AMERICAN ACADEMY *of* ACTUARIES

September 28, 2012

Via Email to bjenson@naic.org

Corporate Governance Working Group
Solvency Modernization Initiative (E) Task Force

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Re: Proposed Responses to a Comparative Analysis of Existing U.S. Corporate Governance Requirements

Based on a review of the exposure draft "Proposed Responses to a Comparative Analysis of Existing U.S. Corporate Governance Requirements," we the practice council vice presidents of the American Academy of Actuaries,[1] on behalf of our practice councils, respectfully submit the following comments for your consideration.

We strongly support the Working Group's efforts to strengthen corporate governance and increase awareness of corporate governance among company directors and management. To that end, we support the proposed referral to the Life Actuarial (A) Task Force (Exhibit G), recommending that the appointed actuary be required to present the full life actuarial report to the board of directors annually as a productive step worthy of implementation.

However, the proposed referral to the Casualty Actuarial and Statistical (C) Task Force (CASTF) (Exhibit H), which recommends that the CASTF consider changes to the property/casualty actuarial process to allow the commissioner a similar level of authority to deem an appointed actuary unsuitable as provided under the *Actuarial Opinion and Memorandum Regulation* (AOMR) (Model #822), however well-intentioned, could bypass regulators' role of oversight and could result in regulators assuming a duty of management.

Such a change is unnecessary because the *Property and Casualty Actuarial Opinion Model Law* (Model #745) already provides a tool for regulators to address the conduct of credentialed actuaries who provide unsatisfactory work. Anyone, including regulators, actuary or non-actuary, may file a complaint concerning a credentialed actuary's work with the Actuarial Board for Counseling and Discipline (ABCD), which has jurisdiction over members of all five U.S.-based national actuarial organizations. The ABCD is responsible for, among other things,

[1] The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

reviewing complaints filed by anyone regarding substandard work or possible violations of the actuarial profession's Code of Professional Conduct (Code) by credentialed actuaries. The ABCD process can include extensive investigation by experts, evaluation of relevant facts and circumstances, review of the work in question, and appropriate notice and hearing procedures.

Following its investigation and hearing, the ABCD may provide instructive counseling to an actuary or recommend discipline to the actuary's member organization(s) if the ABCD concludes that the subject actuary materially violated applicable Actuarial Standards of Practice (ASOPs) and/or U.S. Qualification Standards, thereby violating the Precepts of the Code. The ABCD membership has the unique knowledge and expertise to examine actuarial professionalism issues and manage complex investigations and hearings while also ensuring that actuaries' due process rights are preserved. The ABCD has served the counseling, discipline, complaint resolution, and mediation roles for the profession for over 20 years.

Unlike the *Property and Casualty Actuarial Opinion Model Law*, which was not promulgated until 2005,[2] the AOMR, referenced in Exhibit H, was promulgated in 1991,[3] at about the same time that the ABCD was created.[4] While such language may have been useful at the time of the AOMR's promulgation, the existence of the ABCD and ABCD's disciplinary process exercised over the last 20 years now renders this AOMR provision redundant. Rather than expanding the scope of the AOMR provision, regulators are encouraged to refer matters involving questionable actuarial practice to the ABCD.

The regulatory authority over insurance company management to adhere to the laws and regulations within jurisdictions already exists. Company management is responsible for booking its best estimate for reserves and for hiring experts who are qualified and able to provide analyses and opinions with which to discharge that responsibility. If a concern arises about the aptitude of an actuary or the quality of his/her work, a Commissioner may hire an actuary of his/her choosing at the company's expense in accordance with the *Property and Casualty Actuarial Opinion Model Law*. Hiring an actuary of a Commissioner's choosing at the company's expense immediately provides regulators with the results that will bring the reserving issues at hand to management's attention while avoiding the depletion of state resources necessary for a potentially protracted hearing process.

In conclusion, we applaud the Working Group's ongoing efforts to strengthen corporate governance requirements for insurance companies, including holding management responsible for hiring competent actuaries. However, the ABCD offers an established and effective mechanism for the determination of actuarial competence and the recommendation of discipline of credentialed actuaries. Therefore, Section 5, parts B.4. and B.5. of the AOMR should not be considered for inclusion in the *Property and Casualty Actuarial Opinion Model Law* and should also be removed from the AOMR (Model #822).

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[2] www.naic.org/documents/committees_c_catf_reg_guidance_2006_AOS.doc (last visited on September 26, 2012).
[3] http://www.actuarialstandardsboard.org/pdf/asops/asop022_140.pdf (last visited on September 25, 2012).
[4] The ABCD's establishment became effective on Jan. 1, 1992 (http://actuary.org/yearbook/2009/abcd.pdf, last visited on September 25, 2012).

Thank you for your time and consideration and for your efforts to strengthen corporate governance. If you have any questions regarding these matters, please feel free to contact Lauren Pachman, the Academy's casualty policy analyst, at pachman@actuary.org.

Sincerely,

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