The NAIC (National Association of Insurance Commissioners) appreciates the opportunity to provide the Financial Stability Board (FSB) with comments regarding the Financial Stability Board's Consultative Document on the Application of the Key Attributes of Effective Resolution Regimes for Financial Institutions to non-bank financial institutions.

The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight.

We are responding specifically to Questions for Consultation (22-33) on the Draft Implementation Guidance: Resolution of Insurers:

22. Are the general resolution powers specified in KA 3.2, as elaborated in this draft guidance, together with the insurance-specific powers of portfolio transfer and run-off, as specified in KA 3.7, sufficient for the effective resolution of all insurers that might be systemically important or critical in failure, irrespective of size and the kind of insurance activities (traditional and 'non-traditional, non-insurance' (NTNI)) that they carry out? What additional powers (if any) might be required?

As the FSB itself notes and the NAIC wishes to emphasize, not all resolution powers set out in the Key Attributes are suitable for all sectors and all circumstances. Indeed, the approach adopted for banks is likely not appropriate for insurance companies primarily engaged in "traditional" insurance activities. NAIC believes that the Key Attributes should apply only in the case of an institution that is so interconnected, because of its "NTNI" activities, with the global financial system that its resolution in accordance with the Key Attributes and the draft Annex is both necessary and appropriate. Even (or perhaps especially) then, the assets supporting the contractual obligations of "traditional" insurance activities must remain available to protect policyholders, claimants and beneficiaries.

23. Should the draft guidance distinguish between traditional insurers and those that carry out NTNI activities? If yes, please explain where such a distinction would be appropriate (for example, in relation to powers, resolution planning and resolvability assessments) and the implications of that distinction.

As mentioned in response to question 22, there exists a major difference between "traditional" insurance activities and "NTNI" activities and the potential impact the failure of an insurance company engaged in such activities will have on the market. Every state has a receivership law that embodies certain core principles: to protect the interests of insureds, claimants, creditors, and the public. Where "NTNI" activities are an especially significant aspect of an entity's business, however, it might be that the FSB's core resolution principles are appropriate. It is important to acknowledge that sophisticated mechanisms already exist to resolve insurance company failure in an orderly manner. In the case of insurance failure in the United States, both management and regulators have time well before run-off/liquidation is even considered to explore various options that may prevent insurance company failure and to engage in specified actions, including development of an ongoing supervisory plan as contemplated by the NAIC's Financial Condition Examiner's Handbook. The underlying premise of the application documents seems to be that a G-SII will be subject to group supervision, with all the cross-sector and cross-border asset transferability that implies. When resolution is called for, however, we consider that those who need the protection of “traditional” insurance ought not to be forced to sacrifice any portion of that protection for the benefit of “NTNI” obligees elsewhere in the global financial system. We therefore believe that assets supporting “traditional” insurance activities ought never to be used to satisfy “NTNI” obligations.

24. Are the additional statutory objectives for the resolution of an insurer (section 1) appropriate? What additional objectives (if any) should be included?

Additional objectives should be the protection of policyholders by assuring the continuity of coverage for long duration contracts and non-cancelable or guaranteed renewable contracts (*e.g*., life, annuity and certain health). Policyholders must also be assured of indemnity for short-duration contracts (*e.g.*, property and casualty), as well as contractual events in long term contracts (*e.g.*, death of a policyholder).

25. Is the scope of application to insurers appropriately defined (section 2), having regard to the recognition set out in the preamble to the draft guidance that procedures under ordinary insolvency law may be suitable in many insurance failures and resolution tools are likely to be required less frequently for insurers than for other kinds of financial institution **(*such as banks*)?**

26. *Does the draft guidance (section 4) adequately address the specific considerations in the application to insurers of the resolution powers set out in KA 3.2? What additional considerations regarding the application of other powers set out in KA 3.2 should be addressed in this guidance?*

The NAIC believes the scope of application to insurers still has the potential to be too broad. As the NAIC has noted on many occasions, in the US, insurance regulators possess an array of statutory and remedial tools to identify and supervise troubled insurance companies. Among such tools are risk focused examinations and the associated tools set forth in the Financial Condition Examiner’s Handbook, the Model Regulation to Define Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition, risk-based capital laws, and the Receiver’s Handbook for Insurance Company Insolvencies.

27. Does the draft guidance deal appropriately with the application of powers to write down and restructure liabilities of insurers (paragraphs 4.4 to 4.6)? What additional considerations regarding the application of ‘bail-in’ to insurers (if any) should be addressed in the draft guidance?

28. Is it necessary or desirable for resolution authorities to have the power to temporarily restrict or suspend the exercise of rights by policyholders to withdraw from or change their insurance contracts in order to achieve an effective resolution (paragraph 4.9)?

We believe that the power to restructure insurance liabilities must be constrained by due process and an independent tribunal. Protecting policyholders in this way helps prevent the very “run on the bank” that such restrictions and suspensions are in part intended to mitigate. Additionally, any restructuring of policies beyond what is contemplated in the insurance contract could potentially trigger guaranty associations’ obligations prior to liquidation.

However, the ability to restrict or suspend the exercise of certain contractual rights by policyholders such as the right to surrender their insurance policy is an important policyholder protection used by regulators to preserve the assets of the insurance company while a plan is developed that would allow the company to pay policyholder claimants and treat categories of policyholders similarly during the resolution process. While temporarily restricting policyholder access is beneficial to conducting a thorough financial assessment of the company, consideration should also be given to hardship withdrawals when the surrounding facts and circumstances create an immediate and severe financial need for the policyholder. The hardship factors would involve exposure to significant economic loss that requires immediate relief and for which no other economic resource is reasonably available to the policyholder to meet that loss, such as funding for essential life sustaining medical care, non-reimbursed catastrophic personal property losses, eviction from a residence, educational costs, and severe financial difficulties created by unemployment of the policyholder. Clear, well-documented hardship criteria and procedures supported by due process have worked well to limit withdrawals from annuity contracts, thereby preventing a "run on the bank" stemming from policyholder alarm fueled by uncertainty.

29. Are there any additional considerations or safeguards that are relevant to the treatment of reinsurers of a failing insurer or reinsurer, in particular to: (i) the power to transfer reinsurance cover associated with a portfolio transfer (paragraphs 4.7 and 4.8); and (ii) the power to stay rights of reinsurers to terminate cover (paragraph 4.10)?

The insurance portfolio and associated reinsurance program must be carefully evaluated to identify if a transfer is appropriate and in the best interests of policyholders, claimants and beneficiaries. The NAIC's Life and Health Insurance Guaranty Association Model Act contains the right for a Guaranty Association to succeed to the rights of the insolvent insurer under a contract of reinsurance. Without the reinsurance being transferred to the Life and Health Guaranty Associations, they may be unable to arrange for the policies to be assumed by a new carrier, because that carrier may not be willing to accept the risks without the reinsurance. In the property and casualty context, reinsurance is often the biggest asset of a property and casualty insolvent insurer and the greatest source of funds to pay claims to policyholders and third party claimants, so the transfer of reinsurance may be neither appropriate nor advisable.

30. What additional factors or considerations (if any) are relevant to the resolvability of insurers or insurers that carry out particular kinds of business (section 8)?

We recommend that additional consideration be given to the review and analysis of reinsurance program(s): the financial stability of the reinsurers should be evaluated, determinations made as to whether collateral is being held by the financially troubled insurer for its benefit, and if so whether such collateral needs to be increased.

31. What additional matters (if any) should be covered by recovery plans or resolution plans for insurers or insurers that carry out particular kinds of business (section 9)?

Many of the items in 9.3 may be related to or effect one another. For one example, items (vi), (viii) and (x) all implicate alignment of assets with liabilities. As previously noted, we consider that obligations to those who depend on the promise of "traditional" insurance are the obligations that deserve primary consideration in the resolution of an insurance enterprise.

32. Are the proposed classes of information that insurers should be capable of producing (section 10) feasible? What additional classes of information (if any) should insurers be capable of producing for the purposes of planning, preparing for or carrying out resolution?

No further comment.

33. Does this draft Annex meet the overall objective of providing sector-specific details for the implementation of the Key Attributes in relation to resolution regimes for insurers? Are there any other issues in relation to the resolution of insurers that it would be helpful for the FSB to clarify in this guidance?

Although this Annex provides further sector-specific details for the implementation of the Key Attributes in relation to insurers, the receivership process and the body of law which has been developed over decades in the United States should be reviewed for key processes and used as tools in the furtherance of these guidelines. State laws establish receivership schemes to ensure payment of policyholder obligations of insolvent insurers subject to appropriate restrictions and limitations. All states have receivership laws that govern how rehabilitation and liquidations are initiated and operated including matters relating to proceedings, powers and duties of the receiver, court approved rehabilitation and liquidation plans, claims and priority distributions and asset recovery. Further, all states have guaranty associations and laws in place that address the process and duties of the associations, its board of directors, assessments on member jurisdictions and covered products. Particular attention should be given to relevant NAIC model laws such as the Insurer Receivership Model Act (#555); the Property and Liability Insurance Guaranty Association Model Act (#540) and the Life and Health Insurance Guaranty Association Model Act (#520) which we would be happy to provide upon request.