



December 16, 2011

Mr. Michael T. McRaith
Director, Federal Insurance Office
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Public Input on the Report to Congress on How To Modernize and Improve the System of Insurance Regulation in the United States

Dear Director McRaith:

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, believes that effective and efficient regulation is appropriate to ensure oversight over the diversity of insurance products offered in today’s insurance markets. The Chamber’s Center for Capital Markets Competitiveness (“CCMC”) and Global Regulatory Cooperation Project (“GRC Project”) welcome this opportunity to comment on the Federal Insurance Office’s (“FIO”) notice for comments to assist in formulating the FIO’s forthcoming study on how to modernize and improve the system of insurance regulation in the United States. The Chamber’s comments perhaps offer a unique perspective as our membership is comprised of both businesses which act as consumers of commercial lines of insurance as well as the gambit of companies across the insurance sector.

The Chamber would also like to acknowledge the steps the FIO has taken to reach out and consult with the interests and concerns of all participants in the insurance sector. This is particularly important as the newly created office organizes and defines its relationship with the sector. A positive precedent has been set that will ensure a high degree of openness and cooperation for all participants in the insurance industry, as the exchange of ideas about what is working and what can be improved will help result in well-informed decisions concerning the regulation of insurance.

Advocating Pro-Competitive Regulation

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Oversight of insurance markets should be conducted in a manner that provides appropriate regulatory oversight to protect consumers, while minimizing undue regulatory burdens and compliance costs. In short, the Chamber supports a pro-competitive approach to regulation that leads to a uniform and efficient supervisory system with respect to product design, market conduct, and other oversight functions. A pro-competitive approach to regulation is good for regulators, consumers, and businesses alike, as an efficient and competitive insurance marketplace encourages and enables insurers to provide insurance products suit businesses' and consumers' individualized risk management needs, and promotes beneficial economic activity in all sectors and industries.

To maximize efficiency, markets, not regulators, should establish prices for those product lines that are currently subject to regulatory controls on rates, so that the pricing of policies reflects the risk involved in the underwriting. When it is well done, regulatory oversight maximizes product availability, allowing insurers to meet consumer demands with appropriate flexibility to deal with changing marketplace conditions.

In some states, laws governing rate regulation are antiquated and inhibit the proper functioning of competitive markets. As a result, some insurers have concluded that it is preferable to forego offering products in some states, or limit business investment and marketing efforts, where rate regulation inhibits market pricing and sound actuarial principles. The result is that consumers and businesses may have fewer options to meet their risk management needs. Moreover, for some product lines such as automobile and homeowners insurance, some forms of rate regulation can contribute to the development of a large residual market. This development must be recognized as a failure to adhere to market based principles of regulation, and an area in need of remedial action.

State laws governing the licensing of insurers can be an obstacle to an insurer's offerings and consumers and businesses obtaining certain insurance products that suit their individualized needs. As a result of multiple burdensome and licensing processes that differ by product and by state, the cost and delay of being in the business of insurance in multiple states can be significant in the current environment. Moreover, new and innovative product lines may not reach the market because the failure to obtain approval in some states prevents companies from achieving the scale necessary to bring new products to market at all. While the Interstate Insurance Product Regulation Compact has been developed to address many of these concerns, and has resulted in

improvements in some areas, significant work remains to make it a viable solution to these challenges.

Section 502 of the Dodd-Frank Act charges the FIO “to consult with the States (including State insurance regulators) regarding insurance matters of national importance....” The Chamber believes this situation presents the FIO with an opportunity to advocate for pro-competitive regulation in its work with state regulators, which will advance the interests of regulators, consumers, and businesses. We further urge the FIO and the state regulators to continue to work together to advance existing efforts to align state regulation and remove regulatory divergence across the various states that acts as barriers to increased competition or represent significant compliance burdens and inefficiencies that offer limited benefit.

Educating Federal Regulators on the Business of Insurance

As the federal government does not regulate insurance, it is critical that the FIO educate U.S. financial services regulators to the differences between insurance and other banking related financial products. Insurance is not banking. While a simple point, it continually needs to be underscored. This is also true with regard to assessments of systemic risk. Insurance companies engaged in the traditional business of insurance are not systemically risky.

The Chamber is pleased that the three insurance industry representatives on the Financial Stability Oversight Council are now in place and able to ensure that the concerns and interests of the insurance sector are appropriately accounted for as the FSOC makes decisions that affect the insurance sector, particularly decisions related to the designation of non-bank financial institutions as systemically important financial institutions (SIFIs).

In this regard, the Chamber opposes bank-like regulation for nonbank financial institutions and believes that shoehorning a nonbank financial institution into a banking regulatory framework will disrupt how these institutions compete inside and outside of their industry. Each financial institution fills the need for a specific product or service in the marketplace. In the long run, imposing bank-like regulations on a diverse group of financial institutions will force these companies to alter their business model to the point that the financial services industry becomes overly homogenous.

Instead of mitigating systemic risk, such regulation could increase it, while reducing competition, customer choice, and economic efficiency. Accordingly, the utility and unique functions of different business and industry models and likely costs of applying such regulation to them need to be carefully analyzed in developing and considering criteria for designation and the prudential standards and supervisory tools that would be applied to a designated institution.

For those insurance companies that offer banking services, it is important to note that banking regulators should avoid imposing and extending a banking regulatory framework across the entire company, capturing the traditional insurance business. A more sophisticated and nuanced approach is required to account for the differences between insurance and banking. Moreover, insurance companies are already subject to a comprehensive system of prudential regulation, and banking regulators should learn to leverage the information in this already extensive system of regulation to the greatest extent possible. The FIO will need to bridge the knowledge-gap between banking regulators that are trying to understand the insurance companies which they now regulate and help these federal regulators develop new regulatory approaches.

Section 502 of the Dodd-Frank Act gives the FIO the authority to “recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors...” and directs the FIO director to “serve in an advisory capacity on the Financial Stability Oversight Council established under the Financial Stability Act of 2010.” The Chamber believes it is critical that the FIO be a strong voice as an advisory member on the FSOC to educate the members of the FSOC as well as individual federal regulators as to the differences between traditional insurance business models and banking models. We further urge the FIO to impress upon the FSOC the need for restraint as the FSOC proceeds with the process of considering nonbank financial institutions for designation as systemically significant financial institutions. It is critical that the FIO seek to avoid creating dual regulation.

International Leadership

Several questions in the Federal Register notice speak to the international dimension of insurance regulation and its interface with the U.S. regulatory model as well as the impacts that may be felt on the international competitiveness of insurance firms. Here the Chamber believes the FIO has a critical role to play—it is a role that is not only

clearly defined in the authorizing statute, but is one where the U.S. is increasingly in need of a federal voice to provide U.S. leadership in international dialogues.

The FIO should be looked to by foreign governments and their regulators as being the primary representative of the U.S. on insurance matters internationally. In order to accomplish this, it is critical that the FIO be active in all the various international forums where policy matters that either directly or indirectly impact the insurance industry are discussed. This includes the G20, FSB, OECD, LAIS, IMF, and World Bank. At home, the FIO also has a vital role to play in coordinating across the U.S. government and advancing the concerns of the insurance industry with regulators at the SEC, the Federal Reserve, the OCC, as well as the state regulators. Given all of these extensive demands, the Chamber strongly supports additional resources be dedicated to the FIO to fulfill its international mandate.

With respect to policy formation it is important for the U.S. to lead internationally by example. Since the regulatory environment often dictates market access terms for insurance companies, it is important that regulatory policies be non-discriminatory in nature. Too often U.S. insurance companies looking to compete in foreign markets find themselves facing discriminatory and regulatory environments that are one-sided and tilted toward domestic participants. Equally problematic are instances where U.S. insurance companies also face regulatory burdens or barriers that are non-discriminatory in nature, but nevertheless are poorly designed regulatory environments that discourage or hamstring market entrance into those countries. For these reasons, FIO needs to be a strong and consistent voice at home and abroad for a non-discriminatory, pro-competitive approach to regulation.

Finally, the Federal Register notice seeks comment with regard to how international regulatory developments might impact the need for federal insurance regulation. The Chamber believes the emphasis should be placed on the quality of regulatory outcomes over the regulatory structure. Therefore, regulatory compatibility or equivalence between the U.S. and other countries does not necessarily require federal regulation. Related to the question of federal regulation, is the current debate about whether there is a need to create a global solvency standard. The Chamber has concerns with regard to how the adoption of such a standard might be used by a specific country's regulator to discriminate in favor of its domestic companies and undermine open and competitive markets for the U.S. insurance industry.

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Finally, the Federal Register notice seeks comment with regard to how international regulatory developments might impact the need for federal insurance regulation. The Chamber believes the emphasis should be placed on the quality of regulatory outcomes over the regulatory structure. Federal regulation does not need to be the basis for equivalence between the U.S. and other countries' regulatory structures. Related to the question of federal regulation is the current debate about whether there is a need to create a global solvency standard. It is questionable whether a global solvency standard can be set in the near term, because of the lack of a common accounting standard and the diversity of insurance markets and business models around the world. The Chamber would suggest that rather than seek a global solvency standard, the U.S. and other regulators agree to consider the recognition of national solvency assessment methods in place or in the process of being developed.

Conclusion

The Chamber would like to once again thank the FIO for this opportunity to comment on how to approach insurance regulation in the United States and how to guide its work internationally. We look forward to continuing to work with the FIO as it carries out this important mandate.

Sincerely,



David Hirschmann
President and CEO
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce



Myron Brilliant
Senior Vice President
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