U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

May 5, 2022

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

Re: Board of Governors of the Federal Reserve System Request for Comments on Framework for the Supervision of Insurance Organizations; Docket No. OP–1765, 87 FR 6537

Dear Ms. Misback:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC" or "Chamber") appreciates the opportunity to comment on the proposal issued by the Board of Governors of the Federal Reserve System ("Board") on its "Framework for the Supervision of Insurance Organizations" ("Proposal").

CCMC's membership is comprised of domestic and globally active insurance companies headquartered both in and outside of the United States. In addition, we have member companies that rely on insurance products and the larger role insurers play as investors in our global economy. As a 2019 CCMC study found, U.S. insurance companies play a stabilizing role in capital markets and their assets make up a sizable share of asset classes such as corporate bonds and municipal bonds[1]. As such, we are broadly supportive of the goal of safeguarding our financial system.

Depository institution holding companies significantly engaged in insurance activities ("supervised insurance organizations") have been subject to oversight by the Federal Reserve since 2011, when the Dodd-Frank Act eliminated the Office of Thrift Supervision and gave the Board supervision over these institutions. Since that time, the number of these institutions has decreased (some have ceased certain banking operations). Currently, there are only six such institutions in the country.

The proposed new supervisory rating system is modeled after the large financial institution (LFI) rating system for bank holding companies but is modified in proportionality to support its use for supervised insurance organizations of all sizes and risk profiles. The proposal notes that the Board will follow a risk-based approach and lays out supervisory expectations for supervised insurance organizations, focusing on governance and expectations for boards and senior management in the following areas: credit risk, market risk, model risk, legal risk, operational risk, cybersecurity/information technology risk, and third party risk. The Board will also assess each firm's capital and liquidity risk management and apply one of the following supervisory ratings to each component of the supervised insurance organizations: Broadly Meets Expectations, Conditionally Meets Expectations, Deficient-1, and Deficient-2. The

[1] https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/03/CCMC_InsurancePaper_v2.pdf

proposal lays out broad expectations for each category and concludes with a discussion on incorporating the work of other supervisors.

Under the proposal, a depository institution holding company will be classified as a supervised insurance organization "if it is an insurance underwriting company or if over 25 percent of its consolidated assets are held by insurance underwriting subsidiaries." The proposal also notes that firms will be labeled either complex or noncomplex and that firms are presumed complex if they meet the $100 billion depository asset test. However, the proposal notes that the Board will have discretion to treat as noncomplex a firm with less than $100 billion in depository assets.

CCMC Recommendations

CCMC is supportive of minimizing the costs on institutions that will have to comply with the regulation, and we are particularly appreciative that the Board intends to apply guidance in existing Supervision and Regulation (SR) Letters related to legal and compliance risk to supervised insurance organizations, as well as incorporating "the opinions, examination results, ratings, supervisory issues, and enforcement actions from other supervisors…into a consolidated assessment of the enterprise-wide legal and compliance risk management framework.[2]"

And while we share the goal of promoting safety and soundness among supervised insurance organizations and the entire financial system, we offer the following suggestions to improve the proposal and streamline burdens for supervised insurance organizations:

I. The Board Should Respect the Primacy of State Insurance Regulation

The proposal notes that "the top-tier holding company for some supervised insurance organizations is an insurance underwriting company, which is subject to supervision and regulation by the relevant state insurance regulator as well as consolidated supervision from the Board; for all of these firms, the state insurance regulators supervise and regulate the business of insurance underwriting companies." The proposal also notes that it is the Board's policy to "rely to the fullest extent possible on work done by other relevant supervisors, describing, in particular, the way it will rely more fully on reports and other supervisory information provided by state insurance regulators to minimize the burden associated with supervisory duplication."

These statements recognize the foundational premise that U.S. insurance companies are primarily regulated at the state level, and the proposal refers multiple times to incorporating the work of other supervisors. CCMC supports this approach, but a concern that still remains with the proposal, as CCMC noted in our 2020 comment letter on regulatory capital rules for depository institution holding companies, is a potential bias "towards the Board's longstanding bank-centric approach to regulating insurance firms that subjects them to

---

[2] Board of Governors of the Federal Reserve System Request for Comments on Framework for the Supervision of Insurance Organizations, 78 Fed. Reg. 6543 (February 4, 2022)

inappropriate regulation and may overlap or conflict with state regulatory requirements despite limitations sought by Congress to avoid such outcomes."[3] CCMC encourages the Board to follow congressional intent regarding insurance regulation and to rely heavily on the work of state insurance regulators in order to avoid issuing conflicting, bank-centric guidelines. We also encourage the Board to rely on the work of other functional regulators (e.g., exams from the SEC) and coordinate with them in advance of issuing any further regulations.

II. The Board Should Clarify the Designation of Complex Organizations and Tailor Its Approach to the Supervision of Firms

Complex Designation

The criteria for designating some insurance companies as complex is overly broad and needs to be more targeted to the risks that cause companies to be considered complex. CCMC recommends that the Board provide more specificity regarding the risks that are relevant in defining a complex institution. The only quantitative criteria in the proposal for making this determination is the assumption that a firm that has a depository institution with assets over $100 billion is presumed to be complex without consideration of the institution's risks or complexity of organizational structure. While CCMC has concerns with this arbitrary threshold, we are pleased that the proposal allows room for a firm above $100 billion to be classified as noncomplex, although as discussed below, the Board should provide clarity on this issue.

The Board provides a list of factors that it will consider in making its determination, including the organization's quality and level of capital and liquidity, the size of its depository institution(s), and the complexity of its organizational structure, and notes that it would adapt supervisory activities "to reflect the actual risk profile of the firm and to focus on risks that are most likely to threaten the holding company's ability to act as a source of strength for its depository institution(s)."

Under the proposal, complex firms would be subject to routine, continuous monitoring, while noncomplex firms would be examined annually to assess the firm and assign ratings. The rating components are Capital Management, Liquidity Management, and Governance & Controls, and the four potential ratings that will be assigned to firms are Broadly Meets Expectations, Conditionally Meets Expectations, Deficient-1, and Deficient-2.

We appreciate the Board's commitment to risk-based, tailored supervision that focuses on each organization's individual risk profile, but we are concerned that the proposal does not provide sufficient specificity to supervised insurance organizations. The proposal notes that a firm with over $100 billion in total assets could still be classified as noncomplex "if, for example, most of those assets were a result of traditional insurance activities, it had a small depository institution, it had a history of maintaining relatively large capital and liquidity

[3] 1.22.20 FED Risk-BasedCapitalRequirements.pdf (centerforcapitalmarkets.com)

buffers, and it was viewed overall as well run with little risk to its depository institution." While these examples are somewhat useful, they are nonetheless examples and not principles and, as a result, the proposal leaves too much discretion to the Board to make subjective determinations based on its assessment of risk as to whether a firm is complex or noncomplex. The confusion surrounding this approach could be compounded as the Board faces turnover. Existing Board leadership may assign greater importance to some factors over others, while future leadership could have differing priorities. Given the apparent discretion that the proposed rule would afford to Board staff in certain areas, over time, personnel changes could affect the treatment of these firms and affect their classification. Therefore, we ask the Board to further identify the factors that could lead to a noncomplex designation.

Tailoring

The proposal states that it "represents a significant step in the continuation of the Board's tailored approach to supervision and regulation for supervised insurance organizations." CCMC asks the Board to provide more guidance on several key issues in the proposal and includes recommendations below that could more appropriately tailor these requirements:

III. Clarify How Enforcement Actions by Functional Regulators Could Create a Deficient Rating

There is concern from regulated entities about how enforcement actions are treated under the proposed rating system. The Board's proposal states that a firm's assessment may be downgraded in the event of certain enforcement actions by other functional regulators. This includes both formal and "informal" enforcement actions that a firm is currently subject to, or expected to be subject to, by another regulator tied to violations of laws and regulations. This would be particularly problematic if applied broadly across all regulated entities. For example, would a settlement entered into by a subsidiary company with a functional regulator (e.g., FINRA or the SEC), without admission of liability, be considered a "formal enforcement action of another regulator" that would result in a Deficient-1 or Deficient-2 rating? The Board should provide more definitive guidance on this, perhaps issuing a list similar to the current list of requirements in SR 14-9 that are applicable to Insurance Savings and Loan Holding Companies (ISLHCs) today.

Another concern of CCMC lies in the Board's reliance on other exams and reports. While we support this collaboration, we would appreciate more transparency on whether the Board is following congressional directives on this point. For example, if an institution has received a clean exam from another regulator, but the timing of that exam does not match the Board's timeframe, would the Board reject the exam findings and conduct its own exam? A clear framework on key questions like this is crucial for supervised institutions.

Additionally, we are encouraged by the Board's effort to communicate their view on how other guidance may or may not apply to these institutions. It is clear that there has been a dwindling number of supervised insurance organizations acting as ISLHCs. This trend points to a potential divergence in whether the supervision and regulation of these institutions has had

some impact on the contraction in the market. We encourage the Board not to add additional supervisory guidance without notice and comment or assume that institutions with substantial insurance assets should be subject to the same level of examination applied to complex bank holding companies. This type of regulatory creep could create confusion for supervised insurance organizations.

IV. Capital Management

In our 2020 comment letter, CCMC encouraged the Board to leverage the state regulatory system as the basis of the Building Block Approach (BBA) to capital requirements to ensure regulatory consistency for U.S. insurers.[4] Under the current proposal, capital management is one of the three ratings components for supervised insurance organizations. The proposal states that the Board "relies to the fullest extent possible on information provided by the state insurance regulators, including the firm's ORSA and the state insurance regulator's written assessment of the ORSA." We appreciate this commitment and again encourage the Board to continue to rely on information provided by state regulators as it continues to assess capital management for firms and finalizes capital requirements. Providing as much clear guidance and as possible will be helpful and reduce burdens for supervised insurance organizations.

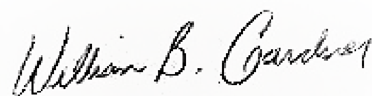
Questions

Question 7. What additional measures, if any, should the Board take to fulfill its goal to rely to the fullest extent possible on work of other relevant supervisors, including the state insurance regulators?

CCMC again strongly encourages the Board to work with other relevant supervisors. In particular, we ask the Board to engage with the National Association of Insurance Commissioners (NAIC) and ensure that state insurance regulators' expertise and feedback are incorporated into the proposal to the greatest extent possible.

The Chamber appreciates the opportunity to comment and stands ready to constructively work with you on these issues going forward.

Sincerely,



Will Gardner
Director
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

---

[4] 1.22.20 FED Risk-BasedCapitalRequirements.pdf (centerforcapitalmarkets.com)