implementation costs are thereby notably less relative to a ground-up capital requirement." However, as noted elsewhere, the Proposed Rule makes various adjustments thus possibly negating the relatively low compliance costs that should be realized via an aggregated approach.

[20] See Proposed Rule, Regulatory Capital Rules: Risk-Based Capital Requirements for Depository Institution Holding Companies Significantly Engaged in Insurance Activities, 84 Fed. Reg. 57273 (October 24, 2019).
[21] U.S. Chamber of Commerce. Insurance Capital Standards and the Aggregation Method (Summer 2019), available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/09/CCMC_InsurancePaper2_v4-DIGITAL.pdf

Additionally, the Federal Reserve should modify the timing of reporting requirements to avoid undue compliance burdens. The NPR's March 15 reporting date is very close with the deadline for annual reporting to the NAIC and would therefore place significant demands on the same staff within a covered firm during a short period. The Chamber recommends the Federal Reserve moves its reporting date to May 15.

VII. Scalar Approach

The Chamber feels obligated to register some concerns with the scaling approach used in the Proposed Rule, but recognizes this is a challenging statistical exercise and is unprepared to offer an alternative. The "probability of default" approach used in the Proposed Rule is inherently bank-centric. There are limited instances of insurance firms defaulting on their obligations, thus the applicability of such an approach may be unsound. Furthermore, the data set used by the Federal Reserve predominantly depends on information about property and casualty insurance, which may be an inappropriate representation when applied to firms that primarily provide other types of insurance products.

The scalar approach could deter covered firms from expanding internationally. The Board's approach contemplates an approach for the firm's currently under the Board's supervision none of which have material international operations. The Chamber encourages the Board to continue to explore methodologies for scaling foreign insurance regimes to the level of conservatism within the RBC framework in close collaboration with the NAIC. While the domestic focus of the firms currently subject to Board supervision may permit deferring resolution of this topic for the time being, it remains important for a variety of reasons. First, ambiguity on this item – as well as other facets of the BBA – will inhibit the ability for Board supervised firms – or those that may be in the future – to make strategic business decisions such as expanding internationally. Second, the Board's current position has the potential to undermine achieving Team USA's shared objective of securing global recognition of the Aggregation Method.

Conclusion

The Chamber appreciates the Board's work to develop a risk-based capital framework, which aggregates existing legal entity capital requirements, with certain proposed adjustments, to determine an enterprise-wide capital requirement. We hope you will consider our recommendations to improve the proposed framework. Finally, we look forward to continuing our work with the Board, NAIC, and U.S. Treasury Department on global acceptance of the Aggregation Method.

Sincerely,

Bill Hulse
Director
Center for Capital Markets Competitiveness