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August 7, 2014

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

Re: Amendments to the Capital Plan and Stress Test Rules (Docket No. R-1492 & RIN 7100 AE 20)

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 over 300 member companies representing more than 90 percent of the assets and premiums of the life insurance and annuity industry in the U.S. We appreciate the opportunity to submit comments on the Federal Reserve Board's (the "Board") notice of proposed rulemaking (the "Proposed Rule") amending the capital plan rule (the "Capital Plan Rule") and stress testing rules ("Stress Testing Rules") under the Board's Regulation YY, which implements Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[1]

I. Introduction

The Board recently issued a final rule implementing certain of the enhanced prudential standards of Section 165 of the Dodd-Frank Act for domestic and foreign banking organizations (the "Final EPS Rule").[2] In the final EPS Rule, the Board refrained from implementing enhanced prudential standards for nonbank financial companies designated under Title I of the Dodd-Frank Act ("NFCs") and, instead, stated that it would apply enhanced standards to designated NFCs following an assessment of their business model, capital structure and risk profile, with such tailored standards applied "if appropriate."[3]

As discussed in previous letters to the Board, we continue to urge tailoring of any application of enhanced prudential standards to insurance enterprises, regardless of

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1 Amendments to the Capital Plan and Stress Test Rules, 79 Fed. Reg. 37420 (July 1, 2014). The Capital Plan Rule is codified at 12 C.F.R. 225.8, and Regulation YY is codified at 12 C.F.R. Part 252.

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

3 79 Fed. Reg. 17244-45.

whether the company is a designated NFC or a savings and loan holding company ("SLHC") subject to the Stress Testing Rules.[4] In this regard, and as the Board is aware, Section 165 of the Dodd-Frank Act specifically requires the Board to take into account these differences and to adapt any standards to the predominant line of business of a designated NFC. The business model, capital structure and risk profile of insurance companies differ significantly from the traditional bank holding company model, and any application of enhanced standards to insurance enterprises should take these differences into account.

The need for tailoring is particularly evident with respect to the capital planning and stress testing regimes that are the subject of the Proposed Rule, and we appreciate the Board's effort to provide for more tailored application of stress testing requirements to NFCs. In particular, we support the provision in the Proposed Rule that would require the Board to notify an NFC prior to applying the Stress Testing Rules to the company.[5] In developing any capital planning or stress testing regimes for insurers, we strongly encourage the Board to give careful consideration to the significant differences in capital structure and risk profile between banking organizations and insurance enterprises, particularly with respect to the key risks that are most likely to impact the capital position of the company (e.g., mortality risk in the case of a life insurer vs. counterparty credit risk in the case of a banking organization). Capital planning and stress testing requirements that fail to do so serve neither the supervisory interests of the Board nor the interests of companies themselves, and furthermore, may make it more difficult for the Board and other regulators to ensure the safety and soundness of the financial system.

Our specific comments on the Proposed Rule are below.

II. Comments on the Proposed Rule

A. Timing of Actions in the Capital Plan and Stress Test Rules

The Proposed Rule would shift the timing of the capital plan and stress cycles by one calendar quarter, subject to a transition period, in order to ease end-of-calendar-year resource constraints at covered companies.[6] We support this proposed change, both with respect to designated NFCs that are insurance enterprises and with respect to SLHCs subject to the Stress Testing Rules. Like banking organizations, these companies may face resource constraints at the end of the calendar year, and would also benefit from a change in timing of capital planning and stress testing cycles.

B. Definition of a "BHC Stress Scenario"

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4 See, e.g., Letter from the ACLI, to the Board (Apr. 25, 2012), *available at* http://www.federalreserve.gov/SECRS/2012/May/20120518/R-1438/R-1438_042512_107212_504336335598_1.pdf.

5 See, e.g., 79 Fed. Reg. 37423.

6 The Proposed Rule contains a rule of construction that any reference to a bank holding company for purposes of the Capital Plan Rule is deemed to include an NFC. See 79 Fed. Reg. 37430. For the purposes of this letter, we refer to companies subject to the Capital Plan Rule or Stress Testing Rules as "covered companies."

The Proposed Rule would codify Board expectations regarding stress test scenario design by adding to the Capital Plan Rule the defined term "BHC Stress Scenario", *i.e.*, a "scenario designed by a covered company that stresses the specific vulnerabilities of the company's risk profile and operations, including those related to the company's capital adequacy and financial condition."[7]

Consistent with the above definition, we assume that any requirement for an insurance NFC to design a stress testing scenario for purposes of the Capital Plan Rule will permit the development of scenarios that stress the "specific vulnerabilities" the insurer faces, e.g., mortality or catastrophe risk. It would be inappropriate to apply stress scenarios designed for banking organizations to insurance enterprises, and stress test scenario design by insurance NFCs should avoid such an outcome.

C. Modifications to Capital Plan Resubmission Requirements under the Capital Plan Rule

The Proposed Rule would remove the automatic requirement that a covered company resubmit its capital plan if objected to by the Board, and instead would permit, rather than require, the company to resubmit its plan if it wishes to seek the Board's non-objection to its capital plan prior to the next capital plan cycle.

We support this proposed change, and believe it will provide needed flexibility for a company to determine whether resubmission of its capital plan is an optimal choice, particularly in light of the company's presumed focus on remediating the issues that led the Board to object to the company's capital plan in the first instance.

D. Consequences for Failure to Execute Planned Actions Under the Capital Plan Rule

The Proposed Rule would amend the Capital Plan Rule to memorialize the Board's existing practices of approving repurchases of common stock on a net and gross basis and address other cases where a company fails to execute planned capital issuances in its capital plan. Specifically, the Proposed Rule would require that the net amount of a covered company's actual capital issuances and distributions be at least as great as net amounts projected in the company's capital plan, in each case for a given calendar quarter.

We respectfully object to these proposed amendments, as they appear to impose inappropriate and unwarranted constraints on a covered company's ability to engage in effective capital management practices. A company's decision to not execute a planned capital action should not automatically be penalized, as there are instances where not executing a planned capital action would be an appropriate exercise of managerial discretion, rather than evidence of deficiencies or shortcomings in capital planning. For example, a company may refrain from executing a planned capital action because of changes in market conditions that make the capital more expensive to issue. The potential for "punishment" of effective capital management is exacerbated by the proposed requirement that net amounts of capital issuances must equal net amounts of capital distributions on a quarterly basis, as a covered company could in effect be penalized for failing to execute a capital action anticipated to take place several quarters in the future, regardless of whether changes in the company's and overall market conditions over the nine-

[7] 79 Fed. Reg. 37431 (to be codified in 12 C.F.R. 225.8(d)) (emphasis added).

quarter capital planning horizon appropriately warrant a decision to not execute a capital action. In any event, a company's decision to not issue capital can be compensated for through higher earnings levels, lower asset levels, or a change in the liability structure of a balance sheet. Insurers have greater flexibility than banking organization to engage in the restructuring of liabilities in particular, and thus there is even less basis to in effect impose an automatic penalty for a decision to not execute a planned capital action.

We respectfully suggest that the Board refrain from codifying this proposal, and consider the merits of its current approach where a company's failure to execute a planned capital issuance is addressed on a supervisory basis. The Board would retain its authority to object to a capital plan on the basis of a failure to execute a planned capital issuance, allowing it to efficiently and effectively address capital planning deficiencies resulting from a failure to execute a planned capital issuance, while avoiding the imposition of unwarranted constraints on a company's capital planning practices.

E. Clarification Under the Capital Plan Rule of Capital Actions Not Requiring Approval

The Proposed Rule would remove prior notice and approval requirements for distributions involving incremental issuances of instruments that qualify for inclusion in the numerator of a covered company's regulatory capital ratios. The Board states in the preamble to the Proposed Rule that removing this requirement will reduce unnecessary and burdensome efforts to submit requests for distributions outside of the capital plan process associated with issuances of regulatory capital.

We support this proposed change, and agree that subjecting incremental issuances to prior approval requirements is unnecessary and overly burdensome. In supporting this proposed change, we encourage the Board to take special recognition of particular issues presented by capital instruments specific to insurance enterprises, *e.g.*, surplus notes, and to provide necessary clarity and transparency to ensure that insurer-specific capital instruments are appropriately treated as "incremental" as appropriate for purposes of this requirement.

F. Capital Plan Rule Hearing Procedures

The Proposed Rule would revise the Capital Plan Rule to permit the use of informal hearing procedures in the event the Board objects to a company's capital plan. The current Capital Plan Rule provides for formal hearing procedures which, as the Board notes in the preamble to the Proposed Rule, can take several months and up to year to complete, during which there would be uncertainty as to whether a company is permitted to make capital distributions.

We support the proposed revision, as the informal hearing procedures contemplated by the Proposed Rule appear to permit the Board to be more efficient and flexible in making final determinations regarding a company's capital plan.

G. Provision of Supporting Models and Documentation

The Proposed Rule would require a covered company to be capable of providing to the Board its loss, revenue and expense estimation models for stress scenario analysis, including supporting documentation regarding each model's development and validation status.

We believe that an insurer should maintain robust documentation of its governance and risk management frameworks, regardless of whether it is an FRB-regulated NFC or SLHC. Indeed, the state regulatory framework to which these companies have been subject for decades also places significant emphasis on insurers establishing and maintaining this documentation. To that end, we assume that any Board review of stress scenario analysis information for a regulated insurance enterprise will comport with Titles I and Title VI of the Dodd-Frank Act, which require the Board to defer to and leverage reports collected by other regulators to the greatest extent possible. In particular, sections 161(b)(3) and 604(h)(2) of the Dodd-Frank Act require the Board to rely on and use examination reports or other information gathered by other financial regulatory agencies for the institution or its subsidiaries when supervising NFCs and SLHCs.

In addition, and consistent with the Board's approach in other contexts, we believe that NFCs and SLHCs that are insurance enterprises should be provided with an adequate transition period to accustom and acclimate themselves to any Board requests for information in connection with the Capital Plan and Stress Testing Rules. For example, through the Capital Plan Review (CapPR) program, the Board appropriately provided a transition period for certain banking organizations to bring themselves into compliance with the Capital Plan Rule, in recognition of the fact that these institutions did not participate in the original Supervisory Capital Assessment Program. We would hope that the Board will take a similar approach when establishing capital planning and stress testing requirements for covered insurance enterprises, including with respect to the provision of information relating to stress scenario analysis and modeling.

III. Conclusion

We thank the Board for its serious consideration of our views. We are available for further discussion on these matters if it would be useful.

Respectfully submitted,

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