



February 13, 2011

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Re: RIN 3064-AD89

Dear Mr. Feldman:

The National Association of Mutual Insurance Companies (“NAMIC”) appreciates the opportunity to provide comments regarding the notice of proposed rulemaking¹ (the “Proposed Rule”) to treat a mutual insurance holding company as an insurance company for purposes of Section 203(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).² The Proposed Rule clarifies that liquidation and rehabilitation of mutual insurance holding companies will be conducted in the same manner as an insurance company.

NAMIC is the largest and most diverse national property/casualty insurance trade and political advocacy association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. Since its inception in 1895, NAMIC has been advocating for a strong and vibrant insurance industry.

Background

Section 209 of the Dodd-Frank Act authorized the Federal Deposit Insurance Corporation (“FDIC”) to promulgate rules and regulations to implement the orderly liquidation authority provisions under Title II. Congress recognized the importance of appropriately accommodating the business of insurance and provided that, to the greatest extent possible, the FDIC should seek to harmonize the orderly liquidation rules with the insolvency laws that would otherwise apply to an insurance company.

¹ Mutual Insurance Holding Company Treated as Insurance Company, 76 Fed. Reg. 77,442-446 (Dec. 13, 2011) (“Proposed Rule”).

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). (“Dodd-Frank”)

Specifically Congress provided “if an insurance company is a covered financial company or a subsidiary or affiliate of a covered financial company, the liquidation or rehabilitation of such company that is [an insurance company], shall be conducted as provided under applicable State law.”³

The FDIC published a final rule on July 15, 2011 implementing the orderly liquidation authority provisions. As part of the rulemaking, the insurance industry urged the FDIC to clarify that a mutual insurance holding company would be treated as an insurance company and would be subject to the state laws governing liquidation and rehabilitation of insurance companies.

The term “insurance company” is defined in Section 201(a)(13) of the Dodd-Frank Act as “any entity that is -- (A) Engaged in the business of insurance; (B) subject to regulation by a State insurance regulator; and (C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation or insolvency of an insurance company.”⁴ As such, questions were raised whether a mutual insurance holding company would meet the statutory definition of an insurance company. The Proposed Rule would clarify that a mutual insurance company would be treated as an insurance company for purposes of Section 203(e) of the Dodd-Frank Act.

Treatment of a Mutual Insurance Holding Company as an Insurance Company

The Proposed Rule would add Section 380.11 to provide that a mutual insurance holding company shall be treated as an insurance company for the purpose of Section 203(e) of the Dodd- Frank Act, 12 U.S.C. 5383(e); provided that:

- (a) It is subject to the insurance laws of the state of its domicile, including specifically and without limitation, a statutory regime for the rehabilitation or liquidation of insurance companies that are in default or in danger of default;
- (b) it is not subject to bankruptcy proceedings under Title 11 of the United States Code;
- (c) its largest United States subsidiary (as measured by total assets as of the end of the previous calendar quarter) is an insurance company or an intermediate insurance stock holding company; and
- (d) its investments are limited to the securities of an intermediate insurance stock holding company, the securities of the converted mutual insurance company and other assets and securities of the type authorized for holding and investment by an insurance company domiciled in its state of incorporation.

NAMIC supports the treatment of a mutual insurance holding company as an insurance company for purposes of rehabilitation and liquidation under applicable State law. The

³ 12 U.S.C. 5383(3)(1).

⁴ 12 U.S.C. 5381(a)(13).

state-based resolution authority for insolvent property/casualty insurers is a thoughtful, methodical process with a superb track record of protecting insurance claimants and policyholders. The state-based guaranty fund system is designed first and foremost to protect policyholder and third-party claimant interests. Each state provides for priority of these claims over other unsecured general creditor claims. In addition, unlike federal resolutions of banking interests, insurance company resolutions require adjustment of property/casualty insurance claims, which are dependent on state law and require detailed and specialized knowledge.

Subjecting insurance companies, including mutual insurance holding companies, to federal resolution would disrupt this well-functioning system. Overlaying federal resolution would needlessly complicate the process and likely disadvantage policyholders and claimants. Replacing the state-based system with a federal system would likely be much less efficient in resolving claims inherently dependent on state law.

Given the direct connection to the insurance company, the continuing interest of the policyholders in the holding company, the extensive state regulation of the holding company and the inclusion of the holding company and its assets in the state-based rehabilitation and liquidation process, NAMIC believes that the FDIC has properly recognized the holding company as an insurance company. Such treatment is consistent with legislative intent and best serves insurance policyholders and claimants. The proposed criteria are appropriate to identify a *bona fide* mutual insurance holding company and consistent with the goal of conforming state resolution authority for insurance companies with the resolution authority of the holding company. The addition of the definition would remove any lingering doubt that a mutual insurance holding company meets the statutory definition of an insurance company for purposes of Section 203(e) of the Dodd-Frank Act.

Conclusion

NAMIC appreciates the FDIC's recognition of the need to ensure proper treatment of mutual insurance holding companies and supports the proposed definition. The Proposed Rule will ensure the proper treatment under State rehabilitation and insolvency law for insurance companies and their mutual insurance holding companies. NAMIC, on behalf of its member companies and their policyholders, looks forward to working with the FDIC to ensure the appropriate deference to state laws governing the regulation of the business of insurance and specifically those laws governing the rehabilitation and liquidation of insurance companies.

National Association of Mutual Insurance Companies
122 C Street, NW
Suite 450
Washington, D.C. 20001
202-628-1558
www.namic.org