

DEPARTMENT OF THE TREASURY
FEDERAL ADVISORY COMMITTEE ON INSURANCE (FACI)
MINUTES – December 3, 2020

The Federal Advisory Committee on Insurance (FACI) convened at 12:30 pm on 3 December 2020 via videoconference, with Dan Glaser, Chair, presiding.

In accordance with the Federal Advisory Committee Act, the meeting was open to the public.

Committee Members Present

DAN GLASER, Marsh & McLennan (Chair)
ERIC ANDERSEN, Aon
AMY BACH, United Policyholders
BIRNY BIRNBAUM, Center for Economic Justice
QUINCY BRANCH, Branch Benefits Consultants
GREG CRABB, Amerisure
BETH DWYER, Rhode Island Insurance Division
ROB FALZON, Prudential
LUCY FATO, AIG
DOUG HELLER, Consumer Federation of America
PETER KOCHENBURGER, University of Connecticut School of Law
GEORGE KEISER, North Dakota House of Representatives
JAMES KELLEHER, Liberty Mutual
SEAN McGOVERN, AXA XL
VICKI SCHMIDT, Kansas Insurance Department
ANDREW STOLFI, Oregon Division of Financial Regulation
MARK THRESHER, Nationwide
BETSY WARD, Mass Mutual
BILL WHEELER, Athene

Also Present

BRANDON FICK, Chief Underwriting Officer, Zurich Insurance Group
MATT GENDRON, Rhode Island Insurance Division¹
ROBERT GORDON, Senior Vice President of Policy and Research, American Property and Casualty Insurance Association (APCIA)
BURCU KILIC, Director, Digital Rights Program, Public Citizen

¹ Mr. Gendron served as proxy for Mr. Dwyer for the first half of the meeting.

L. CHARLES LANDGRAF, Senior Counsel, Arnold & Porter
STEVE SIMCHAK, Head of International, Department Vice President, and Counsel, APCIA
BRAD SMITH, Chief International Officer, American Council of Life Insurers (ACLI)
JOSEPH WAYLAND, Executive Vice President, Chubb Group

Department of Treasury Staff Present

STEVEN SEITZ, Director, Federal Insurance Office (FIO)
LINDSEY BALDWIN, Senior Insurance Regulatory Policy Analyst, FIO (Designated Federal Officer)

Welcome and Opening Remarks

Ms. Baldwin performed a roll call to confirm attendance on the call.

Chairman Glaser announced Lucy Fato, Executive Vice President and General Counsel, AIG as a new member of the committee. Chairman Glaser also reported that Amy Bach will serve as the co-chair for the Subcommittee on Addressing the Protection Gap Through Public-Private Partnerships and Other Mechanisms, along with Sean McGovern.

Chairman Glaser reviewed the meeting agenda:

- FIO update from Director Seitz.
- Q&A session with representatives of the Pandemic Protection Program proposals, which were presented on at the previous FACI meeting.²
- COVID-19 Subcommittee’s “Preparedness” Workstream discussion on identifying best practices for future pandemics or related crises.
- International Subcommittee discussion on international market access and current activities at the IAIS, including presentations from representatives of the World Bank, APCIA, and ACLI.
- Vote on recommendations presented by the COVID-19 Subcommittee’s “Preparedness” Workstream and the International Subcommittee.

Update on Federal Insurance Office Activities

Director Seitz reported that FIO continues to fulfill its mandate of monitoring the insurance sector, including tracking how the COVID-19 pandemic is affecting the U.S. insurance consumers and markets.

² FACI members were provided with materials on each proposal prior to the meeting. These materials are available on the FACI website, <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci>.

Director Seitz reported that FIO's 2020 Annual Report was published on September 30, 2020 and is available on the FIO website. The report discusses the COVID-19 pandemic and presents an analysis of the sector's financial performance and other domestic and international insurance developments. FIO's 2020 Preemption Report was also published on September 30, 2020. Director Seitz reported that FIO did not take any action regarding the preemption of any inconsistent state insurance measure over the last fiscal year.

Director Seitz reported that the International Association of Insurance Supervisors (IAIS) held its Executive Committee meetings on November 4-5, 2020. In addition to its continued monitoring of the impact of the COVID-19 pandemic on the global insurance sector, the IAIS recently issued public consultations related to its work on comparability of the Aggregation Method to the insurance capital standard (ICS), the development of liquidity metrics, and resolution powers and planning. In addition, the IAIS continues to review its work calendar and upcoming projects in light of the COVID-19 pandemic.

Director Seitz reported that FIO published a Request for Information in the Federal Register on October 9, 2020 seeking feedback on a future FIO study to assess the ICS. The request for information seeks input on FIO's evaluation of the potential effects of the ICS on the U.S. insurance market, including the implications for product cost and availability for U.S. consumers, the global competitiveness of U.S. insurers, and insurer investment behavior in capital markets. FIO hopes to use responses to the Request for Information inform its future work during the monitoring period and inform FIO's views on the structure and content of the ICS economic impact assessment. Director Seitz stated that FIO aims to complete this study prior to the IAIS's issuance of a public consultation on the ICS as a prescribed capital requirement and completion of its economic impact assessment in 2023. Director Seitz states that FIO will ask FOCI's International Subcommittee to provide detailed input and responses to the questions in the Request for Information.

Director Seitz reported that FIO received a letter from several members of the House of Representatives about the ICS and the Aggregation Method. The letter has been shared with the International Subcommittee. He added that FIO has also reached out to the Federal Reserve to discuss how FIO and the Federal Reserve can collaborate to align the offices' respective work most effectively.

Director Seitz reported that, in October 2020, the parties to the US-EU Covered Agreement convened the third annual meeting of the Joint Committee pursuant to Article 7 of the Agreement. The Joint Committee is a forum for consultation between the United States and the European Union on administration and implementation of the Agreement. The U.S. delegation included staff and officials from FIO and other Treasury offices, the Office of the U.S. Trade Representative (USTR), the Federal Reserve, Director Farmer of South Carolina, and Commissioner Anderson of Massachusetts. Director Seitz reported that both the United States and the European Union expressed continued support for the Agreement and noted the ongoing and expected benefits to each side arising from the agreement. Each side provided updates on implementation in their respective jurisdictions; FIO summarized state progress on revising credit for reinsurance laws and developments by the NAIC and the Federal Reserve regarding group capital. Director Seitz stated that the meeting was successful and that the parties will remain engaged and continue to move forward.

Director Seitz reported that FIO and USTR are closely coordinating with UK officials to prepare for supporting the U.S.-UK Covered Agreement at the beginning of 2021. UK and U.S. participants, including FIO, virtually held the third meeting of the UK-U.S. Financial Regulatory Working Group on October 20, 2020. Insurance discussions included implementation of the U.S.-UK Covered Agreement, UK and U.S. insurance regulatory responses to the COVID-19 pandemic, and next steps for the U.S.-U.K. Insurance Project. Director Seitz added that FIO began working with its U.K. colleagues on the Insurance Project, which is expected to include: the U.K.'s review of Solvency II and its implications for equivalence and product cost and availability; insurance sector responses to the COVID-19 pandemic; the recent work of the Financial Conduct Authority in various areas, including InsurTech; and any other areas of mutual interest.

Director Seitz reported that FIO published a Notice of Proposed Rulemaking in early November which proposes changes to the rules of the Terrorism Risk Insurance Program to confirm with the 2019 Terrorism Risk Insurance Program Reauthorization Act, which the Program through 2027. The Notice also proposes to clarify Treasury intent by modifying certain definitional terms regarding insured loss and property casualty reinsurance losses, as suggested in a recent GAO report concerning the Program. In addition, the Notice incorporates Treasury's December 2016 guidance regarding stand-alone cyber liability insurance into the program rules. FIO also seeks comment on certain aspects of Treasury's certification process, as well as Treasury's ability to certify cyber events taking place outside the United States that may have a potential impact within the United States. The Notice also seeks comments on participation of captive insurers in the program.

Director Seitz reported that FIO is reviewing recommendations made by the FACI and the Federal Interagency Task Force on Long-Term Care Insurance related to the combination and long-term care insurance (LTCI) products. FIO has reached out to Task Force members, private stakeholders, and the NAIC and state regulators for information regarding next steps.

Director Seitz reported that FIO continues to work with the Mitigation Framework Leadership Group (MitFLG). MitFLG recently held a quarterly meeting, and the continued its work on implementation of the National Mitigation Investment Strategy.

Director Seitz stated that FIO's annual report highlights recent findings of insurer reluctance to offer policies in certain areas at higher risks from natural hazards and weather-related events, such as in California after the 2019 wildfires. He said FIO has met with several industry and consumer stakeholders to discuss this topic and he expects it will be an area of focus in 2021. FIO also received a letter from Senator Dianne Feinstein regarding the impact of increased wildfire risk on private insurance markets. Director Seitz requested the Protection Gap Subcommittee's input and advice regarding the issues and questions raised in the Senator's letter.

Pandemic Protection Program Proposal Q&A

Chairman Glaser briefly reviewed activities related to the work of the COVID-19 Subcommittee. The COVID-19 Subcommittee was charged with assisting FIO and analyzing the various pandemic proposals that have been put forth by the insurance industry. In November 2020,

Congress held a hearing on the challenges and solutions to addressing pandemic risks. Based on this visibility, FOCI invited industry representatives to speak about proposed pandemic solutions as a continuation of the September 2020 FOCI meeting. Each speaker was asked to provide a brief high-level summary of their respective proposal, to be followed by questions and comments from Committee members. Chairman Glaser announced the panel participants: Joe Wayland, Executive Vice President and General Counsel, Chubb; Brandon Fick, Chief Underwriting Officer, Zurich; Robert Gordon, Senior Vice President of Policy and Research, APCA; and Charley Landgraf, Senior Counsel, Arnold & Porter (on behalf of the Business Continuity Coalition).

Mr. Wayland provided a brief overview of Chubb's proposal for pandemic risk. Mr. Wayland stated that the disruption of social and economic life that occurred in response to COVID-19 gave rise to economic losses that are too great for the insurance sector to handle on its own. He noted that pandemics, unlike other catastrophes, are not limited to specific a geography or risk class, which makes them essentially uninsurable. Mr. Wayland stated that the entire U.S. economy cannot be insured, but with substantial government involvement, the industry can and should take a meaningful role in providing coverage as part of a public-private partnership. He added that Chubb hopes industry involvement will lead to greater understanding of the risk, better preparedness, and improved mitigation.

Mr. Wayland said that Chubb proposed a public-private partnership to provide insurance for future pandemics and limit and insure against economic devastation through a two-part framework, intended to meet the unique needs of small businesses versus those of medium and large organizations. Mr. Wayland said that small businesses do not have the risk managers or the same access to capital as medium or large businesses. Part I of Chubb's framework (the Business Expense Insurance Program, or BIP) is a simple, parametric cash flow product that would cover small businesses up to three months of payroll, plus other expenses such as utilities and rent. Mr. Wayland said BIP is distinguishable from other proposals by providing funds without the need for a normal claims process, which is critical to keeping a small business in operation.

Mr. Wayland stated that Part II of Chubb's proposal (Pandemic Re, or Pan Re) would create a federal reinsurance facility in which participating insurance companies would write policies up to \$50 million for businesses with more than 500 employees. Mr. Wayland noted this threshold would be subject to some adjustment in the rulemaking process. Under Pandemic Re, insurers would retain a portion of the risk and the rest would go back to Pan Re, a government reinsurer.

Mr. Wayland explained that in both parts of the proposal, the insurance industry would assume some risk. In Part I, insurers would assume \$15 billion of risk in year one; increasing to \$30 billion over 20 years. In Part 2, insurers would assume \$15 billion of risk in year one; increasing to \$30 billion over ten years.

Mr. Wayland acknowledged that the framework does not answer all the questions, but Chubb believes it would help address key market needs and create a risk-taking role for the industry that will encourage increased preparedness.

Mr. Birnbaum asked Mr. Wayland to explain how Chubb came up with these coverage amounts, including industry capacity, and how these amounts compare to potential policyholder needs. Mr. Wayland responded that Chubb did not apply a “magic formula” but looked at a reasonable total amount for a government program would make sense to have, which they determined to be \$750 billion. Chubb then considered the industry’s current level of risk and what it could reasonably handle.

Mr. Birnbaum followed-up by asking why Chubb decided on a \$750 billion program (i.e., rather than \$500 million or \$1 trillion, etc.), and how it determined the industry’s capacity in each year of the program. Mr. Wayland responded that Chubb did not try to determine ultimate industry capacity but considered \$750 billion a reasonable number given the pandemic losses that have occurred in 2020, particularly for small businesses. Mr. Wayland added that Chubb believes insurers may be able to mitigate some future losses, and this assumption underlies the approach to industry retention and why coverage would be limited to three months.

Mr. Crabb noted that the Zurich’s provided materials estimated that an insured event would cost \$1.6 trillion over three months and asked how the Chubb proposal would handle losses in excess of \$750 billion. Mr. Wayland responded that the insurance industry has a role in addressing pandemics to a certain point, and the program could begin to provide immediate relief to small business. The question after this is how to provide other forms of Treasury relief. Mr. Wayland stated that the Chubb proposal is not trying to solve for an entire pandemic response or predict the size of future events, rather Chubb’s proposal attempts to solve an immediate problem: attempting to keep some stability in those first few months of a pandemic as a response is determined, while small businesses are failing and are unable to make payroll. He reiterated that the program is intended to provide a solution for an immediate problem by getting cash to small businesses in a parametric way that does not involve extensive and timely claims adjustment processes.

Mr. Heller noted that Zurich’s proposal contained a 25 -30 percent ceding permission (i.e., the percentage ceded by the government back to carriers underwriting the business) which scaled up and asked what the revenue would be to carriers within Chubb’s process (or, the administrative cost expensive for handling the policies). Mr. Wayland responded that the proposal assumes that insurers would be required to pandemic coverage as part of any business policy, with a strong opt-out. If a business chooses to opt-out, it would be limited in accepting federal benefits.

Mr. Heller followed-up by asking whether insurers would have administrative or acquisition costs paid by the federal government. Mr. Wayland responded that these costs should be contained in premium and added that that the only premium charged would be for the insurer share of the risk (which would promote affordability). No premium would be ceded to the federal government.

Mr. Fick described Zurich’s perspective on pandemic risk and the insurer’s ideas for finding a solution. He said that Zurich recognizes that a challenge in developing a solution is that the insurance industry does not have the capital to address pandemic risk on its own. He said that pandemic risk is uninsurable, but manageable. Mr. Fick stated that any pandemic solution must be affordable to allow for an appropriate take-up rate; and a solution must also be transparent and reliable for the industry, government, and policyholders.

Mr. Fick stated that the Zurich concept addresses these challenges by leveraging three things:

1. The financial stability of the federal government.
2. The insurance industry's local service and expertise in underwriting risk and responding to catastrophes.
3. Key elements of the Federal Crop Insurance Corporation (FCIC), a well-established public-private partnership.

Mr. Fick explained that under the Zurich proposal, businesses would voluntarily select a level of coverage through an existing broker or agent and receive a premium subsidy. Payouts would be used to cover critical financial obligations and expenses such as payroll, rent, and other operating expenses. Carriers who offer property coverage would be required to offer pandemic coverage as part of their policy renewal process. The federal government would regulate, manage, and financially support the program by setting rates, reimbursing agents and brokers for operating expenses, and developing the product. Carriers would provide local delivery and service of the program on behalf of the government and would have an opportunity to voluntarily bear risk based on their appetite, by allocating policies to one of three risk pools. Policies would need to be parametric, with clearly defined triggers to quickly delivery funds into the hands of the policyholder.

Mr. Gendron asked whether Zurich had considered using the Terrorism Risk Insurance Program (TRIP) as a model for its pandemic proposal. Mr. Fick responded that Zurich used the FCIC, specifically the pools, which is why Zurich's concept differs from other proposals. Mr. Fick said that Zurich feels that the insurance industry must participate in any solution but recognizes that differently sized companies will have different appetites for risk bearing. Establishing three pools will allow carriers to either take on no risk at all, some risk, or a high percentage of risk; each carrier will be able to determine based on its own analysis and risk appetite of how it wants to participate. Mr. Fick added that the Zurich proposal does not put any thresholds or caps on proposal but noted Zurich has done some modeling for pandemic losses, and as previously mentioned, a three-month event would result in approximately \$1.6 trillion in losses. Zurich therefore believes some of the proposed caps may be insufficient, and an open market should exist which requires insurers to take the risk they offer fixed property coverage, then decide how much of that risk they want to pass on to the federal government. during an event and believes that some of the caps that exist today may not be sufficient.

Mr. Thresher asked for clarification about how the proposal would handle mandated coverage while not requiring insurers to take on any risk. Mr. Fick responded by describing the development of the FCIC. He said that that insurers currently take on a large percentage of the risk under the FCIC, but this was not the case at the beginning of the program. Over time, as insurers gained data, intelligence, and comfort with crop risk, they slowly put more of their capital behind the program. Mr. Fick explained that if all insurers were required to provide mandatory coverage but did not want to put any capital at work, the full risk could be put in one risk pool that is completely backed by the federal government. In this pool, the government would pay all losses arising from those policies. However, insurers who want to accept a small amount of risk could place some policies in the second pool; those wanting more risk could place

policies in the third pool, etc. Mr. Fick added that the use of the pools would evolve over time, because insurers would be unlikely to feel comfortable with establishing rates and models and undertaking traditional underwriting activities. However, having the industry involved in providing a pandemic solution for consumers would start work on front-end mitigation of risk. As time goes on, Mr. Fick said companies will become comfortable with pricing risk and diversifying their portfolios with this risk, but this will not happen at the same time. The use of pools allows insurers the opportunity to put capital into the risk when they feel comfortable doing so.

Mr. Gordon presented comments on behalf of APCA and the National Association of Mutual Insurance Companies (NAMIC), which together represent over 90 percent of the property and casualty insurance industry. Mr. Gordon stated that APCA and NAMIC are committed to finding pandemic risk management solutions that work for all stakeholders. APCA, NAMIC, and the Independent Insurance Agents & Brokers of America (“Big I”) designed the Business Continuity Protection Program (BCPP) through a comprehensive review of historical catastrophe programs and consideration of improvements that could have been made to establish the Paycheck Protection Program (PPP) in advance of COVID-19. Mr. Gordon stated that the BCPP would provide financial protection against government and economic shutdowns through a parametric trigger and include a backstop partnership with insurers to provide excess wrap and reinsurance coverage with available capital.

Mr. Gordon described business interruption (BI) insurance as a property coverage and stated a government decision to shut down major portions of the economy has nothing to do with property damage. He said this is why pandemics are not insurable, adding that the NAIC has testified that BI policies were generally not designed or priced to provide coverage against communicable diseases. Mr. Gordon added that a moral hazard is created by disconnecting the policymaker decision to shut down the economy from the cost of doing so.

Mr. Gordon continued that it is somewhat misleading for pandemic proposals to focus on the pandemic BI identification losses and isolation. He stated that early estimates indicate that COVID-19 will be most expensive global loss in history, not including tens of billions of dollars in new exposures. Mr. Gordon stated that in addition to identification costs, the average loss adjustment expense for commercial insurance is roughly 20 percent of losses (more for BI) and underwriting expenses are roughly 27 percent of the premium. Mr. Gordon concluded that even if the federal government were to provide a 100 percent identification backstop, the loss adjustment and underwriting expenses for a \$1.6 trillion event could cost several hundred billions of dollars.

Mr. Gordon stated it is also a misnomer to use TRIP as an applicable model for pandemics. He said that terrorism coverage was widely provided before 9/11, however insurers did not provide significant BI coverage for pandemic shutdowns, even before COVID-19. He said that this is because insurance is not typically well-suited for a global pandemic with virtually every policy holder suffering significant losses at the same time for an extended period. Mr. Gordon added that, unlike terrorism losses, pandemics are not diversifiable, because they are global events that can simultaneously impact numerous lines of business, policyholders, assets, and liabilities. Pandemic losses can also occur at a magnitude equivalent to a 9/11-sized event, every other day, for months.

Mr. Gordon stated that the APCIA and NAMIC encourage FIO and FOCI to analyze the effectiveness of the PPP and how Congress and the Administration might have set up the PPP if it could have been done in advance.

Mr. Kochenburger commented that civil authority coverage provides some insurance coverage for government-ordered shutdowns, and noted is typically restricted, both in duration and geography. He asked why this type of coverage is offered and how it can be distinguished from BI coverage. Mr. Gordon stated that after 9/11, shutdowns that were directly tied to property damage were covered, whereas shutdowns of business not directly tied to property damage (e.g., airport closures) were denied coverage. Mr. Gordon commented that insurers can provide coverage for property damage but are not good at providing coverage against the losses resulting from a government decision. He said current shutdowns are intended to protect public health and are not related to physical damage. He said that the BCPP proponents believe that the government should avoid a moral hazard by balancing the cost of the decision to order a shutdown against the extent of public health.

Mr. Birnbaum commented that he agrees with Mr. Kochenburger that the argument of insurance companies insuring only property damage is somewhat strained, because the concept of BI insurance is not necessarily tied to property damage. He added that despite Mr. Gordon's comments about tying insurance to government decisions, APCIA supports TRIP, which gives total discretion to the Secretary of Treasury to declare whether an event is an act of terrorism. Mr. Birnbaum asked why there is a distinction between the types of risk. Mr. Birnbaum also why a parametric product with specific coverage limits would not address proponents' concerns about non-fortuitous events. Mr. Gordon responded that both TRIP and the BCPP have a government trigger, which is based on the predicate of property damage, workers' compensation losses, or liability losses, rather than a government decision to shut down the economy.

Mr. Gordon agreed that a parametric trigger is necessary, stating that insurance is not well suited when all policyholders losses happen simultaneously, because it would be logistically impossible (even beyond cost) for the industry to adjust claims for millions of businesses at the same time. He said that adjustment is a very complex process using forensic accountants, which cannot be performed on a timely basis and provide businesses need relief right away. APCIA has been asked to add an insurance backstop to create the opportunity where private available capital is willing to be allocated to pandemic risks.

Mr. Gordon said that the Business Continuity Coalition (BCC) and other business groups asked for the addition of an insurance backstop to the BCPP, which would create the opportunity to allocate available private coverage to pandemic risks as excess or wrap coverage, and they have agreed to add this coverage. However, Mr. Gordon added that the membership of APCIA, NAMIC, and the Big I feel that it is difficult to see private capital participating in this space without a government foundation to build on.

Mr. Landgraf stated that his presentation at the September 2020 meeting described how the plan of the BCC, a policyholder group, uses many elements of the BCCP, the Chubb proposal, the Zurich proposal, and Rep. Maloney's Pandemic Risk Insurance Act (PRIA) bill. He added that he intended to use his time at the present meeting to focus on the differences. Mr. Landgraf also

stated that the BCC believes that a TRIP-like backstop for an array of property & casualty lines is needed, as is some form of mandatory availability.

Mr. Landgraf described TRIP as a successful program. He said that the program has not been successful because it rapidly pays claims after a big event, but because it helped the economy recover by filling a gap and restoring confidence to markets (particularly lenders and employers). Mr. Landgraf stated that the BCC fully endorses a parametric business interruption product but noted the debate about the role of the private sector versus government sector in providing such a product. However, Mr. Landgraf added that a business interruption parametric product alone is not the solution, because other lines of insurance are impacted. He said that contrary to the suggestion that the insurance industry does not write coverage in these lines, there has been a significant amount of coverage prior to this year. Mr. Landgraf said many policyholders are experiencing exclusions imposed for the first time.

Mr. Landgraf stated that the BCC is sympathetic to the fact that global reinsurers and others may be withdrawing and imposing exclusions, and said this is why a federal backstop is needed to allow the gap to be filled. Mr. Landgraf acknowledged that this gap existed prior to this pandemic, in some cases, but added that the gap is also being aggravated as a result of the pandemic even in lines where there have not been across the board losses this year, whether or not caused by civil action or actual infection.

As a result, Mr. Landgraf stated that BCC supports a TRIP-like structure with a special rule for business interruption that would result in the availability of a parametric product backstopped by the federal government. BCC believes this “splits the difference” parametric plan between the APCIA plan and the Zurich and Chubb plans, by proposing a backstop very similar to Zurich and Chubb's proposal for a parametric product. In addition, for those insurers who do not wish to risk their capital (even at 100 percent reinsurance) could alternatively support a joint underwriting facility, such as by buying surplus notes, which would use the federal backstop.

Mr. Landgraf stated that the BCC strongly believes in addition to parametric business interruption, other lines of business need support. He said this will help get the economy going and shows the true value of using the federal full faith and credit. Liquidity and injection of cash in the big event is extremely important, but not the only goal.

COVID-19 Preparedness Discussion

Ms. Ward reviewed the work undertaken by the “Preparedness” Workstream of the COVID-19 Subcommittee to-date. She reported that the Workstream reviewed federal and state actions taken to serve consumers and the broader public in response to COVID-19, as well as actions taken to better serve the public. The Workstream also reviewed actions that industry has taken to adapt to the COVID-19 operating environment, and has identified several lessons have emerged in terms of what should be during a pandemic-type crisis, including actions that should be taken before the next crisis so that insurance can continue operating for consumers, regulators, and for industry in as normal a manner as possible. In addition, the Workstream also identified lessons on how the industry might enhance the way it operates with consumers, regulators, and the

insurance industry itself. Focusing on these categories, the Workstream met regularly over the last six months to develop recommendations for FACI's consideration.

Ms. Ward noted that the Workstream consists of a diverse set of stakeholders including regulators, academic experts, brokers, and private sector executives. Topics were raised and debated to find consensus on emerging lessons, should another pandemic-like crisis emerge, including how to ensure resiliency in the face of such crises and whether to apply planned consistency or principles (e.g., premium grace period principles). Ms. Ward added that the Workstream also developed recommendations on temporary practices adopted during the COVID-19 pandemic which could benefit from being made permanent.

Ms. Ward stated that the subcommittee agreed on recommendations in four key areas:

1. Emerging lessons.
2. Ensuring resiliency in the event of a pandemic.
3. Premium grace period principles
4. Temporary-to-permanent.

Ms. Ward summarized federal-level activities reviewed by the Workstream, stating that the Department of Labor (DOL), the Securities and Exchange Commission (SEC), and the Department of Homeland Security (DHS) took actions to address COVID-19-related challenges. The DOL and the SEC made significant modifications which Ms. Ward said should be considered by policymakers in the future. DHS developed a list of critical and essential business services that should be allowed to operate during a pandemic, which helped provide consistency to state emergency declarations.

Ms. Ward summarized the proposed recommendation for FACI's consideration:

[FACI recommends] that recommends that FIO reiterate the importance of insurance being deemed a business essential service and encourage federal and state regulators to allow for regulatory compliance efficiencies, coordinate, or take similar relief actions during a future pandemic or emergency, while ensuring consumers and investors continue to have timely access to critical services and information.

[FACI recommends] develop[ment of] better ways to prepare for future crises and pandemics, both industry and regulators will need to plan to confront these challenges as part of resiliency planning for uninterrupted regulatory oversight and approvals as well as ongoing business operations.

Ms. Ward noted that specific examples of emerging lessons and possible ways to be better prepared for the future were provided to members of the Committee in the meeting's pre-read materials.

In response to a question from Chairman Glaser, Ms. Baldwin confirmed that the FACI had the option of either voting on all the recommendations at the same time or considering each

recommendation separately. Ms. Ward commented that she preferred to consider each recommendation separately.

Ms. Fato inquired whether she was permitted to abstain from voting given her status as a new member and unfamiliarity with the work performed to-date. Chairman Glaser confirmed that abstentions are permitted, and a two-thirds majority of votes cast is required for a vote to pass.

Ms. Ward made a motion for FACI to present the recommendation to FIO.

Chairman Glaser opened discussion on the recommendation. In response to an inquiry from Mr. Birnbaum about which recommendation was being voted on, Chairman Glaser directed the membership to the bold text contained on the “Emerging Lessons” page of the [presentation slide](#). Mr. Birnbaum questioned why the voting procedure had changed from the prior meeting, when recommendations were voted on at the end of the meeting. Chairman Glaser responded that no procedure exists to handle recommendations in a certain pre-prescribed way, but that the agendas of the two meetings were different and resulted in a different format.

Chairman Glaser conducted a voice vote on the motion for FACI to make the following recommendation to FIO:

FACI recommends that recommends that FIO reiterate the importance of insurance being deemed a business essential service and encourage federal and state regulators to allow for regulatory compliance efficiencies, coordinate, or take similar relief actions during a future pandemic or emergency, while ensuring consumers and investors continue to have timely access to critical services and information.

[FACI recommends] develop[ment of] better ways to prepare for future crises and pandemics, both industry and regulators will need to plan to confront these challenges as part of resiliency planning for uninterrupted regulatory oversight and approvals as well as ongoing business operations.

The motion carried by voice vote; recommendation passed.

Following the vote, Mr. Birnbaum recommended that Chairman Glaser ask for any abstentions on the voice vote. Ms. Baldwin confirmed that abstentions are not called for or recorded in a voice vote. Mr. Birnbaum asked for confirmation that only two-thirds of votes cast were required to pass a voice vote (e.g., if only six people vote, only four votes are required to adopt the recommendation). Ms. Baldwin confirmed that only two-thirds of votes cast are required to pass a voice vote.

Ms. Ward summarized the next proposed recommendation for FACI’s consideration:

[FACI recommends] that FIO encourage regulatory agencies and insurers that have not already done so, either voluntarily or for purposes of satisfying regulatory requirements (e.g., Own Risk and Solvency Assessment, or ORSA) to develop strategies that address the key organizational challenges a pandemic poses in preparation for a future event.

Ms. Ward noted the subcommittee's examples of what a plan should include:

- Identify programs that can be undertaken in advance of a pandemic that would diminish its impact on the organization and allow for the continuation of essential services;
- Present strategies for responding to operational challenges created by a pandemic, including a need for remote working, identification of essential staff, and redeployment of staff to key functions, among others;
- Determine critical interdependencies with external entities and steps to support them during a pandemic; and
- Provide guidance for prioritizing the allocation of resources in the event that a pandemic diminishes an organization's capacity for an extended time period or place new demands on the organization that compete with other priorities or obligations it has in normal times, while maintaining essential services.

Mr. Kelleher made a motion for FACI to present the recommendation to FIO.

No points of discussion were raised on the motion.

Chairman Glaser conducted a voice vote on the motion for FACI to make the following recommendation to FIO:

[FACI recommends] that FIO encourage regulatory agencies and insurers that have not already done so, either voluntarily or for purposes of satisfying regulatory requirements (e.g., Own Risk and Solvency Assessment, or ORSA) to develop strategies that address the key organizational challenges a pandemic poses in preparation for a future event.

The motion carried by voice vote; recommendation passed.

Ms. Ward re-iterated the concept of noting and supporting learnings from the current pandemic and stated that there are benefits to all in clarifying or defining consistency of items such as insurance premium relief in a state of emergency.

Ms. Ward summarized the subcommittee's proposed recommendation for FIO to support principles for insurance premium relief in a future event:

If there is a state of emergency declared, [FACI] recommends that FIO should support the following principles of insurance premium relief for a future event:

- *Allowing premium payments up to a total of 90 days from the premium due date so that the policy is not canceled or lapsed;*
- *Allowing reasonable repayment options for unpaid premiums;*
- *Waiving any late premium payment fees or penalties;*

- *Providing reasonable flexibility to policyholders or their beneficiaries regarding proof of claim; and*
- *Policyholders the ability to make premium payments, report a claim or otherwise communicated with the policyholders' insurer or producer electronically, or if in person, by maintaining safe social distancing standards.*

Chairman Glaser opened discussion on the recommendation.

Mr. Birnbaum stated that the recommendation is qualitatively different from the other recommendations because it has a general principle, with several specific provisions. Mr. Birnbaum stated that there should be a specific provision to provide premium relief for consumers whose exposure has changed radically. Mr. Birnbaum provided two examples: changes in auto insurance exposure due to empty roads/less driving, and exposure changes for closed businesses. Ms. Ward responded that the subcommittee discussed this type of premium relief but did not have time to address as an area of focus. Ms. Ward suggested that this topic could be discussed in 2021.

Mr. Birnbaum proposed returning the recommendation to the subcommittee for further work to achieve a more comprehensive and balanced approach.

Mr. Thresher asked whether there was a definition to clarify the meaning of "state of emergency" in the recommendation. Ms. Ward replied that the committee did not define "state of emergency" and it was used for context in the current situation. She agreed a definition is needed.

Mr. Birnbaum noted that the current recommendation does not reference the pandemic. Ms. Ward replied that the recommendation was generalized based on lessons learned from the current pandemic.

Chairman Glaser provided Ms. Ward the option to return the recommendation to the subcommittee for further discussion or take a vote, noting that the recommendation could be amended. Ms. Ward responded that she would like to have the recommendation considered for a vote, because she believed there was a benefit in having FIO support principles for insurance premium relief, even with a limited focus on premium grace periods. Ms. Ward added that although she agreed that "state of emergency" should be defined it did not need to preclude a vote on the recommendation.

Mr. Kelleher withdrew his motion and stated that the recommendation needed more work. He suggested consideration of the motion be deferred and said the committee could benefit from additional clarity. Ms. Ward responded that the subcommittee would revisit the proposed recommendation.

Moving to the next proposed recommendation, Ms. Ward said the subcommittee recognizes it is ideal to make operations more robust to be better prepared to operate without interruption in a future pandemic. This would result in temporary items being made permanent. Ms. Ward said that the COVID-19 subcommittee also considered temporary actions that ease commerce in a touchless environment which could benefit society if made permanent. Based on this, the

subcommittee proposed recommendations for FACI's consideration that included e-delivery, e-signature, e-filing, and producer licensing.

Ms. Ward summarized the subcommittee's proposed recommendation on e-delivery:

[Recommendation #1]: [FACI recommends that] FIO engage various stakeholders to conduct a study of federal and state regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers' and customers' ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in a manner consistent with today's consumer expectations.

The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and recommendations.

FIO should solicit input from regulators, insurers, consumers, and other stakeholders as part of this study.

Ms. Ward summarized the subcommittee's proposed recommendation on e-signature:

[Recommendation #2]: FIO should encourage both federal and state regulators to permit or, to the extent e-signature is already adopted, enhance the use of e-signature for insurance transactions and regulatory filings where appropriate and applicable. Regulators should be encouraged to review relevant insurance guidance and rules that require a signature to expressly allow that requirement to be satisfied by an e-signature.

Ms. Ward summarized the subcommittee's proposed recommendation on e-filing:

[Recommendation #3]: FIO should encourage state regulators that have not already done so to transition to electronic insurance company regulatory filings where appropriate and applicable.

Ms. Ward summarized the subcommittee's proposed recommendation on producer licensing:

[Recommendation #4]: FIO should encourage state regulators that have not already done so to adopt online/remote straining and examination options for producer licensing where possible.

Ms. Ward explained that these recommendations are all based on activities that are currently in place on a temporary basis, and there are benefits to making these activities permanent.

Ms. Ward noted that the subcommittee did not have a unanimous affirmative recommendation on e-delivery, and asked Mr. Heller to comment. Mr. Heller explained that he believes it would be beneficial to have a full understanding of the implications of e-delivery and how it should work,

he opposed the proposed recommendation because he believes a “deep dive” into e-delivery would not be the best use of FIO's resources.

Mr. Falzon, who was involved in drafting the recommendation, provided an explanation of why he believed the recommendation should be adopted. He responded that there is a general view that the insurance industry’s technology needs to catch up to the 21st century to meet customer expectations and to keep costs low in infrastructure, delivery, and sales. This will allow the industry to develop products and price points to more broadly serve all socioeconomic demographics, which Mr. Falzon said is not currently been done well. He said one of the reasons for this is because of the industry’s cost delivery system including items like document delivery in lieu of technology. Mr. Falzon continued that the Federal Communications Commission (FCC), the Department of Labor (DOL), the NAIC have all ordered initiatives that are concurrently focused on e-delivery, but there are no organizations focusing on insurance at the federal level (the NAIC is at the state level and the FCC and the DOL focus on securities, risk and retirement products). Mr. Falzon stated that this issue should be examined on behalf of insurance customers and companies, because many of the restrictions on e-delivery exist at the federal level in addition to the state level. Mr. Falzon stated that FIO is the most logical entity because of its mandate, its focus on the topic in its previous two annual reports, and its focus on FinTech.

Mr. Kochenburger requested that a statement be included in the recommendation to study the digital divide. He said that COVID-19 has highlighted inequality in digital access and added that it is frequently mentioned, including at the most recent meeting of the NAIC’s Special Committee on Race & Insurance. He said that although the current language recommending a study of “customers’ ability to utilize the advantages of technological developments” was broad, he believed it was particularly important to specifically mention the need to study the digital divide.

Mr. Falzon made a motion for FACI to present four recommendations (as a package) to FIO on e-delivery, e-signature, e-filing, and producer licensing, as originally submitted by the COVID-19 subcommittee.

Mr. Kochenburger made a motion to amend the recommendation on e-delivery by adding the following text to the end of the first paragraph (after “in a manner consistent with today's consumer expectations.”):

In particular, this study should examine the disparities of internet access, often called the “digital divide.”

In response to an inquiry from Chairman Glaser, Ms. Baldwin confirmed that a voice vote would be conducted on adopting the amended language, and if the voice vote carried, then a second vote would be held to adopt the recommendation with inclusion of the amended language. In contrast, if the voice vote on the amendment failed, a voice vote would proceed to adopt the original proposed language of the recommendation.

Members discussed Mr. Kochenburger’s proposed amendment.

Mr. Kelleher commented that the recommendation, as stated, would be a broad undertaking, and questioned whether adding a study on the digital divide, although an important topic, would create issues with the capacity of resources. Mr. Kochenburger clarified that he did not intend for FIO to engage in a separate study or de-portion the topic, but believed it is an important issue and the recommendation should evaluate the extent to which policyholders would/would not be able to take advantage of the technology. He added that this is a key access issue and therefore fits in with one of FIO's primary missions, which is to look at availability and accessibility.

Ms. Ward suggested that disparities in internet access could be incorporated into the final sentence of the recommendation ("FIO should solicit input from regulators, insurers, consumers, and other stakeholders as part of this study"). Mr. Kochenburger agreed to this as a compromise if it would make inclusion more likely to pass a vote, but suggested the term "digital divide" should be incorporated because it is increasingly used. Mr. Birnbaum responded to Ms. Ward's comment by stating that the first paragraph discusses the study, so any modification of the study (such as looking at the digital divide) should be incorporated in that paragraph rather than in the last sentence.

Ms. Bach commented that her biggest concern with e-delivery was not unequal access, but rather than consumers have problems with keeping coverage in place (e.g., by missing cancellation notices due to spam). She said that this topic hasn't been brought up, and questioned whether the proposed recommendation could use additional work. Ms. Ward and Mr. Falzon responded that the intent of the recommendation is to study and evaluate the feasibility of e-delivery, rather than adopt e-delivery. Ms. Bach asked whether the recommendation considers the workstreams of the NAIC on e-delivery. Mr. Falzon responded affirmatively and added that there are both state and federal considerations with respect to e-delivery, and the NAIC does not have the platform to address federal issues.

Mr. Kochenburger said he agreed with Mr. Birnbaum that his amendment fit better in the first paragraph of the recommendation but agreed to revise his proposed amendment in alignment with Ms. Ward's suggestion, in the interest of obtaining industry support for the amendment.

Chairman Glaser conducted a voice vote to amend the e-delivery text of the motion to read as follows [note: bolded/underlined text indicates amended language]:

[Recommendation #1]: [FACI recommends that] FIO engage various stakeholders to conduct a study of federal and state regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers' and customers' ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in a manner consistent with today's consumer expectations.

The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and recommendations.

*FIO should solicit input from regulators, insurers, consumers, and other stakeholders **and examine disparities in internet access, often called the digital divide**, as part of this study.*

Motion to amend carried by voice vote.

Members resumed discussion on the motion for FACI to present recommendations to FIO on e-delivery, e-signature, e-filing, and producer licensing.

Mr. Birnbaum made a motion to amend the recommendation on e-delivery to add the following text to the first paragraph (after “in a manner consistent with consumer expectations”):

, subject to appropriate safeguards against fraud by parties subject to the transaction.

Mr. Birnbaum explained that he proposed this amendment because none of the proposed recommendations have addressed the potential for fraud. Mr. Birnbaum stated that while the NAIC and many states have taken measures on a temporary basis during the COVID-19 pandemic, there is an insufficient history of enforcement actions to determine the increased potential for fraud. He said referring to this kind of consumer protection was important and necessary for all the proposed recommendations (e-delivery, e-signature, e-filing, and producer licensing).

No additional points of discussion were raised on Mr. Birnbaum’s proposed amendment.

Due to connectivity issues, on behalf of Chairman Glaser, Ms. Baldwin called for a voice vote to amend the e-delivery text of the motion to read as follows [note: bolded/underlined text indicates amended language]:

*[Recommendation #1]: [FACI recommends that] FIO engage various stakeholders to conduct a study of federal and state regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers’ and customers’ ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in a manner consistent with today’s consumer expectations, **subject to appropriate safeguards against fraud by parties subject to the transaction.***

The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and recommendations.

FIO should solicit input from regulators, insurers, consumers, and other stakeholders and examine disparities in internet access, often called the digital divide, as part of this study.

The results of the voice vote on the amendment were unclear. Ms. Baldwin conducted a roll call vote on the amendment.

In Favor: Andersen, Bach, Birnbaum, Branch, Crabb, Heller, Kochenburger (by proxy, Heller), McGovern, Schmidt, Ward

Opposed: Falzon, Keiser, Kelleher, Thresher

Abstentions: Dwyer, Fato

Absent at time of vote: Glaser, Stolfi, Wheeler.

Motion to amend carried (10-4-2).

Comments provided during the vote:

- Ms. Dwyer stated she abstained because she had just joined the meeting.
- Mr. Falzon stated that he voted in opposition because the paragraph at the end of the recommendation was intended to broad and capture all issues, rather than specifying each relevant issue. He added that he was not objecting to the idea of preventing fraud, but rather to specifically identifying fraud among many issues.
- Ms. Fato stated that she abstained from the vote because it was her first meeting, rather than any substantive reason.
- Mr. Keiser stated that he voted in opposition because the topic should be a free-standing separate subsection.

Members continued discussion on the original motion. Ms. Ward confirmed that the original motion, as amended involved voting on all four temporary regulatory relief recommendations as a package. She asked the membership for input on whether they would prefer instead to vote on each recommendation individually.

Mr. Birnbaum proposed an amendment to the motion to add the same language to the three remaining recommendations: “subject to appropriate safeguards against fraud.” He said it was more important to add the language to these because they were not recommendations to study, but recommendations for FIO to encourage these activities.

Members discussed Mr. Birnbaum’s proposed amendment.

Mr. Heller commented that he is opposed to the e-delivery recommendation and he said if the recommendation would be voted on as a package, he would vote in opposition to the package despite his support for the other three individual recommendations. He said he was raising this comment in case it created issues on the number of votes needed to pass the recommendations.

Mr. Birnbaum suggested that the first recommendation (on e-delivery) could be voted on separately and the last three could be treated as a package.

Ms. Dwyer commented that there is significant overlap with some of the NAIC’s work, with e-signature and e-filing being discussed by the Innovation Task Force. She added that she is the

Co-Chair of the NAIC's committee on producer licensing. She noted that 27 states have remote exams, and more are moving into this direction.

Ms. Ward proposed moving forward with a consolidated vote on all four recommendations, given that only two individuals raised concerns about voting separately.

Ms. Schmidt commented that if the motion failed, the committee could still vote on each recommendation individually.

Ms. Baldwin conducted a voice vote to amend the motion to read as follows [note: bolded/underlined text indicates amended language]:

[Recommendation #1]: [FACI recommends that] FIO engage various stakeholders to conduct a study of federal and state regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers' and customers' ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in a manner consistent with today's consumer expectations, subject to appropriate safeguards against fraud by parties subject to the transaction.

The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and recommendations.

FIO should solicit input from regulators, insurers, consumers, and other stakeholders and examine disparities in internet access, often called the digital divide, as part of this study.

*[Recommendation #2]: FIO should encourage both federal and state regulators to permit or, to the extent e-signature is already adopted, enhance the use of e-signature for insurance transactions and regulatory filings where appropriate and applicable, **subject to appropriate safeguards against fraud by parties subject to the transaction.** Regulators should be encouraged to review relevant insurance guidance and rules that require a signature to expressly allow that requirement to be satisfied by an e-signature.*

*[Recommendation #3]: FIO should encourage state regulators that have not already done so to transition to electronic insurance company regulatory filings where appropriate and applicable, **subject to appropriate safeguards against fraud by parties subject to the transaction.***

*[Recommendation #4]: FIO should encourage state regulators that have not already done so to adopt online/remote straining and examination options for producer licensing where possible, **subject to appropriate safeguards against fraud by parties subject to the transaction.***

Motion to amend carried by voice vote.

No additional points of discussion were raised on the motion.

Ms. Baldwin conducted a voice vote on the motion for FACI to make the following recommendations to FIO:

[Recommendation #1]: [FACI recommends that] FIO engage various stakeholders to conduct a study of federal and state regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers' and customers' ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in a manner consistent with today's consumer expectations, subject to appropriate safeguards against fraud by parties subject to the transaction.

The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and recommendations.

FIO should solicit input from regulators, insurers, consumers, and other stakeholders and examine disparities in internet access, often called the digital divide, as part of this study.

[Recommendation #2]: FIO should encourage both federal and state regulators to permit or, to the extent e- signature is already adopted, enhance the use of e-signature for insurance transactions and regulatory filings where appropriate and applicable, subject to appropriate safeguards against fraud by parties subject to the transaction. Regulators should be encouraged to review relevant insurance guidance and rules that require a signature to expressly allow that requirement to be satisfied by an e-signature.

[Recommendation #3]: FIO should encourage state regulators that have not already done so to transition to electronic insurance company regulatory filings where appropriate and applicable, subject to appropriate safeguards against fraud by parties subject to the transaction.

[Recommendation #4]: FIO should encourage state regulators that have not already done so to adopt online/remote straining and examination options for producer licensing where possible, subject to appropriate safeguards against fraud by parties subject to the transaction.

The results of the voice vote on the amendment were unclear.

Mr. Thresher requested that a record of the final voting language be provided following the meeting. Ms. Baldwin agreed to provide a record after the meeting, and confirmed that the roll call vote would incorporate amendments proposed by Mr. Kochenburger and Mr. Birnbaum and included a package of four recommendations proposed as temporary regulatory relief measures which should be made permanent.

Ms. Baldwin conducted a roll call vote:

In Favor: Andersen, Branch, Crabb, Dwyer, Falzon, Glaser, McGovern, Schmidt, Thresher, Ward, Wheeler

Opposed: Birnbaum, Heller, Keiser, Kelleher

Abstentions: Fato

Absent at time of vote: Bach, Kochenburger, Stolfi

Motion carried (11-4-1); recommendation passed.

Presentations and Discussion Led by the Subcommittee on FIO's International Work

Mr. Falzon stated that the Subcommittee invited four speakers to make presentations, which would be followed by member discussion.

Mr. Falzon introduced the first presenter, Craig Thorburn, Lead Insurance Specialist, The World Bank. Mr. Thorburn has been involved with the joint International Monetary Fund-World Bank Financial Sector Assessment Program, and has published numerous articles and research targeting a better depth and quality for the insurance sector and emerging and developing markets. Mr. Thorburn also represents the World Bank at the IAIS and previously served as Life Insurance Commissioner in Australia.

Mr. Thorburn provided background on the World Bank's efforts. He stated that the World Bank focuses on reducing poverty and improving shared prosperity. It also engages in developing insurance markets because of its conviction that insurance makes a difference. He noted that there are many ways that insurance works, and insurance can also hinder people if it is not available.

Mr. Thorburn stated that over the past three years, the World Bank has reinvigorated its efforts to understand what insurance markets need to develop and what holds them back. He stated that the World Bank has found six key imperatives, and he described three of them:

Mr. Thorburn said that innovation may be the most critical imperative. He said that a situation cannot improve if things continue to be done the same way. In many less-developed countries, innovation is widely acknowledged as a critically important, but almost nonexistent. Reasons for this include fragmented industry structures that take too long to normalize, constraint profitability that absorbs any potential to invest in doing something differently, and protected segments that have an incentive to avoid change. He added that innovation is also hampered by a very severe shortage of technical skills.

Second, Mr. Thorburn said that better regulation and supervision are important. He said that risk-based approaches work for development, not just for prudence, safety, and proportionality. However, many insurance supervisors do not have the necessary technical skills for this type of supervision, and many places are stuck with using a compliance-based approach. Mr. Thorburn

stated that the World Bank's conducts standard financial literacy quizzes as part of its regular training initiatives, and the participants do not produce encouraging results. He said that policy and supervisory colleagues need to improve in this area so they can avoid taking an overly conservative risk-avoidance approach. This will permit market players to move towards managing risk rather than managing rules.

Mr. Thorburn stated that the third key imperative is the importance of policy leadership, which gains visibility when people have greater confidence in their own skills. Mr. Thorburn said that too many countries do not have a development policy or an insurance; and often lack clarity if they do. As a result, policy leadership usually falls to an implementation agency that is not really empowered with the necessary scope or resources.

Mr. Thorburn stated that the potential for improved skills, a decent policy framework, and a rationally competitive sector, can go a long way to unleashing the innovation that is needed and advance the sector's development goals. He added that this supports risk management in the productive sectors and plays a much-needed role in financial market development and long-term finance.

Mr. Thorburn stated that the constraints to this progress are significant, and include a range of protectionist and nationalistic initiatives. He said that reforming these is a big challenge, but there would be a considerable prize in having more foreign participation in some of these markets.

Mr. Thorburn said that typical constraints are the role of state insurers and the existence of monopolies. In addition, markets can overly fragmented and focused on irrational competition in poorly-performing compulsory insurance classes. He said there can also restrictions on insurer access to reinsurance markets. Finally, there can be unusual national requirements and regulations (e.g., needing to have a local birth certificate if you are a CEO or senior supervisory official, or even to be an agent to sell insurance).

Mr. Thorburn stated that the World Bank has Done research to confirm that liberalization works, and the concerns that stop forward movement do not arise. Generally, growth occurs fast enough to benefit everyone. Mr. Thorburn said that in its research, the World Bank only identified one country where a state-owned monopoly did not grow faster when it lost its monopoly.

Mr. Thorburn stated that when new entrants gain a foothold, people get access to better insurance, new products and services become available, and compulsory classes become less critical to the future of the insurance industry. In addition, insurance becomes available for small and medium businesses, and insurers become major institutional investors. Mr. Thorburn cautioned that this is not always the case, however, and there are plenty of examples where the lack of an insurance sector did not cause a country issues, and emphasized the importance of policymakers and the insurance sector working together.

Mr. Thorburn emphasized that with a positive view of what can be achieved, at the end of the day the population as a whole can benefit: people's poverty is reduced, prosperity is shared and improved, and the well-being of the country as a whole improves.

Mr. Falzon introduced Burcu Kilic, Director, Digital Rights Program, Public Citizen, to provide a consumer perspective. Ms. Kilic has researched and written extensively on technology, innovation, digital rights, and trade, and provided technical advice and assistance in numerous countries in Asia, Latin America, Europe, and Africa.

Dr. Kilic described Public Citizen as a nonprofit consumer advocacy organization. She said her presentation would provide insight into how consumers feel about data flows, privacy, and digital trade.

Ms. Kilic stated there is a general understanding that data is very important for trade, and this generally refers to personal data. She said personal data has been flowing around the world and pioneering services, which has resulted in an unprecedented amount of data process in collection and processing – data hoarding. Ms. Kilic added that insurance companies do not have a very good track record with data collection and data processing.

Ms. Kilic stated that the concept of data protectionism is a frequent topic in data flow discussions. She said that most digital protectionism measures are privacy measures, which aim to protect consumers. She noted that digital protectionism is easy to assert, but hard to define and very polarized. Ms. Kilic referred to [slide 3 of her presentation](#), and noted that in countries such as China, the purpose of data localization measures is completely different from data protection and data localization measures in the EU and other countries.

Ms. Kilic reaffirmed that most data protection measures aim to protect consumers' privacy because the consumer privacy is important for consumer trust. She stated that in a digital age, it is not possible to talk about consumer trust without talking about data privacy, particularly in the United States, which does not have comprehensive and meaningful privacy legislation and protections for consumers. The burden falls to companies to provide data privacy protections to the consumers. In addition, consumer views are changing, and American consumers are becoming more sensitive about their data.

Ms. Kilic stated that where data flows is another concern for consumers, especially American consumers. She said there is an assumption the data has been flowing through the United States., but research from the Nikkei newspaper shows that China (including both mainland China and Hong Kong) are dominating data flows (with 23 percent), and the United States is no longer the final destination for data (with 12 percent). Ms. Kilic noted that people have raised concerns about TikTok and V-Tech, and this demonstrates the importance of data flow protections.

Ms. Kilic said that all recent U.S. free trade agreements, starting with the Trans-Pacific Partnership Agreement (TPP) in 2015, include provisions on cross-border data flows and data localization. However, they also have a privacy exception, which tech companies and trade officials have promoted, however Ms. Kilic noted that these are very narrow exceptions and have been proven to not work.

Ms. Kilic stated that there is also a trade conflict between the United States and the European Union, because Europeans are concerned about their data flowing to the United States, since the U.S. does not have any privacy protections and U.S. government surveillance laws do not treat Europeans the same as U.S. citizens. She added that the European Court of Justice emolliated

the system established by the United States and EU because of a lack of privacy protections in the United States. Ms. Kilic said that privacy has therefore become a trade problem because there are not sufficient exceptions.

Ms. Kilic said that financial services are another issue in free trade agreements. The e-commerce chapter of the TPP introduced binding commitments on the free flow of data and data localization, but excluded financial services from its core in the TPP. The financial services chapter then included a provision on free flow but nothing on data localization. Ms. Kilic said this was a big issue between the financial services industry and the United States Trade Representative (USTR), and Congress questioned why this was done when it considered ratification of the TPP. Ms. Kilic said that the reasoning was that the U.S. Department of Treasury wanted to maintain data in the United States following the experience with Lehman Brothers in 2018; to ensure timely access to information in times of crisis.

The same approach was inserted into the United States Canada and Mexico Agreement (USMCA), which excluded financial services from the scope of the digital trade chapter but included a provision on data localization in the financial services chapter while ensuring that financial regulatory authorities have direct and complete online access to data. Ms. Kilic compared the two provisions and noted the data flow provision has an exception for privacy (but the exception is self-cancelling); while the authorities at Treasury and USTR believed the exception wasn't sufficient for data localization. This is how the compromise in provisions was developed.

Ms. Kilic concluded that consumers are very concerns about data collection and analysis, and that “innovation” without some consumer protection and public privacy guardrails do not create fair market conditions for consumers. She said that, unfortunately, the status quo is not protecting consumer privacy or providing data rights. She added that Public Citizen is very concerned about the financial services solution in the TPP and USMCA. She said that the Financial Times has reported that insurers may be at the center of the next big crisis – and when there is a new crisis there is a desire for regulators to have access to that data. Mr. Kilic concluded by stating that solving these issues requires creative economic, legal, and political thinking.

Mr. Thresher asked why Ms. Kilic is concerned that the insurance industry does not control personal data and requested an offline conversation to discuss her thoughts; he disagreed that the industry is not good about managing data. Ms. Kilic responded that the problem is the lack of privacy protections in the United States, and that the insurance industry does not necessarily have a good record of using data, noting recent scandals about the industry's past usage of data. She said that from a consumer point of view, there is a significant concern about practices and business decisions of the financial industry related to data and data processing, since consumers don't have any rights over their data.

Mr. Falzon asked Ms. Kilic how cloud data storage is handled with respect to data localization. Ms. Kilic responded that it depends on individual country regulations, with some countries introducing regulations to protect their consumers and some having financial industry regulations on localization of data. Ms. Kilic added that the meaning of “localization of data” needs clarification, noting that some countries ask for data to be stored locally while other countries

allow data to be stored in the cloud with a local copy of the data stored within the country. Different measures exist, and she reiterated that most of these measures are aimed protecting consumers.

Mr. Falzon introduced Steve Simchak, Head of International, Department Vice President, and Counsel, American Property Casualty Insurance Association (APCIA) and Brad Smith, Chief International Officer, American Council of Life Insurers (ACLI), to speak about market access and level playing field issues. Mr. Simchak is the chair of the Global Federation of Insurance Association's Cyber Risks Working Group and serves as an industry advisor to USTR, the U.S. Commerce Department, and the U.S. State Department. Mr. Smith focuses on the development of international insurance, pension and asset management regulatory standards, and engagement with national insurance and pension regulators to represent the interests of U.S. companies operating in over 130 insurance jurisdictions.

Mr. Simchak stated that he wanted to begin by addressing any concerns that that insurance trade agreements are about deregulation or weakening prudential outcomes. He said this is not the case, because at the core of insurance international trade law is a commitment from sovereign governments to not discriminate against insurers doing business within their jurisdiction based on nationality (noting this is applicable to domestic insurers as well as regarding insurers from third jurisdictions). Mr. Simchak emphasized that insurance trade agreements are not commitments to deregulate or to regulate in a particular way. Agreements are also subject to the prudential exception, which allows governments to take regulatory measures for prudential reasons even if those measures are otherwise inconsistent with their commitments. In other words, Mr. Simchak explained, even when a government makes international trade commitments on insurance, it is free to continue to regulate to the degree that it wants or in the manner of its choosing: it is only committing to not discriminate in applying those regulations – and even this commitment has a prudential exception.

Mr. Simchak stated that all available research points clearly to the benefits for the United States from U.S. property/casualty insurance trade, and the great potential for the U.S. economy created by other countries eliminate the significant barriers currently faced by U.S. groups when they operate abroad. Mr. Simchak referenced the U.S. International Trade Commission's report [*Property and Casualty Insurance Services: Competitive Conditions in Foreign Markets*](#), which concluded that U.S. P&C insurance exports would increase by 48 percent if all the examined countries were to liberalize cross-border insurance trade, and U.S.-owned affiliates could increase sales by 28 percent. The report concluded that such liberalization would beat U.S. job growth, and those jobs would likely pay above average wages. Mr. Simchak stated that this finding was reinforced in a book by Georgetown University Professor Brad Jensen, [*Global Trade in Services Fear, Facts and Offshoring*](#), which stated that jobs in insurance and other finance industries which are related to international trade pay, on average, more than \$20,000 more per year than insurance sector jobs that are not related to international trade.

Discussing the effects of international insurance trade on consumers and economies in foreign markets, Mr. Simchak concluded that available evidence indicates that the presence of foreign insurers and reinsurers in a host market is a substantial net positive for the host market's economic growth and resilience, consumer choice, and infrastructure development. Mr. Simchak stated that the United States is one of the most open countries in the world for foreign insurance

companies because it is good for the United States to have foreign insurance groups here, just as it is good for foreign markets to benefit from the presence of U.S. insurance groups.

Mr. Simchak provided an example of cross-border reinsurance that he found instructive. The Organisation for Economic and Co-Operative Development's (OECD) most recent report on reinsurance, in October 2020, concluded:

1. Access to global reinsurance markets allows for diversification of risks away from the domestic financial system and reduces the share of losses that must be absorbed domestically.
2. Greater access to international reinsurance markets provides domestic insurers with the capacity needed to meet societal needs in the domestic market by properly managing their growing exposure to catastrophe risks.
3. Trade barriers can negatively impact price competition and innovation.
4. Trade barriers can lead to a concentration of risk in domestic groups and the domestic economy.

Mr. Simchak noted that the Working Group of FOCI's International Subcommittee has held conversations on the effects of other trade barriers over the past several months, but acknowledged there was not time to discuss them during his presentation.

Mr. Simchak addressed concerns about data flows, noting that insurance is a data business at its core. He said that emerging technologies have allowed insurers to use data to expand and customize their products, reach the uninsured and underinsured in ways that were impossible before, improve underwriting and modeling, improve claims processing, and a foster range of other developments. Mr. Simchak said that being able to store data in the location of choice can increase cybersecurity, resilience, and efficiency, but said that while tech advancements are new value for consumers and industry, some governments have prevented the adoption of those advancements through restrictions on data flows and data storage. Mr. Simchak said that data restrictions of this nature can come in various forms, be motivated by various goals, and affect various types of data. He added that these restrictions make it more difficult to fully utilize the data benefits that technological advancements have enabled, so a real problem is created by data localization rules.

Mr. Simchak acknowledged data privacy concerns about data flows, but questioned why this would lead to objection about a particular recommendation in front of the committee. He said that he has never heard an industry argument that privacy protections are outside the legitimate role of government or that there should not be any privacy protections when insurers or other businesses use consumer data. Mr. Simchak continued that the draft recommendation in front of the committee contained a clear recognition of the government's right to protect privacy, and seeks to liberalize and promote the free flow of data, but states "recognizing that such commitments do not restrict a government's right to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent the commitments." Mr. Simchak said this language directly reflects the compromise that was reached in the USMCA, by stating that

nothing restricts the right of a party to adopt or maintain measures to protect personal data, personal privacy, and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent this article. Mr. Simchak said that this compromise protects data flows but also protects privacy.

Mr. Simchak referred to Ms. Kilic's discussion of the USMCA and providing governmental access to data when required. He stated that USMCA addressed these concerns by providing necessary governmental access regardless of where data is stored, and requires that authorities have immediate, direct, complete, and ongoing access to information processed or stored on computing facilities that the covered person uses or locates outside the parties' territory. Mr. Simchak also noted that the prudential exception, which gives governments the right to adopt measures for prudential reasons but are otherwise inconsistent with their commitments, also applies.

Mr. Smith expressed his agreement with the statements made by Mr. Thorburn and Mr. Simchak on access to insurance, financial inclusion, economic empowerment, and trade. Mr. Smith stated that the industry has advocated for the concept of a level playing field, but has raised questions by some consumer advocates who believe this concept undermines consumer protections or legitimate prudential concerns. Mr. Smith affirmed that the industry fully supports the core principles of the IAIS, which state that the only justifiable policy initiatives and responsibilities of insurance regulation should be for consumer protection and financial stability. Mr. Smith said that this is what the subcommittee was seeking in its proposed recommendations.

Mr. Smith stated that, unlike the United States, many countries do not have the same benefit of having a history of rule of law and contract certainty and they face active corruption threats. Mr. Smith noted that the former regulator of the Chinese Insurance Regulatory Commission is serving 16 years in prison, and other regulators have also been caught in scandals. Mr. Smith said that the industry is advocating is for regulators to have the independence to act outside the scope of political intervention. He said the industry seeks to empower regulators to have the authorities and resources to ensure consumer protection and financial stability.

Mr. Smith stated that in the history of trade policy and liberalization, U.S. companies were present in more markets in 1900 than they were in the year 2000. He said that decolonialization resulted in a pushback where many U.S. companies were pushed out of foreign markets and replaced by a local monopoly. He said that there is a characterization that the global industry is a giant competing with small, local players, but he noted that Japan has the largest insurance provider in the world, the Life Insurance Corporation of India is the eighth largest insurance company in the world, and several Chinese companies are ranked among the top 20 largest insurers.

Mr. Smith added that in some jurisdictions, entities are not even considered insurance companies. For example, he said that in Japan, the Japanese agricultural insurance cooperative is regulated by the agriculture law and not by insurance law. In India, the supervision of the Life Insurance Corporation of India (LIC), which has over 80 percent market share, is not subject to independent supervision and is regulated under a separate law from the Insurance Act. India has recently designated that the LIC and General Insurance Corporation of India (GIC) have both been determined to be domestically and systemically significant and announced a political intent

to bring those entities under the same standards of supervision for consumer protection and financial stability. Mr. Smith expressed his support for this move. He said that ACLI supports strong international standards because, without strong regulation, no confidence in the market exists and consumers have no trust in the industry's products.

Mr. Smith referred to comments submitted by Mr. Birnbaum to amend the language in the white paper prepared by the subcommittee, and expressed caution in allowing policies beyond consumer protection and market stability, because of relative terms. Mr. Smith said that countries would consider political oppression or cross-subsidy funding for programs through confiscation of private savings as laudable policies, even though these concepts do not comport with rule of law and contract certainty; the successful structure that has led to a high market penetration in the United States. Mr. Smith said that if the goal is to increase financial inclusion, market penetration should be increased, rather than making products that are somehow less well-regulated for the poor.

Mr. Birnbaum asked Mr. Smith to clarify which remarks he was referring to in his final statement. Mr. Smith referred to a [written statement](#) previously circulated to the committee, which contained alternative formulations of the proposed Subcommittee recommendation. He quoted the second, which states “FIO should advocate for Treasury, the NAIC and the Federal Reserve to advance policies and standards at the IAIS and FSB that, while recognizing the importance of proportionality in supervision, do not create or encourage supervisory practices that favor some market players over others, absent objective and verifiable public policy standards.” Mr. Smith stated that the term “objective and verifiable public policy standards” is subjective, and questioned what type of public policy standard would justify disparate treatment. Mr. Smith noted that the government of Indonesia had to recapitalize several state-owned life insurers because they were not regulated for solvency standards and failed to pay policyholders, resulting in a delay of years. He added that India faces a similar situation for several non-licensed state-owned enterprises. Mr. Smith said that he worried ambiguity in this clause could provide an opportunity to use varying political motivations that undermine consumer protection and financial stability as the chief priority.

Mr. Birnbaum responded in disagreement, stating that virtually every jurisdiction has public policy governing its regulatory philosophy and regulatory procedures, and the inclusion of language in the proposed formulation requiring “objective and verifiable standards” to justify such treatment addressed Mr. Smith's concern. Mr. Birnbaum said that Mr. Smith's examples referred to lawless actions, which fall outside the bounds of his proposed formulation. Mr. Smith replied that the intent is to make sure regulators can act independently outside political pressure for state-owned entities that might otherwise receive lighter treatment.

Mr. Falzon summarized six recommendations that the International Subcommittee developed for the FACI's consideration:

[Recommendation #1]: FIO should advocate for Treasury and other federal departments and agencies with relevant jurisdiction and expertise—including the Office of the U.S. Trade Representative—to ensure the issues the Subcommittee has identified are considered and resolution sought when engaging in trade negotiations and bilateral consultations with foreign jurisdictions.

[Recommendation #2]: Analysis of which jurisdictions are engaging in the market access and level playing field issues [FACI's International] Subcommittee has identified should be expanded upon and maintained by the U.S. Government. FIO should advocate for the Office of the U.S. Trade Representative to request that the U.S. International Trade Commission undertake this work.

[Recommendation #3]: FIO should advocate for Treasury and the Office of the U.S. Trade Representative to pursue actions to ensure financial services are not exempt from commitments in trade agreements that promote the free flow of data and prevent unwarranted data localization, recognizing that such commitments do not restrict a government's right to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts, provided that such measures are not used to circumvent the commitments.

[Recommendation #4]: Within the framework of international agreements, FIO should advocate for Treasury and the Office of the U.S. Trade Representative to encourage relevant agencies and organizations to strengthen monitoring of international trade agreement implementation and enforcement of violations, including establishment of annual meetings of signatories to review implementation status and adherence to commitments and new approaches for early identification of issues and resolution of disputes.

[Recommendation #5]: FIO should advocate for policies and standards at the International Association of Insurance Supervisors (IAIS) that prevent disparate supervision of market players operating in a jurisdiction.

[Recommendation #6]: FIO should advocate for Treasury to pursue policies and standards at the Financial Stability Board (FSB) that prevent disparate supervision of market players operating in a jurisdiction.

Mr. Falzon described the first four recommendations as focusing on the role that FIO can play in expanding awareness of eight issues identified in the [white paper](#) prepared by the Subcommittee, and getting other federal departments and agencies with the appropriate and relative jurisdiction and expertise to engage in helping to address issues where they may exist. He said that the last two recommendations involve pursuing global standards that promote fair and equal competition through FIO's seat at the IAIS and through Treasury's seat at the FSB.

Mr. Falzon stated that he believed the Subcommittee had achieved consensus on all the proposed recommendations except the third recommendation, which he suggested may need additional discussion. Mr. Falzon also noted that there were two topics where the Subcommittee did not achieve complete unanimity. First was on the role of proportionality in the way that laws are developed and/or regulation and supervision are applied; Mr. Falzon said was discussed in the comment letter submitted by Mr. Birnbaum. Mr. Falzon described Mr. Birnbaum's view as being that there should be an ability to develop laws and/or apply regulations and supervision in a proportional manner to give nascent domestic players a boost that could help offset the resource advantages that larger foreign carriers might have in entering those markets. Mr. Falzon described the counter and prevailing view of the Subcommittee as stating that the role of

proportionality involves the intensity of how regulations and supervision are applied based on the level of risk presented, regardless of whether a firm is a foreign firm or a domestic firm, or regardless of the level of sophistication of a market, which could, by way of example, inform the ability or relevance of trying to meet all aspects of some global standards (i.e., ICS). Mr. Falzon said that the Subcommittee's view is that proportionality relates to the readiness of an individual company or market to adopt a particular provision, not with disproportionate adoption for equally-sized and equally-competent, sophisticated companies within a particular market, based on solely on whether the company is foreign or domestic.

Mr. Falzon said that second point of disagreement related to data localization. Accordingly, Mr. Falzon proposed that FACI vote on adopting recommendations 1, 2, 4, 5, and 6. Time permitting, FACI could then discuss recommendation 3 and determine whether to take a vote.

Chairman Glaser provided two options for proceeding. First, the FACI could discuss the five proposed recommendations and decide on any language change before a motion was made. Alternatively, Chairman Glaser said that if Mr. Falzon felt there was sufficient unanimity on the recommendations, a motion could be made right away followed by an amendment if necessary. Mr. Falzon responded that he believed there was sufficient unanimity and that the existing dissent was well-articulated in Mr. Birnbaum's comment, so no additional discussion was necessary prior to making a motion to adopt the recommendations.

Mr. Birnbaum commented that he was supportive of recommendations 1, 2 and 4, and his comments outlined his request for additional work on recommendation 3 and data localization. He noted that recommendations 5 and 6 contain identical language but are directed at two different entities (IAIS and FSB). He said for these he would want to consider a proposed amendment for including the concept of proportionality and supervision. Accordingly, he said if the five recommendations were voted on, he would need to vote no despite supporting three of the five recommendations.

Chairman Glaser commented that if the five recommendations were brought as a package and did not pass, each individual recommendation could be subsequently voted on separately.

Mr. Heller commented that he had concerns about recommendations 5 and 6 because he believed there should be some respect for local policies. He added that he believed it would better serve the process for FIO to know where there is real unanimity and where there is not, so he would prefer that recommendations 1, 2, and 4 be voted on separately from recommendations 5 and 6. He indicated that he did not necessarily want to vote against 1, 2, and 4, but he did not support 5 and 6 as written.

Mr. Falzon responded that in the interest of time, and because the dissenting views had been well articulated, he proposed packaging all 5 recommendations as a vote, and upon failure, the recommendations could be divided into two packages. He added that he believed FIO would understand areas where there was some dissent by virtue of Mr. Birnbaum's submission, and unless there was additional information not captured in the statement, he would like to move forward with a single package to preserve time for discussion of recommendation 3.

Mr. Kelleher made a motion for FACI to present the proposed recommendations 1, 2, 4, 5, and 6 (as a package) to FIO.

Mr. Birnbaum made a motion to amend and substitute recommendations 5 and 6 with the following language (as proposed in his written objection):

FIO should advocate for Treasury, the NAIC and the Federal Reserve to advance policies and standards at the IAIS and FSB that, while recognizing the importance of proportionality in supervision, do not create or encourage disparate supervision of similar market participants within a jurisdiction.

Mr. Birnbaum explained that the concept of proportionality runs throughout both the NAIC and IAIS core principles and guidelines. He said that he disagreed that this was only proportionality in terms of the intensity of regulation. He said it was proportionality in terms of what standards are applied and in what manner. For example, Mr. Birnbaum said, a cybersecurity model passed by the NAIC specifically talked about proportionality in terms of what the regulators should expect in terms of a cybersecurity program based on the particular characteristics of the insurer. Mr. Birnbaum added that the IAIS also talked about proportionality and supervision, and in one area is phrased as identifying market access issues by specifically using the phrase "do not create or encourage disparate supervision of similar market participants within a jurisdiction."

Chairman Glaser received confirmation from Ms. Baldwin that procedurally, a vote would take place on whether to amend the original series of recommendation. If the vote carried, a vote would take place on the amendment version. If the vote did not carry, a vote would take place on the original version proposed.

No additional points of discussion were raised on Mr. Birnbaum's amendment.

Chairman Glaser conducted a voice vote to amend the motion to read as follows [note: bolded/underlined text indicates amended language]:

[Recommendation]: FIO should advocate for Treasury and other federal departments and agencies with relevant jurisdiction and expertise—including the Office of the U.S. Trade Representative—to ensure the issues the Subcommittee has identified are considered and resolution sought when engaging in trade negotiations and bilateral consultations with foreign jurisdictions.

[Recommendation]: Analysis of which jurisdictions are engaging in the market access and level playing field issues [FACI's International] Subcommittee has identified should be expanded upon and maintained by the U.S. Government. FIO should advocate for the Office of the U.S. Trade Representative to request that the U.S. International Trade Commission undertake this work.

[Recommendation]: Within the framework of international agreements, FIO should advocate for Treasury and the Office of the U.S. Trade Representative to encourage relevant agencies and organizations to strengthen monitoring of international trade agreement implementation and enforcement of violations, including establishment of annual meetings of signatories to review implementation status and adherence to

commitments and new approaches for early identification of issues and resolution of disputes.

~~*[Recommendation]: FIO should advocate for policies and standards at the International Association of Insurance Supervisors (IAIS) that prevent disparate supervision of market players operating in a jurisdiction.*~~

~~*[Recommendation]: FIO should advocate for Treasury to pursue policies and standards at the Financial Stability Board (FSB) that prevent disparate supervision of market players operating in a jurisdiction.*~~

[Recommendation]: FIO should advocate for Treasury, the NAIC and the Federal Reserve to advance policies and standards at the IAIS and FSB that, while recognizing the importance of proportionality in supervision, do not create or encourage disparate supervision of similar market participants within a jurisdiction.

Motion to amend failed by voice vote.

No additional points of discussion were raised on the motion for FACI to present the package of recommendations to FIO.

Chairman Glaser conducted a voice vote on the motion for FACI to make the following recommendations to FIO:

[Recommendation]: FIO should advocate for Treasury and other federal departments and agencies with relevant jurisdiction and expertise—including the Office of the U.S. Trade Representative—to ensure the issues the Subcommittee has identified are considered and resolution sought when engaging in trade negotiations and bilateral consultations with foreign jurisdictions.

[Recommendation]: Analysis of which jurisdictions are engaging in the market access and level playing field issues [FACI's International] Subcommittee has identified should be expanded upon and maintained by the U.S. Government. FIO should advocate for the Office of the U.S. Trade Representative to request that the U.S. International Trade Commission undertake this work.

[Recommendation]: Within the framework of international agreements, FIO should advocate for Treasury and the Office of the U.S. Trade Representative to encourage relevant agencies and organizations to strengthen monitoring of international trade agreement implementation and enforcement of violations, including establishment of annual meetings of signatories to review implementation status and adherence to commitments and new approaches for early identification of issues and resolution of disputes.

[Recommendation]: FIO should advocate for policies and standards at the International Association of Insurance Supervisors (IAIS) that prevent disparate supervision of market players operating in a jurisdiction.

[Recommendation]: FIO should advocate for Treasury to pursue policies and standards at the Financial Stability Board (FSB) that prevent disparate supervision of market players operating in a jurisdiction.

The results of the voice vote on the motion were unclear.

Ms. Baldwin conducted a roll call vote:

In Favor: Andersen, Branch, Crabb, Dwyer, Falzon, Glaser, Keiser, Kelleher, McGovern, Schmidt, Ward

Opposed: Birnbaum, Heller, Kochenburger (by proxy, Heller)

Abstentions: Fato

Absent at time of vote: Bach, Stolfi, Thresher, Wheeler

Motion carried (11-3-1); recommendation passed.

Mr. Falzon stated that the topic of data localization could be deferred to the next meeting to ensure sufficient time for discussion.

Updates from the Subcommittee on the Availability of Insurance Products and the Subcommittee on Addressing the Protection Gap Through Public-Private Partnerships

In the interest of time, Chairman Glaser deferred updates from the Subcommittee on the Availability of Insurance Products and the Subcommittee on Addressing the Protection Gap Through Public-Private Partnerships until the February 2021 FACI meeting.

New Business

Mr. Falzon noted that several international regulatory developments had occurred since the previous meeting and noted that many were covered by Director Seitz in his opening remarks. Mr. Falzon indicated that he would distribute notes on these updates to the members. Mr. Falzon also indicated that the International Subcommittee would distribute a memo to the members on FIO's Request for Information for Feedback on a Proposed Study of the ICS.

Mr. Birnbaum commented that Director Seitz referenced reaching out to the Protection Gap Subcommittee about Senator Feinstein's letter and the International Subcommittee to comment on FIO's Request for Information. He asked Director Seitz whether FIO is seeking feedback on any additional issues. Chairman Glaser responded that FIO will be following up with the subcommittees on issues they'd like feedback on soon.

Chairman Glaser reported that any member wishing to add or change their subcommittee membership should notify FIO's Designated Federal Officer (Ms. Baldwin).

Chairman Glaser announced that FACI set four meeting dates for 2021: February 18, June 2, September 9, and December 2. He added that these dates would be posted on the FACI website.

At 3:32 pm, Chairman Glaser concluded the meeting.

I hereby certify these minutes of the December 3, 2020 Federal Advisory Committee on Insurance public meeting are true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Dan Glaser', is written over a horizontal line.

Dan Glaser
Chair