

Comments on 2 July 2012 ComFrame Working Draft

A. General Comments

These comments are submitted on behalf of the undersigned members of the International Network of Insurance Associations (INIA), who represent a significant portion of the world's insurance premium.

We commend the IAIS and supervisors for the significant efforts they have already devoted to creating a more globally harmonised and gap-free supervisory system through the new Insurance Core Principles (ICPs); the work relating to supervisory colleges; and the Multilateral Memorandum of Understanding on Cooperation and Information Exchange (MMoU).

Before making any final decisions on the scope and substance of ComFrame, we believe it would be beneficial for all stakeholders to focus their efforts on fully implementing these and other existing measures designed to enhance cooperation and coordination among supervisors. To ensure this, we would encourage the IAIS to take the opportunity early in the next cycle for an open discussion of the objectives of ComFrame and consideration of the practicalities of implementation for both supervisors and internationally active insurance groups (hereinafter referred to as IAIGs).

We also believe it is essential that Members and Observers reach a common understanding on these fundamental issues:

- Shared goals and outcomes with respect to group supervision.
- Differences between group-wide supervision and creation of a new prudential regime for IAIGs
- The capital component.

1. Shared Goals/Outcomes of Group Supervision

The outcome of the group-wide supervision debate will have consequences for insurance companies regardless of where they conduct business. Whether those consequences are adverse or beneficial depends largely on a common understanding of the goals and principles and the manner in which they are implemented. Accordingly, it will be critical for regulators and industry to collaborate on their approach to implementing group-wide supervision standards so that unintended consequences are minimized.

When discussing group-wide supervision, it is important that a level competitive playing field be maintained for all companies and the growth of private markets be taken into consideration. An additional shared goal is the need for more efficient and effective supervision that is free of gaps – a particularly relevant concern where a group has legal entities operating in numerous countries, resulting at times in an unnecessary layering of duplicative requirements. Often, these multiple layers of regulation become a drain on resources rather than a benefit to policyholders.

The goals of promoting continued growth of private markets, maintaining a level playing field, and improving policyholder protection are consistent with the goal of enhanced coordination and cooperation among regulators through participation in supervisory colleges. Supervisory colleges should focus on identifying areas where regulation is duplicative or burdensome in a group setting and should foster stronger communication among regulators so that the scope of a group's activities and the boundaries and limitations of regulatory authority are well understood.

While the latest ComFrame consultation document acknowledges the goals of reducing regulatory burdens and increasing coordination and communication, the prescriptive standards outlined in Module 2 do not always align with these goals of regulatory efficiency, increased competition, enhanced policyholder protection, and private market expansion. Therefore, it is important to make sure that the details of group supervision within ComFrame do not undermine the broader goal of proper supervision of healthy insurance markets. In order to provide a clear focus for how ComFrame should be developed and implemented, we would welcome the inclusion of a clear statement on the purpose of group supervision in the 'Introductory remarks'.

2. Group-Wide Supervision under ComFrame Should Not Produce a New Prudential Regulatory Regime

It has become apparent that some are viewing ComFrame as justification for the application of a new prudential regime to IAIGs. In fact, prescriptive language is pervasive throughout the 89 pages devoted to Module 2, starting with the introductory comments, which describe the section as containing "the requirements that an IAIG will need to meet" and which "will need to be reflected in national/regional jurisdictions' regulatory and supervisory regimes."¹ If the IAIS is proposing the establishment of a new prudential framework for IAIGs through Module 2, we would strongly disagree with this approach. Moreover, the implicit threat of additional regulation applied to IAIGs in the name of "group-wide supervision" may well be the source of many of the concerns arising from ComFrame. Companies attempting to interpret the prescriptive language and "requirements" fear that this module will be the source of new regulatory layers, rather than a productive way for supervisors to coordinate company oversight while minimizing any potential negative impact that might result from applying different jurisdictional standards. For regulators, the prescriptive nature of Module 2 may also lead to confusion, particularly over the scope of another regulator's supervisory authority or the necessity of codifying Module 2 requirements as part of a national/regional regulatory framework. Such an outcome could possibly generate regulatory conflict instead of cooperation and coordination, thereby undermining the very purpose of ComFrame. Accordingly, we recommend redrafting Module 2 to shift its focus from imposing prescriptive, one-size-fits all requirements on IAIGs to encouraging supervisors to coordinate their distinctive regulatory frameworks. Under this approach, the Parameters and Specifications should be explicitly positioned as guidance or key examples/illustrations of various methods that could be used to achieve the outcome intended in the Standards. This would be in line with the description of Parameters and Specifications in the 'Characteristics of ComFrame' section of the 'Introductory remarks'.

¹ ComFrame Working Draft at p. 39.

The revisions to Module 2 should clarify the overall purpose of ComFrame to guide the coordination of supervision among regulators responsible for internationally active insurance groups. Consistent with the goals of effective and efficient regulation, growth of competitive insurance markets, and improved policyholder protection, Module 2 should emphasize principles and standards of enterprise risk management applicable to groups that can be used by supervisors as a guide to assess their respective regulatory frameworks. Redrafted this way, Module 2 will not be misinterpreted as a regulatory penalty imposed on insurance groups that, in many cases, are among the most prudent and well-managed companies engaged in the business of insurance.

ComFrame should deal solely with matters relating to group supervision of IAIGs and should not be used to introduce requirements that are solely and specifically relevant to systemically important financial institutions. There should not be an automatic assumption that the organization of insurance companies into a group – even one that does business in multiple jurisdictions – qualifies the group for new and more intrusive layers of regulation. It is important that supervision remains risk based, so that an IAIG (or, for that matter, any other insurer) should find itself subject to more extensive and intrusive supervision only if it is conducting higher risk activities.

3. ComFrame Capital Component

While we appreciate the deliberative approach the IAIS has taken with respect to developing a potential capital component, we also must emphasize that this component carries perhaps the greatest risks in all of ComFrame to the goals of creating level competitive playing fields and promoting continued growth of private markets. A capital component, if ultimately included, should focus on providing a way of understanding the financial condition of the group while recognizing local requirements applicable to legal entities within the group.

We firmly believe that any capital component must not, directly or indirectly, create a global capital standard for IAIGs. Such a standard would have ramifications for the competitiveness of insurers operating outside their home jurisdictions. For example, in any given jurisdiction, there may be IAIGs selling insurance whose ultimate controlling entities are domiciled outside the jurisdiction. However, they compete inside the jurisdiction with non-IAIGs. So, if jurisdictions were to adopt and enforce an IAIG capital standard requiring or pressuring IAIGs to hold larger amounts of capital, it would create a competitive disadvantage for IAIGs in many insurance markets.

We also continue to be concerned that a global capital standard in Module 2 will be misinterpreted – either by regulators or by capital markets and investors – as if it were a *technical regulation* applicable to insurers rather than a *standard* for cross-border supervisory cooperation and understanding. This must be corrected and incorporated into any new iteration of Module 2.

To the extent that a substantial portion of ComFrame has been devoted to Module 2, there is a great deal of concern that it is trending toward creation of regulatory overlay that will neither

lead to regulatory efficiency nor advancement of competitive private markets. Instead, the outcome may generate additional regulatory risk to the IAIG. If ComFrame is to remain true to its stated intent and satisfy the needs of all stakeholders, the IAIS should redirect its efforts towards establishing a common framework for the *supervision* of IAIGs as the unique and diverse market participants they are today, as opposed to subjecting IAIGs to restrictive *regulatory* mandates that, while perhaps intended to simplify the supervisory process, will only serve to stifle innovation, impose undue costs and burdens, and ultimately harm policyholders.

Accordingly, we recommend that the IAIS take a phased-in approach to implementing ComFrame that would: (a) focus first on Module 3, particularly those elements that identify the group-wide supervisor, describe responsibilities within the context of a supervisory college, and establish a process for dispute resolution and supervision in time of crisis; (b) implement a structure based on practical experiences of supervisory colleges, group supervision, and application of the ICPs – which already contemplate the regulation of insurance groups and collaboration of supervisors at an international level; and (c) based on that structure and experience, identify gaps in group supervision that may merit, as appropriate further specification.

That will allow group-wide supervision to develop while also learning how to focus—collectively and cooperatively—on the overall quality of a group’s enterprise-wide risk management (ERM). ComFrame is likely to impose real resource constraints as regulators and supervisors build and redirect resources to staff jurisdictional representation at supervisory colleges. These staff will not arrive fully trained, but will have to learn as they build this new system. This will take time and we urge recognition of this learning curve.

We also suggest that IAIS institute at 3-4 year, non-binding “field testing” phase, once the ComFrame document is completed. This should become a clearly defined component of ComFrame with a specified timeline. During this stage, the various aspects of the framework will be used as a guide for supervisors and IAIG’s to assist in operationalizing ComFrame as a practice. This phase should be used to determine how effective the various ComFrame components are in everyday supervisory and business practice and permit for in-process calibration and course corrections, as necessary. We urge the IAIS to use the IAIS Supervisory Forum as a course modification and correction mechanism during the field testing phase, to integrate feedback from subject groups, home and host supervisors and other stakeholders. This amendment to the process would substantially reduce regulatory risk to IAIGs and “resource risk” to supervisors.

It is also important that a properly constructed ComFrame – which does not impose prescriptive requirements on groups, but rather assists supervisors in determining whether groups are appropriately managing risk – can be implemented in an orderly, consistent, and efficient manner that does not cause any market disruption or competitive harm to those companies which may be identified as IAIGs.

B. Comments on Each Module

Module 1

This module has been criticized as being both over- and under-inclusive, which points to a problem generally with the identification criteria that is exacerbated by a lack of clarity in the overall purpose of ComFrame. For example, some industry trades believe that the currently considered 3+ country geographic scope threshold is not in line with the qualitative determination of “internationally” active insurance groups. Those trades would argue that a more appropriate threshold would be 6+ countries (or 3+ common supervisory frameworks, given that group regulation would already be harmonised across various jurisdictions), which would rectify the presumably unintended consequence of capturing over 45 IAIGs, many of which are only regionally active. Other suggestions are to give more weight to international activity than size criteria; increase the size criteria (e.g., total assets of not less than USD 100 billion or gross written premium of not less than USD 20 billion); and establish a market share threshold for all countries in which an IAIG operates to achieve that designation. Conversely, other industry trades believe that the IAIG determination should be more broadly applicable to any internationally active group, minimally defined, in order to preserve competitive balance among all international insurers.

These contradictory perspectives are symptomatic of both the need for a clear articulation of the overarching goals of ComFrame and concern with the increasing emphasis on the IAIG requirements in Module 2, with some companies wishing to avoid the overly prescriptive requirements while others who seem likely to be designated as IAIGs regardless of the criteria wishing to avoid the adverse effects of an unlevel playing field. If our recommended phased-in approach is adopted, thereby shifting ComFrame’s primary focus to supervisory coordination and cooperation, we anticipate there will be far less concern about the Module 1 determination process and more widespread consensus about the criteria that define an IAIG.

Further, the IAIS should not view the differing industry perspectives or failure to reach consensus on Module 1 criteria as an indication that the current Module 1 criteria strike an appropriate balance. They do not. Instead, the IAIS, consistent with our stated views, should look at Module 1 as a practical reflection of the industry unease with the language, tone and direction of the Parameters and Specifications of Module 2.

In addition, in order to align with the ICPs, we believe ComFrame should apply to state owned and state affiliated insurers. This is due to the fact that, according to the ICP’s preamble, the ICPs “apply to the supervision of all insurers whether private or government controlled insurers that compete with private enterprises, wherever their business is conducted, including through ecommerce.” While we recognize that some of these state owned or affiliated groups only operate in their home jurisdiction, others have regional and international operations, and we believe these entities should fall within the scope of ComFrame based on their size and international activity.

With respect to particular aspects of Module 1, Parameter M1E3-2-1 continues to raise concerns about regulatory overreach. While we appreciate the need for consideration of certain entities within an IAIG over whom a supervisor may lack legal authority, the provision may be interpreted to instruct regulators to ignore the boundaries of their legal authority and/or

supervisory power. This Parameter should be rewritten as a more affirmative instruction to group-wide supervisors to consider inviting other regulators, including non-insurance sector regulators, to participate in supervisory cooperation where the insurance supervisors lacks legal or supervisory authority.

In addition, Standard M1E4-2 seems misplaced and would be more appropriately included in Module 3, as it relates more to the role of a group-wide supervisor rather than to the identification of an IAIG or selection of a group-wide supervisor.

Module 2

As indicated in our General Comments, we believe discussion on the application of any specific Parameters and Specifications in Module 2 should be deferred until further work on Module 3 has advanced. Perhaps inadvertently, Module 2 now appears to be centered on technical regulation, rather than setting standards that can be the basis for supervisory discussions of the quality of the IAIG's enterprise-wide risk management. Therefore, we would continue to respectfully urge the IAIS to, at minimum, revise Module 2 to reflect the overarching goals of supervisory coordination and cooperation. This would entail retention of principles-based Elements while explicitly acknowledging that the Parameters and Specifications are intended as guidance to supervisors, as distinguished from prescriptive mandates on IAIGs.

While the latest ComFrame consultation document acknowledges the goals of reducing regulatory burdens and increasing coordination and communication, the prescriptive standards outlined in Module 2 do not always align with the goals of regulatory efficiency, increased competition, improved policyholder protection, and private market expansion. Therefore, it is important to make sure that the details of group supervision do not undermine the broader goal of proper supervision of healthy insurance markets.

Equally important, the new set of mandates would create an unlevel playing field, by imposing burdens on IAIGs that are not imposed on domestic players that may be equally, if not more, complex. Ironically, ComFrame could result in the imposition of new costs and constraints only on IAIGs, which in many cases may be the most financially strong and well-managed companies in some domestic markets.

If ComFrame is to remain true to its stated intent and satisfy the needs of all stakeholders, the IAIS should redirect its efforts towards establishing a common framework for the *supervision* of IAIGs as the unique and diverse market participants they are today, as opposed to subjecting IAIGs to restrictive *regulatory* mandates that, while perhaps intended to simplify the supervisory process, will only serve to stifle innovation, impose undue costs and burdens, and ultimately harm policyholders.

Among our specific concerns about Module 2 is its treatment of capital, including capital assessment and adequacy. The concept of group capital is not well-defined, and does not adequately address how capital supervision is currently undertaken in different jurisdictions. While capital assessment in some form may be an appropriate function to be performed by supervisors with respect to entities subject to their respective jurisdiction, it can serve as

guidance only for supervisors working to understand an IAIG's approach to capital. We believe these matters are fundamental and can be addressed most effectively with more experience among supervisors working together to apply the ICPs, supervisory colleges, and group supervisory practices.

There has also been no agreement or resolution on a global accounting standard. Given the differences in accounting treatment and asset and liability valuation for solvency purposes among countries, we do not believe it is necessary or productive to mention International Financial Reporting Standards (IFRS) or any other specific accounting model, since measurements of financial activity and account balances can be based on standards appropriate for a given entity in their domiciliary jurisdiction. It is also premature to cite IFRS as the standard for accounting, as there is currently much uncertainty with regard to international financial accounting standards.

Furthermore, the sheer number of rules imposed on IAIGs in Module 2 and their degree of prescription seems redundant or otherwise unnecessary, and if not addressed would create entirely new supervisory mandates on a select class of insurers and create competitive imbalances. We strongly object to the entirely prescriptive standards in Module 2, Element 6, which contemplate that an IAIG maintain group-wide policies/strategies for underwriting, claims management, reinsurance, insurance liability valuation, and asset liability management. Supervisors should work with companies to better understand their business models, instead of forcing them to adhere to a predetermined approach that either does not recognize the validity of existing corporate frameworks or does not allow sufficient flexibility for a company to respond to the needs of its investors and policyholders. Accordingly, these provisions must be revised to recognize that IAIGs may have decentralized operations and more than one policy/strategy in these areas.

The overly prescriptive nature of Module 2, Element 1 – Governance blurs the distinct functions that the board of directors and management perform. Under U.S. state corporate laws (wherein each state has its own corporate law that governs companies incorporated in that state, as opposed to one overarching Federal law), the board of directors has an oversight/advisory role, with all operations (including legal compliance) being within the purview of management. In contrast, Parameter M2E1-1-1 provides that the IAIG's Governing Body is required to ensure "that the IAIG's group-wide business objectives and strategies do not conflict with the jurisdictional requirements applicable to the entities within the IAIG..."² This provision appears to place compliance responsibility on the board, in conflict with national corporate laws. In Europe, corporate governance frameworks vary, with some jurisdictions supporting a one-tier system, as in the United Kingdom, where the board exercises both an oversight/advisory role and a management role. Conversely, other jurisdictions support a two-tier system, as in Germany, where different boards exercise the oversight/advisory and management roles.

Public companies are already subject to extensive corporate governance regulation within their home jurisdictions. Insurance holding companies also are subject to separate, specific regulation in their home jurisdictions. It would be unduly costly, burdensome, and inefficient to subject IAIGs to another completely separate corporate governance framework. Accordingly, the

² ComFrame Working Draft at p. 41.

governance provisions should be principles-based and allow flexibility as to how the overall principles are met.

In sum, we recommend adopting a phased-in approach to Module 2, including the capital and accounting provisions, and moving ahead with the critical process of enhancing supervisory coordination and cooperation pursuant to a fully-developed Module 3. If there is a desire to retain other aspects of Module 2, they should be recast as principles-based outcomes subject to supervisory oversight that do not require IAIGs to alter generally conforming business models and governance frameworks.

Module 3

As indicated in our General Comments, we believe Module 3 should be pursued at this time so that any gaps in the global supervisory framework are closed and improved coordination and cooperation between supervisory authorities can be achieved. However, we continue to be concerned with Module 3's assignment to "involved supervisors" of extensive new regulatory authority that would inevitably create duplicative (and even conflicting) demands on the IAIGs. Furthermore, we find the selection process, assigned roles, and responsibilities of the group supervisor to be too unclear and confusing, setting up the possibility of multiple group supervisors and other forms of duplication.

Consistent with our recommended phased-in process, the IAIS should focus attention on incorporating principles that will aid supervisors in understanding: (i) the identity and roles/responsibilities of the group-wide supervisor within a supervisory college; (ii) the 'involved' supervisors' duties of cooperation and communication in a supervisory college; (iii) the structure for ensuring coordination, cooperation, and communication in times of crisis; and (iv) the mechanism for resolving issues among different supervisors. To the extent that the current document – particularly Module 3, Element 1 – seems to add more layers of supervision, those provisions should be deleted. In addition, the definition of the term "involved supervisors" is currently far too broad. Therefore, we suggest that wherever this term appears in Module 3, careful consideration should be given as to whether reference should be made instead simply to supervisors of subsidiaries or significant branches (i.e., "host supervisors").

Another source of concern is the potential to overemphasize the application of the group-wide supervisory process consistently across IAIGs (Standard M3E1-6). While we agree with the goal of a level competitive playing field, this must be appropriately balanced by the need to customize supervision to the individual circumstances of each IAIG (as the IAIS guidance on supervisory colleges and Standard M3E4-2 recommend, supervision should be customized to the nature, scale and complexity of the IAIG). We respectfully suggest amending Standard M3E1-6 to require the group-wide supervisory process to be applied in a manner that strives to balance the goals of consistency and customization.

Standard M3E1-8 focuses on "decision making" within a supervisory college, but a supervisory college, as an entity, does not have independent or collective enforcement authority. Moreover, the Standard implies that involved supervisors should exercise responsibility for consultation and dialogue with groups on all decisions. It is neither realistic nor effective to expect this level of

engagement by involved supervisors. Rather, the group supervisor should be responsible for taking decisions with host supervisors, in consultation with the IAIG management, and the IAIG should be afforded an opportunity to challenge a decision. At minimum, Standard M3E1-8 and Module 3 should be clarified to more fully explain the role of involved supervisors and the group-wide supervisor and just what it means for such decisions to be implemented.

Module 3 also perpetuates the fundamental misunderstanding of the role of a holding company's board of directors versus insurer management that was evident in Module 2. For example, the vast majority of communications specified as being directed to board members (e.g., Parameter M3E1-9-2) would be more appropriately communicated to an IAIG's management team.

Furthermore, confidentiality protections are an essential precondition to information exchange, and a paramount concern to protect both the insurance group and confidence in the supervisory system. We support the direction in Standard M3E2-3 that involved supervisors take all necessary actions to protect confidential information; and in Parameter M3E4-4-5 that confidential information be shared in a secure environment between the members of the supervisory college. As such, we strongly disagree with the language in Parameter M3E2-3-6 which provides that: "The inability to exchange information on a confidential basis is not to be a barrier to the ongoing efficient and effective supervision of IAIGs." Public exposure of proprietary information may result in significant harm to groups, from both a regulatory and economic perspective.

Module 4

While the Base Prerequisites or Group-Wide Supervisor Prerequisites capture some important attributes of supervisors, such as having a transparent supervisory system, inadequate detail is provided. For example, the OECD's Policy Framework for Effective and Efficient Financial Regulation sets forth a set of guidelines that includes publication of proposals, opportunity for comment, selection of the least costly policy option and periodic reviews to assure continued relevance. This work should be referenced as an example of a transparent regulatory/supervisory system. We also believe that more specific guarantees should be provided regarding minimal due process.

Confidentiality protections are an essential precondition to information exchange, and a paramount concern to protect both the IAIG and confidence in the supervisory system. Accordingly, we appreciate that the Base Prerequisites contemplate all members maintaining "legislation requiring protection of the confidentiality of information in possession of the supervisor, including confidential information received from other supervisors."³

C. Responses to General Questions

1. Are the criteria and process for identifying IAIGs appropriate?

This module has been criticized as being both over- and under-inclusive, which points to a problem generally with the identification criteria. It is also symptomatic of the larger concern

³ ComFrame Working Draft at p. 172.

with ComFrame’s increasing emphasis on the IAIG requirements in Module 2 and lack of clarity on the overall purpose of ComFrame. Assuming that appropriate agreed-upon criteria for identifying IAIGs can be finalized, one alternative is to rewrite and “phase in” any Module 2 standards applicable to IAIGs to make them less prescriptive and more explicitly only illustrative guidance so that regulators can use the overall principles as a basis for assessing their own jurisdictional standards for groups. An increased comfort level with Module 2 may decrease objections to the Module 1 criteria and process, and enhance the value of Module 2 in relation to Module 3.

2. Are the qualitative requirements for IAIGs set out in Module 2 Elements 1 to 7 reflective of actual practices within large, internationally active insurance groups?

No. The current draft appears to favor a centralized approach to group operations and management, which will not be the model followed by all IAIGs. ComFrame needs to be flexible in its approach to IAIGs, as actual enterprise risk management practices will continue to evolve and there are dynamics within the industry that are not predictable. Recognizing that not all IAIGs face the same risks, the key is for supervisors to understand the risks and know what IAIGs are doing to address them.

3. Are the Group Governance requirements sufficiently flexible to accommodate different ways of structuring IAIGs and different governance models in use? Are there any areas relating to governance of IAIGs which are not adequately covered, and if so how should they be covered?

No. It is inappropriate for regulators to dictate governance practices to an IAIG, even more so practices that do not recognize the validity and flexibility of existing best practices adopted by organizations such as the SEC, NYSE and NASDAQ. Companies should be permitted to operate differently, which is what separates them in the marketplace.

Principles of “good governance” should recognize that there are a variety of valid approaches and practices. While it is appropriate for ComFrame to provide examples and expectations of governance functions, it should not prescribe *how* the functions must operate or be structured. It is not the role of the supervisor to tell companies how to structure the organization of their business; rather, supervisors should have a thorough understanding of a company’s governance and, in concert with the company’s management, identify any gaps. Group governance principles should be satisfied by a publicly traded company’s compliance with applicable securities laws in their home jurisdictions.

In its present form, as discussed under the comments on each individual module, Module 2, Element 1 (Governance) presents a number of related concerns that hopefully can be rectified before the IAIG framework is finalized:

First, the Governance module blurs the distinct functions of the Board of Directors (typically the “Governing Body” for a corporation) and management. Under corporate laws prevalent in many countries, the Board of Directors has an oversight/advisory role, with all operations (including legal compliance) being within the purview of management. For example, the first bullet of

Parameter M2E1-1-1 provides that the IAIG's Governing Body is required to ensure "that the IAIG's group-wide business objectives and strategies do not conflict with the jurisdictional requirements applicable to the entities within the IAIG...." Assuming that the board constitutes the "Governing Body," this Parameter is squarely at odds with national corporate governance requirements in many jurisdictions.

Second, the Governance Element (particularly the Parameters and Specifications under the respective ComFrame Standards) in many cases is much more detailed and prescriptive than similar standards existing under the regulatory framework that governs publicly traded corporations. Corporate governance is not a "one-size fits all" analysis. IAIGs need flexibility to determine what is appropriate for their particular needs and circumstances. Accordingly, the standards (and the related Parameters and Specifications) should be revised to provide Governing Bodies the flexibility necessary to develop policies and procedures that fit their respective companies' particular requirements.

Lastly, public companies are already subject to extensive corporate governance regulation in their respective home jurisdictions. Insurance holding companies are also subject to separate, specific regulation in their domiciliary jurisdiction. It would be unduly costly, burdensome and inefficient to subject IAIGs to another completely separate corporate governance framework. Accordingly, the Governance module (if not the entire ComFrame) should recognize an IAIG's compliance with its existing regulatory framework as being compliant with ComFrame through a principles-based and outcomes-focused approach.

4. Does the approach to ERM in Module 2 Element 2 provide an adequate and comprehensive platform for the supervision of ERM processes in IAIGs?

We believe Module 2 Element 2 is overly prescriptive. ComFrame's emphasis should instead be placed on supervisory understanding of IAIG ERM practices and assessing their adequacy, rather than on dictating specific ERM practices.

Best practices related to ERM will evolve over time. ComFrame needs to be flexible enough to change and be able to address such best practices of IAIGs.

ERM should not be used to calculate capital requirements. Regulators should not assume responsibility for ERM, e.g., by determining the level of economic capital. Companies decide how much capital they need to run their business and obtain the desired credit ratings.

5. Is the Group Structure and Strategy section sufficiently comprehensive to address the risks from the highly complex structures and business combinations evident in many internationally active insurance groups?

Group structure and strategy (M2E3) – Requiring an IAIG to "make() and keep() its group structure transparent in order not to impede effective group-wide supervision" approaches the issue from the wrong direction and would stifle innovation and creativity. It is sufficient that IAIGs provide supervisors with enough information to understand their respective group structures.

Continued operation in periods of stress (M2E3-5-3) – “Living will” provisions (or language that connotes a similar function) should be revised, as it is impossible to foresee all “plausible adverse scenarios.” In addition, should an insurer run into financial difficulty, the business models of insurers already provide that time should be available for a tailor-made plan to be developed to deal with the situation in question.

IAIG’s strategy from an ERM perspective (M2E4) – As drafted, these provisions are overly prescriptive. Sharing such strategic information outside of a company, even outside of a certain level of management, could increase the chances for a leak of information and loss of a “first-mover” advantage in the marketplace. Insurers already have significant reporting and approval requirements related to acquisitions, inter-company transactions, reinsurance, and the introduction of new product policy forms. These reports would be presumably be funneled to the relevant college, as part of the supervisory cooperation and coordination process.

Intra-group transactions and exposures from an ERM perspective (M2E5) – We believe Parameter M2E5-1-1 (material intra-group transactions “may be subject to approval by host supervisors”) is not workable. It should be sufficient that these transactions are reported as currently required and then shared with the college so supervisors can understand any impact on the IAIG.

6. The IAIS envisages creating a partly harmonised approach to capital requirements for IAIGs (see Appendix 2). The current draft of Module 2 Element 8 is not yet fully reflective of that strategic direction as it is a work-in-progress. Please comment on the progress made so far and provide input on the steps that should be taken in achieving the strategic direction.

ComFrame should not limit the flexibility of insurance groups to operate through well capitalized, well managed subsidiaries that have appropriate transparency to regulators for intercompany transactions without necessarily being subject to a separate group capital assessment. Instead, ComFrame should foster a mutual understanding of the different approaches to capital requirements among jurisdictions and ensure that relevant and material risks are captured and understood by the IAIG’s supervisors.

It is appropriate for ComFrame to include a supervisory review of an IAIG’s own assessment of its group capital, but this should be incorporated only as guidance for supervisors working to understand the IAIG’s approach to capital so as to foster an effective discussion of timely claims paying ability during supervisory colleges and other forms of supervisory cooperation. We continue to be concerned that a global capital standard in Module 2 will be misinterpreted – either by regulators or by capital markets and investors – as if it were a *technical regulation* applicable to carriers rather than a *standard* for cross-border supervisory cooperation.

In the end, actual capital requirements (as distinguished from a supervisory assessment of an IAIG’s own capital assessment) involve critically important public policy decisions that should not be made outside of a legislative process. Such requirements would involve strategic planning that may be set in motion years in advance. They would impact policyholder premiums,

borrowing costs, share prices, acquisitions, and numerous other strategic elements of successful insurance enterprises, which form the backbone of healthy insurance markets. We respectfully suggest those implications cannot be addressed within ComFrame.

7. Does Module 3 provide a sufficient basis for more effective and more coordinated supervision of IAIGs? Where could improvements be made? Where is there a need for greater specificity?

We believe that a high quality Module 3 offers the greatest potential value for ComFrame, in enhancing supervisory understanding of how individual IAIGs operate. However, while M3E3 provides for a useful assignment of supervisory roles and responsibilities, this is not reflected elsewhere in Module 3, particularly in M3E1.

The lack of clear roles and responsibilities is already raising questions among supervisors as well as the industry. For example, at a recent IAIS Implementation Committee discussion, supervisors began to ask what resources they will need to perform their functions under ComFrame. If ComFrame results in every involved supervisor having extensive new duties, then duplication, inefficiency, and unnecessary expenses for regulators/supervisors and the IAIGs will inevitably result. On the other hand, if the role of involved supervisors is to share information, participate in supervisory colleges, help select the group supervisor consistent with clear criteria, and regulate/supervise local operations as provided under applicable law, then new costs should be minimal.

Likewise, the duties of the group-wide supervisor need to be clarified to avoid duplications and inconsistencies and ensure the allocation of tasks provides a firm foundation on which the supervisory process can be based. Therefore, we appreciate the attempt in Element 3 to provide a clear allocation of tasks between involved supervisors and the group-wide supervisor. However, it is unfortunate that the roles and responsibilities attributed to involved and group supervisors later in this chapter are inconsistent with the division of tasks allocated in Element 3.

8. Do the Base Prerequisites or Group-Wide Supervisor Prerequisites capture the important attributes of supervisors to ensure a successful implementation of ComFrame?

While some important issues are mentioned, such as having a transparent supervisory system, we believe that further detail would be useful. For example, the OECD's 2009 "Policy Framework for Effective and Efficient Financial Regulation" sets forth a set of guidelines that includes publication of proposals, opportunity for comment, justification of the costs of government action by its benefit before action is taken, and periodic reviews to assure continued relevance.⁴ This work should be referenced as an example of a transparent regulatory/supervisory system. We also believe that more specific guarantees should be provided regarding minimal due process.

Furthermore, confidentiality protections are an essential precondition to information exchange, and a paramount concern to protect both the insurance group and confidence in the supervisory system. We appreciate that the Base Prerequisites contemplate all members maintaining

⁴ OECD, "Policy Framework for Effective and Efficient Financial Regulation," pgs. 42-55.

“legislation requiring protection of the confidentiality of information in possession of the supervisor, including confidential information received from other supervisors.”

Signatories:

American Council of Life Insurers (ACLI)

American Insurance Association (AIA)

Association of Bermuda Insurers and Reinsurers (ABIR)

Canadian Life and Health Insurance Association (CLHIA)

Federación Interamericana de Empresas de Seguros (FIDES)

Group of North American Insurance Enterprises (GNAIE)

Insurance Bureau of Canada (IBC)

Insurance Council of Australia (ICA)

Insurance Europe

Reinsurance Association of America (RAA)

South African Insurance Association (SAIA)