International Association of Insurance Receivers
610 Freedom Business Center | Suite 110 | King of Prussia, PA 19406
610.992.0015 (o) ● Fax: 610.992.0021 (fax)
Web: www.iair.org
Promoting professionalism and ethics

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Jim Mumford (IA), Chair of Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners

Re: Charge to Evaluate the Benefits and Cost Associated With Requiring Resolution Plans for Large Insurance Groups

Dear Mr. Mumford:

The International Association of Insurance Receivers ("IAIR") is pleased to submit this response to the call for comments by the Receivership and Insolvency (E) Task Force ("RITF"). We appreciate this opportunity.

Formed in 1991, IAIR is the educational and credentialing organization for professionals working with financially troubled or insolvent insurers. Our membership includes government insurance receivers and regulators, guaranty association executives, private sector professionals and others interested in how financially troubled or insolvent insurers are addressed.

The RITF has sought public comment on the following essential charge recently given to it:

> Evaluate the benefits and cost associated with requiring resolution plans for large insurance groups. Develop guidance on resolution plans for states with large insurance groups and address related issues developing in the federal and international standards.

Insurance is unlike other businesses; in particular, an insurer's promises differ fundamentally from the promises made by banks. The failure of an insurance company can cause serious harm to policyholders and others whose promised benefits under an insurance policy or contract may go unsatisfied, leaving them facing significant financial and property losses, and/or the inability to continue to receive essential benefits. The challenge is to minimize those risks and mitigate

those potential harms. With that challenge in mind, we offer comments in the following areas:

1. A resolution plan should not be required where it would be redundant with existing insurance regulation. Coordination with the Own Risk and Solvency Assessment ("ORSA") reporting requirements, in particular, would avoid wasteful duplication and enhance the resolution plan.

2. A resolution plan should not be required unless the particular insurer presents solvency risks for which a tailored resolution plan would usefully augment the existing state-based system.

3. Public confidence in insurance should remain justified. The goal of a resolution plan should be to make good on the insurer's promises to its existing policyholders, claimants and beneficiaries.

4. A resolution plan should not be required where mechanisms for coordination of the state-based system already exist.

5. A resolution plan must be prepared, maintained and reviewed in absolutely the strictest of confidence.

1. Risk-Focused Regulation

We believe the existing state-based insurance regulatory system is up to the challenge: state insurance regulators now have more tools than ever before to identify and deal with risks to insurer solvency. The risk-focused surveillance cycle embodies many of those tools, and in some instances a carefully tailored resolution plan could augment state insurance regulators' on-going supervisory plan for a particular insurer.

It seems likely that a useful resolution plan would address many of the same risks as are addressed in Form F and the ORSA report. Consequently, the RITF might consider a size threshold that would not require a resolution plan from any insurer not required to submit an ORSA report, although regulators ought to have authority to require a resolution plan from any insurer the risk-focused surveillance cycle finds to exhibit a comparatively high risk of failure. Furthermore, it seems likely that size is positively correlated with the expertise and resources necessary to prepare a useful resolution plan.

Finally, state insurance regulators already have broad authority under many insurance regulatory statutes and regulations to resolve a troubled company situation without a judicial receivership, with or without the troubled company's continued existence. This should be the goal of a resolution plan. These statutes and regulations include, *inter alia*, the hazardous financial condition, risk-based capital and similar NAIC models, and we see little to justify a duplicative

requirement. Instead, the state insurance regulators could be given explicit authority, for example, to require addressing resolution as part of a risk-based capital corrective action plan.

2. Targeted and Tailored Requirement

To be clear, we are not advocating any inflexible requirements. To the contrary, we believe that resolution plans should be required of those insurers, but of only those insurers, where the benefits are likely to outweigh the costs to the insurer and to the reviewing state insurance regulator. It is evident that any resolution plan must be capable of being regularly monitored by the state insurance regulators and include objective benchmarks and timelines. In some cases, it may be appropriate to require that policyholders and other creditors will receive as much in a resolution as they would in a liquidation and an ORSA-type stress test might be appropriate. We note that information of the type called for in Items (e), (f) and (g) of the Reserve Board and FDIC 2013 Model Template for §165(d) Tailored Resolution Plans would be useful to have in advance of any insurer receivership. Should the RITF decide to develop specific guidelines, we would be pleased to provide comment and technical support.

3. Promises Kept

Our long-standing and deeply-held belief is that nothing should compromise the obligation to policyholders, claimants and beneficiaries in the distribution of assets of an insolvent insurance company. However, Section 165(d) of Dodd-Frank suggests several issues. Helpful starting points for RITF consideration might be (i) Chapter 11 of the NAIC Receiver's Handbook for Insurance Company Insolvencies, (ii) the February 18, 2014 Joint Submission of NOLHGA and NCIGF Regarding FDIC'S Single Point of Entry Resolution Strategy, and (iii) IAIR's September 18, 2013 Comments on Key Attributes of an Effective Resolution Regime.

4. Existing Multi-State Mechanisms

Extensive and effective mechanisms already exist to identify and address solvency risks to multi-state insurers. These cover the entire life cycle of insurers, from the zone examination system to the guaranty association systems. Minimally, the preparation, maintenance and review of any resolution plan should incorporate, and not duplicate, the work of the NAIC's Financial Condition (E) Committee and its Financial Analysis Working Group. We submit that the goal of the RITF with respect to this charge should be to augment and enhance, not to duplicate or supplant, existing mechanisms for interstate coordination and cooperation, which proved their worth in the financial crisis and which state insurance regulators themselves have continuously improved. Development of a resolution plan cannot occur in a vacuum. Liquidation, including guaranty association protections, must be considered in the development of a resolution plan.

5. Confidentiality

Absolute confidentiality is vital for two reasons. First, for resolution plans to be of any real use, insurers must be confident that the information contained in them, or which might be ascertainable from them, will not become available to competitors or adversaries.

Second, public confidence is fundamental to the business of insurance. Undermining that confidence could result in, and has resulted in, the very insolvencies that resolution plans would seek to avoid.

We hope these comments will prove helpful as the RITF deliberates its charge. As always, IAIR stands ready to assist the RITF, and we encourage you to draw upon our experience. Again, thank you for the opportunity.

Very truly yours,

Bart A. Boles, President