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February 26, 2015

Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies (Docket No. R-1489 & RIN 7100 AE 18)

Dear Chair Yellen:

These comments are submitted on behalf of the American Council of Life Insurers (the "ACLI"). The ACLI is a national trade association with 284 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the United States. We appreciate the opportunity to respond to the Federal Reserve Board's (the "FRB") notice of proposed rulemaking (the "Proposed Rule") that would establish risk-based capital surcharges for the largest, most interconnected U.S. bank holding companies ("U.S. G-SIBs") pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1]

While the Proposed Rule would by its terms only apply to U.S. G-SIBs, we are submitting this letter in response to Question 4 in the preamble to the Proposed Rule, which asks:

If the proposed framework were applied to nonbank financial companies designated by the Financial Stability Oversight Council for Board oversight, how (if at all) should the framework be modified to capture the systemic risk profile of those companies?[2]

In this letter, we address the potential application of the Proposed Rule to insurers designated under Title I of the Dodd-Frank Act by the Financial Stability Oversight Council ("Designated Insurers"). First, we discuss the potential application of the Proposed Rule and its specific analytical framework for calculating a risk-based capital surcharge for Designated Insurers. Second, we discuss the appropriateness of potential application of a risk-based capital surcharge to Designated Insurers.

I. Potential Application of the Proposed Rule to Designated Insurers

The Proposed Rule is by design tailored to U.S. G-SIBs. It is based entirely on the financial reporting structure and risk profiles of large bank holding companies ("BHCs"), and builds on regulatory

[1] Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies, 77 Fed. Reg. 75473 (Dec. 9, 2014).

[2] 79 Fed. Reg. 75478.

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reporting requirements that have been developed for BHCs[3]. In fact, there does not appear to be any substantive reference in the Proposed Rule to insurance enterprises other than in Question 4 of the preamble. It is therefore unsurprising that the Proposed Rule and its underlying analytical framework are inappropriate for Designated Insurers.

Moreover, the recent enactment of the Insurance Capital Standards Clarification Act of 2014 is recognition that it is simply improper to consider applying bank-centric requirements like those in the Proposed Rule to insurance entities.[4] That law, which was unanimously approved by both houses of Congress, stands as an emphatic statement that the innate differences between the banking and insurance industries should be separately and appropriately addressed in any regulations developed by the FRB. It is clear that Congress believes it is imperative that the FRB recognize these significant differences whenever it considers regulatory actions that effect insurance enterprises, and for that reason alone it is inappropriate to consider applying the proposed framework to Designated Insurers.

Further, applying the indicator-based methodology to insurance enterprises would appear to be in direct contradiction to efforts by international standard-setters, such as the International Association of Insurance Supervisors (the "IAIS"), to develop methodologies and standards that are appropriately tailored to insurance.[5] While we believe the IAIS G-SII designation methodology has serious shortcomings, and have submitted detailed comments to the IAIS regarding these shortcomings, the underlying principle is clear – namely, that any methodology to assess the systemic importance of insurance enterprises must not be based on a methodology used for banking organizations, and must appropriately account for the unique characteristics of the business of insurance and insurance enterprises.[6] In addition, as discussed below, the IAIS has not yet developed a risk-based capital surcharge for G-SIIs that could equate to the G-SIB surcharge framework for global systemically important banks.

Finally, if the FRB were to apply the proposed indicator-based methodology to insurance enterprises, it would not be complying with its obligations under the Dodd-Frank Act that require the FRB, when prescribing prudential standards for Designated Insurers, to thoroughly consider and take into account the differences between bank holding companies and Designated Insurers. These differences include, among other things, whether a Designated Insurer owns an insured depository institution and the degree to which a Designated Insurer is already regulated.[7]

In sum, we do not believe it would be appropriate to apply the Proposed Rule and its analytical framework to Designated Insurers, and believe that any effort by the FRB to apply capital standards to these firms should not be based on a framework that by design and construction is intended to apply to large banking organizations.

II. A Capital Surcharge for Designated Insurers is Not Justified

We do not believe there is a sufficient basis in law or policy to apply to Designated Insurers the risk-based capital surcharge contemplated by the Proposed Rule, as Designated Insurers do not pose the systemic and other risks to which the Proposed Rule appears to be directed. In addition, unlike the

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[3] As noted in the Proposed Rule's preamble, the proposed G-SIB surcharge is intended as one of an "integrated set of prudential standards" along with rules related to resolution planning, capital, stress-testing and liquidity coverage. Of these only the resolution planning rules apply to Designated Insurers.

[4] PL 113-279, December 18, 2014

[5] *See* IAIS, Global Systemically Important Insurers: Assessment Methodology (July 18, 2013), *available at* http://www.iaisweb.org/index.cfm?event=getPage&nodeId=25233#.

[6] *See* ACLI, Response to IAIS G-SII Assessment Methodology (July 30, 2012), *available at* https://www.acli.com/Issues/Documents/0730ACLICommentIAISConsultation.pdf.

[7] 12 U.S.C. 5365(b)(3)

Basel Committee process for G-SIBs, there does not appear to be a view that the gradated capital surcharge contemplated by the Proposed Rule is an appropriate policy tool for insurance.

As a threshold matter, we reiterate our belief that the traditional core activities of life insurers do not present risks to U.S. or global financial stability, because of *inter alia* the (i) long-dated assets and liabilities, which are a fundamental component of the insurance business model; (ii) comparatively lower levels of interconnectedness as compared to other financial intermediaries, *e.g.*, payments activities conducted by banking organizations, and (iii) the robustness of the U.S. insurance regulatory framework, including strict capital and reserving requirements that decrease risks that insurers pose to the financial system. Given that core life insurance activities do not pose the systemic risks of large banking organizations, we do not believe that the same rationale exists for imposing a risk-based capital surcharge on Designated Insurers as there may be for large BHCs. In any case, the surcharge contemplated by the Proposed Rule, *i.e.*, a surcharge precisely designed for and directed towards these banking organizations and their activities, would never be appropriate for a Designated Insurer.

Designated Insurers clearly do not pose any of the specific risks to which the Proposed Rule appears to be directed. For instance, the FRB states that the Proposed Rule is designed to "correct for the competitive distortions created by the perception that [a U.S. G-SIB] may be too big to fail" and "place additional private capital at risk before the Federal Deposit Insurance Fund or the Federal government's resolution mechanisms would be called upon .. . ."[8] We are unaware of any evidence of a market perception that Designated Insurers are currently "too big to fail," nor would a failure of a Designated Insurer place the Deposit Insurance Fund at risk or with any likelihood call upon extraordinary Federal government resolution mechanisms, such as the Orderly Liquidation Authority of Title II of the Dodd-Frank Act.

Instead of seeking to implement a bank-centric risk-based capital surcharge for Designated Insurers, directed towards risks that Designated Insurers do not pose, we urge the FRB to look to the insurer risk-based capital ("RBC") system as an appropriate regulatory capital framework, which is well-suited to measure the capital needs of insurance enterprises, and recognizes the unique characteristics of insurance enterprises business models and balance sheets, which differ significantly from those of banking organizations. Given the robustness of the RBC framework, as well as the enactment of recent legislation to amend Section 171 of the Dodd-Frank Act to provide the FRB additional flexibility in establishing capital requirements for Designated Insurers, it would be both premature and inappropriate to impose on Designated Insurers a bank-centric asset-based capital surcharge along the lines of the Proposed Rule.[9],[10]

In addition, we ask the FRB to consider that there does not appear to be any consistent view that a risk-based capital surcharge based on the capital surcharge framework for G-SIBs is appropriate for insurance enterprises. As ongoing developments at the IAIS illustrate, global capital standards for the insurance industry differ significantly from the Basel Committee standards for banking organizations, and it is important that these differences be recognized and taken into account in any U.S. capital standard for insurers. It is therefore unsurprising that the IAIS has not yet developed a system of gradated capital surcharges for G-SIIs along the lines of the G-SIB framework, and that there does not appear to be any consensus view that such a framework would be appropriate for insurers in the future.

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[8] 79 Fed. Reg. 75475.

[9] *See* S. Res. 2270, 113th Cong. (2014) (enacted), *amending* 12 U.S.C. § 5371.

[10] We are aware of other non-bank centric approaches to insurer capital requirements being discussed in various venues, and we are exploring the viability of those approaches internally. (*e.g., see the ACLI's Feb. 13, 2015 response to the IAIS consultation document on a proposed insurer capital standard at:* https://www.acli.com/Issues/Documents/FINAL_ACLItoIAISonICSconsultation-clean_Feb13%20_015.pdf)

Finally, we assume and believe that, following the issuance of a notice of proposed rulemaking on a general capital framework for insurance enterprises, any application by the FRB of specific regulatory capital requirements to Designated Insurers would be implemented on a tailored basis, as contemplated by Section 165 of the Dodd-Frank Act and consistent with the FRB's stated intent to "thoroughly assess the business model, capital structure, and risk profile" when applying standards to designated nonbank financial companies, including Designated Insurers.[11] In our view, it is essential that the FRB tailor any application of quantitative prudential standards, including regulatory capital standards, to Designated Insurers through a formal rulemaking.

III. Conclusion

We thank the FRB for considering our views. We are available for further discussion on this matter at your convenience.

Respectfully submitted,

Julie A. Spiezio

[11] Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17240, 17245 (Mar. 27, 2014).