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INSURANCE REGULATION POLICY ISSUE— FEDERAL vs. STATE

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Impact of federal vs. state regulation on the insurance industry - what areas are most appropriate for each? What areas are most likely for each? How can one affect these determinations?

1. Current regulatory environment
    a. Federal level - SEC, IRS, FTC
    b. State level - rate regulation, cost disclosure, policy form readability
2. Future regulatory environment
    a. Adaptability of traditional laws to new products
    b. National health insurance
3. How to affect the future regulatory environment
    a. Legislative processes
    b. Industry groups
    c. Professional activities

MR. HARRIS N. BAK: Joe Frankel will lead off the discussions by commenting on the current regulatory environment at the federal level.

MR. JAMES P. CORCORAN (Presented by MR. J. JOSEPH FRANKEL***): There has been unprecedented federal interest in the insurance business during the last few years. No fewer than eighteen federal agencies and authorities currently possess significant jurisdiction over various insurance related activities. Although many of the federal agencies are charged with some regulatory responsibilities, there is no single, comprehensive federal regulatory structure for the insurance industry, because of the decision of Congress to delegate regulation to the states. However, there are significant forces seeking to establish

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federal control of the insurance business. In general, the industry opposes this trend toward greater federal regulation.

Historically, our efforts to be cooperative with federal agencies in order to meet perceived needs has resulted in frustration. The Federal Trade Commission (FTC) provided a prime example. Relying upon its mandate as a consumer protection bureau, the FTC has clearly set as its objective, in the opinion of informed industry officials and government observers, jurisdiction over the entire insurance business.

In July of 1979, the FTC released its by now notorious report on life insurance cost disclosure. FTC Chairman Pertschuk, testifying before the Senate Committee on Commerce, Science and Transportation with respect to the report and the 2-1/2 year study which preceded it, asserted that consumers are losing billions of dollars yearly through inappropriate life insurance choices. The staff report alleges that life insurance is not just insurance, but is also a type of savings vehicle on which the average rate of return on the savings component is below the return available from other savings media. The National Association of Insurance Commissioners (NAIC) Model Cost Solicitation Regulation was criticized as possessing numerous shortcomings, principally the time at which it required disclosure, the six comparison indices used, and the alleged abuse of a rate-of-return measure.

On October 17, 1979, the American Council of Life Insurance (ACLI) appeared before the Senate Commerce Committee to present the industry's views of the FTC staff report. Industry witnesses stressed that any rate of return calculation is inappropriate and misleading. The industry strongly emphasized its support of cost disclosure and, specifically, the NAIC Model Regulation which had been adopted by some 33 states and is already being used in at least 80% of today's sales.

The fundamental issue involved in the Senate Commerce Committee hearings was whether the FTC had authority under Section 6 of the FTC Act to investigate the insurance industry and the existence of potential consumer problems, in view of the fact that the McCarran-Ferguson Act denies it the right to regulate the insurance business. Chairman Cannon asserted that FTC investigations of the insurance industry were beyond the FTC's authority, because they were in patent violation of the McCarran Act. Senator Cannon expressed concern that these self-initiated Commission investigations were not being undertaken with a view toward rule-making or law enforcement proceedings, and that the insurance industry, the subject of the investigation, would never have an adequate opportunity to challenge the substance of the Commission's conclusions or its jurisdiction to undertake the investigations.

In May, compromise legislation extending the life of the agency for three years was enacted, severely curtailing the FTC's ability to turn its attention to the business of insurance. President Carter signed the bill on May 28, 1980. The legislation provides that the FTC is authorized to conduct studies of the insurance industry only when requested by a majority of the members of the House or Senate Commerce

Committees and that the authority to conduct such studies would expire at the end of the session of Congress in which it was given.

An expansion of the FTC's power may accompany any modification or repeal of the antitrust immunity granted the business of insurance under the McCarran-Ferguson Act. The McCarran-Ferguson Act of 1945 provides in substance that it is in the public interest for the states to continue to regulate and tax the business of insurance, and stipulates that no act of Congress, other than one specifically relating to the insurance business, will be construed to invalidate, impair, or supersede such state regulatory and tax laws. However, as federal law and regulation have increasingly impacted the insurance industry in recent years, a number of proposals and recommendations to modify McCarran have been advanced at the Federal level. Among these have been: proposals from Senator Metzenbaum and Congressman LaFalce providing for the modification or outright repeal of McCarran; former Senator Brooke's bill, introduced in a previous session, for a dual charter system for insurance companies; and recommendations for the repeal of the McCarran antitrust immunity made in 1977 Justice Department Task Force report and in the January, 1979 report of the National Commission for the Review of Antitrust Laws and Procedures appointed by President Carter in 1979.

Under a dual charter system insurance companies meeting certain defined eligibility requirements would have the option of seeking a federal charter, thereby losing some of the protection afforded by the McCarran-Ferguson Act, or retaining full McCarran-Ferguson protection by maintaining a state charter. This proposal was suggested by the Justice Department and incorporated into a bill introduced by Senator Brooke. The Brooke bill, "The Federal Insurance Act", was first introduced in October of 1976 when there was concern that one or more large property/casualty companies might become insolvent, and the adequacy of state insurance guaranty funds to deal with a major company insolvency was open to question.

The dual charter system proposed by Senator Brooke is similar to the recommendations of the Report of the Justice Department Task Force group on Anti-Trust Immunities: (i) insurance companies meeting specified requirements could be federally chartered; (ii) federally chartered insurance companies would be exempt from state minimum reserve requirements, state insolvency guaranty plans, state restrictions on insurance investments and state regulation of premium rates and classifications; (iii) a state could continue to tax insurance companies doing business within the state; (iv) a federal guaranty fund would be created, and federally chartered insurance companies would have to participate in a federal guaranty plan; (v) federal solvency and investment standards would apply; (vi) a system for determining financial difficulties would be created, and the merger, consolidation, rehabilitation, reorganization or dissolution of a federally guaranteed insurer would be regulated; and (vii) discrimination in the selection and classification of risks based on race, age, or sex would be prohibited.

Unlike the Justice Department proposal, the Brooke bill would not have

made federal antitrust laws fully applicable to the operations of federally chartered insurers. It provided instead that the federal antitrust laws would be applicable to federally chartered insurers only with respect to those activities that are exempt from state regulation. The major impact of the Brooke bill from an antitrust point of view was likely to be that the ratemaking activities of federally chartered companies would be subject to the federal antitrust laws.

It was his realization of the very real political forces behind preservation of state regulation which prompted Senator Brooke to make the bill optional, and to compare his proposed dual regulation system to the system of Federal-State regulation of banks. Associations representing the major segments of the insurance business were almost unanimous in their opposition to the proposal in its present form. Furthermore, representatives of the Department of Justice, the Securities and Exchange Commission (SEC) and the Federal Insurance Administrator all declined to endorse the bill.

In March of 1980, the long anticipated legislation designed to limit the anti-trust immunity of insurance companies was introduced by Senator Metzenbaum. The bill, which Senator Metzenbaum may reintroduce this year, would limit the antitrust immunity granted the industry by the McCarran Act through a series of deletions and additions to the Act. The thrust of the proposed legislation is not to impose federal regulation on the insurance business, but rather to put the onus on state regulation to meet "basic standards of fairness and competitive rating." Section 3 of the bill would amend the McCarran Act by making the federal antitrust statutes fully applicable to insurance.

If the McCarran-Ferguson Act were repealed, a number of practices in the insurance industry which are currently protected under the McCarran-Ferguson Act exemption would be exposed to antitrust attack. The state action exemption may immunize some. In the absence of that immunity, many joint practices would be subject to particular scrutiny. These include: (1) ratemaking for property and liability insurance; (2) pooling of statistical data; (3) use of standard policy forms and standardized reinsurance; (4) joint underwriting and joint reinsurance; (5) residual market mechanisms; and (6) tying of various lines of insurance.

In recent years, we have seen a judicial narrowing of the scope of the McCarran-Ferguson exemption. The McCarran-Ferguson Act grants to the "business of insurance" an exemption from federal antitrust law, to the extent that the industry is regulated by state law. In the recent case of Group Life & Health Insurance Co. vs. Royal Drug Co., the Supreme Court considered the definition of "business of insurance" under the Act, and concluded that, at least in the context of an antitrust case, the term is restricted to those specific activites that spread risk among policyholders, a narrower definition than many practitioners had assumed. In Royal Drug, the Supreme Court held that Blue Shield's agreements with pharmacies to provide prescription drugs to groups of insureds at prices not exceeding a fixed amount did not constitute the "business of insurance" and were therefore not immune under the

McCarran-Ferguson Act exemption from price fixing and boycott charges.

The Social Security Amendments of 1980 added a new section regulating Medicare supplemental health insurance. The federal law is significant not only for its substance, but also for the way in which it structures the sale of insurance policies. The legislation uses a minimum-standards approach, incorporates standards adopted by the NAIC, and establishes a panel having federal powers. The Baucus amendment, as originally introduced, provided the Secretary of Health and Human Services (HHS) with authority to establish a procedure whereby Medicare supplemental policies would have been certified by the Secretary as meeting minimum standards with respect to adequacy of coverage, reasonableness of premium charge, and disclosure of information to the insured.

In opposing the amendment, the Health Insurance Association of America (HIAA) and ACLI stressed that voluntary certification for these policies is unnecessary, noting that the alleged abuses that were uncovered by the two Aging Committees of the Senate and House had already received attention by HHS, FTC, NAIC, consumer groups, and the insurance industry. In December 1978, the NAIC adopted amendments to the NAIC Model Individual Accident and Sickness Insurance Minimum Standards Act to deal specifically with insurance sold to the elderly. No legislative hearings were held in the Senate on the Baucus amendment to H.R. 3236. Nevertheless, the bill, including the amendment, passed the Senate on January 31, 1980. In May, the House-Senate conferees reached agreement on H.R. 3236 and approved the Baucus amendment which was signed into law by the President on June 9. Federal standards under the bill would be those recommended by the NAIC, plus the minimum loss ratio requirements of 75% in the case of group policies and 60% for individual policies. The conferees agreed to delay the effective date of the amendment from January 1, 1982 to July 1, 1982. Federal certification of Medigap policies meeting minimum Federal standards would be authorized in states that had not yet acted by that date. As approved by the conferees, the amendment provides that states that have already imposed the NAIC standards would be exempt from the program. Other states would be given until 1982 to write conforming regulations.

MR. ROBERT A. SEILER: Since your entire program concentrates on public issues involving the actuary, and there is little which goes on in a company today which does not seem to involve the actuary, I feel comfortable in supplementing Jim Corcoran's comments by looking at the subject in the broader context of federal regulation which affects the insurance corporation rather than in the narrower McCarran Act context of that which affects the "business of insurance."

If the pundits are correct and we begin to see a rash of acquisitions and mergers in the 80's, then the question is presented as to which law, state or federal, or both, will apply to the merger or acquisition. The National Securities case stands for the proposition that dealings with the securities of an insurer are not shielded by the McCarran Act. Presumably then, both state and federal law might be applicable, but there is considerable question today if that is the case.

Time will not permit me to do anything more than sketch the outlines of this emerging conflict between state and federal regulation. The SEC laws contain provisions which are popularly known as the Williams Act. The provisions set up certain disclosure and filing requirements immediately upon any attempt to acquire control of another corporation, by tender offer or otherwise. The SEC laws are disclosure laws, which do not attempt to regulate the terms or conditions of the transaction. Contrast that with the NAIC Model Insurance Holding Company Regulatory Act, which about 47 states have in one form or another. That Act requires filings with the commissioner of the states of domicile of affected insurers before an attempt to acquire is undertaken. That Act seeks to protect both policyholders and shareholder interests, going so far as to judge the fairness of the offer. You can see the conflict: the Holding Company Law requires you to go to the Commissioner before you communicate an offer. The Williams Act arguably stands for the proposition that going to the Commissioner is the very act that triggers the public disclosure requirements of that Act. If you are the acquiree, that doesn't seem to be too much of a problem. But, if you are the acquiror, the approval process contemplated by the Holding Company Law gives entrenched management and controlling shareholders the very thing the law was drafted to provide: time, and the opportunity to protect themselves. As the acquiror, you will be taking the position that the Insurance Holding Company Law should wait until the Williams Act provisions are complete; or better yet, not apply at all.

This latter solution, i.e. not apply at all, is supported by a case in the 5th Circuit, known as Great Western United v. Kidwell. The decision held that a state "anti-takeover statute," comparable to the Insurance Holding Company Law, was pre-empted by the SEC laws and was unconstitutional as a burden on interstate commerce. The matter was brought closer to home in a recent Indiana case involving the Standard Life. An acquiror sought to avoid the Indiana Holding Company Law by resorting to the federal district court, invoking the Great Western case. The SEC intervened, urging the court to find that the SEC law pre-empted the state laws, and argued that the state law could be applied, as to the regulatory portion, after the Williams Act provisions were satisfied.

This case has given rise to some activity within the NAIC and among our trade associations. The question: How to minimize federal regulation? Some suggest amending the holding company laws to only protect policyholders and corporate solvency, thereby hopefully invoking the McCarran Act shield. Others, wishing to maintain the current protection afforded shareholders and entrenched management suggest that the SEC relegate this activity to the states, much as it did with the proxy material. My guess today is that we may see the Holding Company Model changed: for shareholders, the opportunity to protect themselves seems unchanged, although they will lose time. They just won't have a "friendly" regulator to help them.

An issue which is very much alive in the context of federal vs. state regulation is ERISA. As you will recall, ERISA contains a provision

pre-empting state insurance laws as to uninsured employee health plans and legal expense plans. To the best of my knowledge it is the first law to change the policy enunciated by the McCarran Act, i.e., to leave regulation of insurance to the states.

Let's review some of the current problems under ERISA.

(1) State mandated insured benefit plan legislation is adversely affecting our ability to compete with non-insured or self-insured plans. The solution is to extend the pre-emption to include state mandated insured benefit plans. That is the current plank of the ACLI and HIAA.

(2) If greater problems are presented insured group plans by state law, we might expect to see an even broader pre-emption requested by industry.

(3) A whole new set of problems could arise if current efforts of some large life and health insurers to legitimatize group auto and homeowners coverages comes about. Will they be considered fringe benefits and thereby be included in ERISA by amendment? If so, then what would be the effect upon the pre-emption provision? Would it be enlarged as a means of avoiding burdensome state rating laws? Each of these moves chips away at the philosophy of McCarran.

(4) Uninsured welfare benefit plans are essentially unregulated as to benefits, market conduct, prices and solvency. Will that continue or will we see some future efforts at federal regulation of such plans? If so, what will be the effect upon insured plans? Would that exacerbate our current problems and give rise to moves for federal regulation of insured plans, or at least the removal of state regulation?

Not all insurers are firm advocates of state regulation in today's regulatory environment - that is a central fact which must be recognized. The right issue, or combination of issues, produces a willingness to accept some form of federal regulation. In fact the right issue can produce affirmative action by the industry itself to seek federal minimum standards.

MR. BAK: Tom Kelly will now tell us about the current state of state regulation.

MR. THOMAS J. KELLY: State regulation may be summarized in terms of equity, market conduct, and solvency regulation. The supervision is exercised through licenses, such as insurers' and agents'. Equity and market conduct regulation are interrelated in their objective of fair treatment of consumers. Solvency regulation is needed to assure that promised benefits will be provided when they are due. My approach will be to provide an overview of regulation in New York State, supplemented with a cross reference to other states.

Rate regulation is an important form of regulation for equity. Direct

rate regulation includes the requirement that accident and health premium rates are reasonable in relation to the benefits provided. This currently permits recognition of differentials by age and sex, when supported by credible statistics, differentials by renewability clause, differentials in hospital and medical premium rates by area, etc. Similarly, for credit life and credit accident & health, direct rate regulation requires that premium rates be reasonable in relation to benefits provided. Here, differentials are permitted between life and accident & health insurance and between short term and long term loans. Maximum premium rates are usually prescribed, with permissible deviation procedures for varying the premium rates. Other examples of direct premium rate regulation include the filing of group accident and health rates and the promulgation of minimum first year group life insurance rates.

Sometimes premium rates are indirectly regulated, such as in individual life insurance, where minimum reserve requirements require additional reserves if premium rates are reduced below the valuation level. In addition, Section 213 of the New York Insurance Law specifies expense limitations, particularly for life insurance policies, and subsection 10 of that statute requires that premium rates for life insurance be self supporting. In individual deferred annuities, where emphasis in early years is placed on investment return, the requirement of minimum cash values and other non-forfeiture values may impose limits on the relationship of premiums to benefits. Other regulations are also intended to improve equity. These include the prohibition against unfair discrimination among policyowners of the same class, and the requirement of equitable distribution of dividends among policyowners of mutual companies. In defining classes, there is sometimes competition between refined subdivisions based on statistical analyses and broader definitions based on social considerations.

Market conduct regulation includes objectives of treating potential customers equitably and seeing that policyowners are treated fairly with respect to the payment of benefits. The regulations cover such areas as advertising, replacement, cost disclosure, etc, in life insurance, and mandated benefits in health insurance. Although compliance with these regulations has generally been reviewed in the examination of life insurance companies, it has been emphasized more in recent years.

The regulation for solvency generally involves the development and maintenance of adequate standards for policy reserves. There are also statutory limitations in the types of assets in which life insurance companies may invest. Compliance is supervised through periodic examination, particularly of domestic life insurance companies. In recent years, additional responsibilities concerning adequacy have been invested in the actuary who certifies to the company's annual statement. The NAIC also provides for early warning tests which are based on data reported in the annual statement. These tests are reviewed frequently to determine if further modifications are needed to make them more meaningful.

MR. SEILER: When we look at the current regulatory environment at the

state level, we see a number of regulatory efforts which are a direct response to threatened federal regulation. A number of states are currently considering the NAIC Model Insurance Information Practices and Privacy Act. Illinois and California statutes become effective on July 1st. Virginia's law becomes effective January 1, 1982. These laws are a direct response to the recommendations of the Federal Privacy Protection Study Commission. It set up a series of recommendations revolving around three policy objectives:

(1) Minimize the intrusiveness of insurance information practices by restricting such practices in specified situations.

(2) Enhance fairness by opening up insurer records to review and correction by the consumer.

(3) Create an expectation of confidentiality which could be enforced in the courts.

The recommendations provided for mixed enforcement by the state insurance departments, the FTC and the courts.

Industry and the NAIC immediately reacted by beginning the arduous task of developing an NAIC Model bill which revolved around the basic principles enunciated by the Privacy Commission. That activity proved fortuitous because it helped to defer federal action on Administration privacy bills. The bills died during the last session of Congress, although I am told at least one life insurer is busy trying to revive the federal bills on the theory that we need uniformity and the bills do not really regulate the business of insurance, even though they impact on our underwriting, marketing and claim practices. I must state that I disagree 1000 percent with that analysis of the federal bills. The industry was concerned enough by the threat to state regulation contained in the Privacy Commission recommendations that all the national trade associations - life/health, property/casualty, and even the agents - endorsed the NAIC Model. Some few insurers favored the federal bills.

Finally, let me bring you back to the subject of mergers to mention the new NAIC Model Acquisition and Merger Law. This Model Act had its genesis in two activites: first the efforts of the NAIC to show the federal government that it was monitoring competition; and, second, a reaction to the FTC's efforts to force American General to divest itself of its acquisition of Maryland Fidelity and Deposit, which it recently did voluntarily.

Since the only laws which seek to regulate the antitrust aspects of a merger or acquisition are the holding company laws, the NAIC felt compelled to act in order to be able to effectively assert the McCarran Act shield. The holding company laws only considered the antitrust impact in the states of domicile of the affected insurers. Therefore, the merger or acquisition was not "regulated by state law" for purposes of the McCarran Act.

After considerable controversy and opposition from industry, the NAIC

Model Holding Company Act was amended so as to incorporate a new Model Acquisition and Merger Law. That new model incorporates provisions comparable to the Federal merger pre-notification rules and the impact on competition standards (market shares) used by the Justice Department in looking at mergers and acquisitions.

On the surface, the new Model would appear to allow each state in which an insurer is licensed to act upon the antitrust effects of the merger or acquisition within that state. As a practical matter, however, the Model Act excludes so many acquisitions by market shares, when measured state by state, that, in theory at least, the filing requirements should not be burdensome. Domiciliary insurance departments can prevent the entire acquisition or merger. Foreign states can only refuse to allow the insurer the right to underwrite risks in the affected lines within that state. To date, no state has adopted this new Model Act. If industry's general reaction to it is any indication, we may not see this Model enacted in many states. It is extremely questionable whether many states have the technical expertise to administer antitrust standards if they get beyond pure numerical market share standards.

MR. JOHN H. COOK: Bob, in reference to your remark concerning federal regulation of privacy protection, are you opposed because you think it is inadvisable, or is it because you feel it is contrary to the principles of the McCarran Act?

MR. SEILER: Both. I am concerned about any reduction in the scope of the McCarran Act through enactment of a law which supersedes the Act's policy of leaving regulation at the state level. As more federal regulation of insurance is enacted, eroding the states' sphere of control, stronger arguments can be made for completely removing insurance regulation from the states to the federal level.

Another aspect of the privacy laws which concerns me is an area for which the Privacy Commission made no specific recommendations, but is a natural extension of the privacy laws. Recommendation number one of the Commission stated that the states and the federal government should be considering the propriety of insurance decision making in the underwriting and claims area. We may see this at the state level, and I feel we should fight against it.

MR. BAK: Tom, many companies writing individual health insurance have been complaining about the need for 30 or 40 different policy forms for the 50 states. This results in delays, considerable expense, etc. Do you feel the states will strive for uniformity, or will this eventually be handled at the federal level?

MR. KELLY: I have discerned a general intent to develop more consistency among the states, especially in the actuarial and technical areas. Since I am not very involved with policy forms, I have not seen any activity with respect to uniformity in that area. Hopefully, in the case of state mandated benefits and standard policy provisions, more consistency can be achieved in the future.

Based on product innovations during the past several years, it appears that it will become increasingly difficult to adapt traditional laws to new products. This need has been recognized to some extent by the NAIC in its recent adoption of a new broader definition of group life insurance and of the dynamic interest and mortality bases for minimum life insurance and annuity reserves.

It appears that there will probably be a further blurring of lines between different types of policies, including:

Term Insurance vs. Permanent Insurance
Life Insurance vs. Annuities
Individual Insurance vs. Group Insurance
Participating Insurance vs. Non Participating Insurance
Casualty Insurance vs. Life Insurance

Some current examples of this type of innovation are indeterminate premium life insurance policies and Universal Life insurance policies.

With the increased flexibility in regulations needed to accommodate these changes, it appears that increased responsibilities will be placed on the actuary. The recent recommendations of the Society and Academy Committees concerned with dividends point in this direction. Another example of such increased responsibility in the future may be in the actuary's certification to the matching of assets and liabilities, so that any special benefit requirements or asset peculiarities are recognized in the company's liabilities and surplus. Such certifications may also be needed to prevent financial crises to the company due to cash flow problems.

Although each state retains its independence, the effectiveness of state regulation of insurance is due significantly to the operation of the NAIC. Professionals in the regulatory and private sectors combine their efforts in developing and updating model laws and regulations. When these models are adopted by the NAIC, they are available to each state to adopt without change, adopt with modification, or, sometimes, to reject. Thus, to the extent that the public feels that state regulation of insurance should be continued, support should be continued for the NAIC or some similar organization.

MR. BAK: Next we will hear how we can affect the future regulatory environment.

MR. SEILER: Before you can answer that question you have to make a decision as to what effect you want to produce. Do you want to preserve state regulation completely, partly or not at all?

Advocates of federal regulation often base their decision on the industry's need for uniformity or the need for quick action in the solution of a problem by going to one legislature rather than 50. A bit of reflection on the subject should gain an acknowledgement that there are two kinds of uniformity, "helpful uniformity" and "harmful uniformity". The former is the type which permits us to use common forms and procedures regardless of where we operate. "Harmful

uniformity" is that which prevents us from doing something different than our competitors because all must behave in the same fashion.

As the greatest collection of bureaucrats, the federal government can be expected most often to opt for uniformity. However, it can establish regional administrative offices, as does the IRS, and thereby deprive you of the uniformity. Even under circumstances where no federal regulatory agency is impressed upon the industry, as under the proposed federal privacy bills, you do not obtain uniformity. Enforcement is through the courts, which hardly brings uniformity. Also, if its quick action you're looking for, don't expect federal agencies to act quickly.

There are other factors to be considered:

(1) Will we get a sympathetic regulator like the banks have? We'd probably get the FTC.

(2) Federal legislation is generally broad, leaving far more room for administrative interpretations, unlike the more precise state statutes.

(3) A federal regulator is remote, unlike the state regulator. On that basis, state regulation is better for the consumer and for the medium and smaller companies who cannot afford to maintain a Washington presence.

(4) Federal regulation, regardless of its form, will not entirely supplant state regulation. We could get duplicative and conflicting regulation on that basis.

(5) Would federal regulation bring stricter investment laws and perhaps even mandated investments? The chances for such action are certainly greater at the federal level than at the state level.

(6) As the major supplier of security benefits to the U.S. public, the federal government would be not only a regulator but also a competitor. Is that healthy for our business?

Finally, dispersion of power in and of itself is a laudable goal and should lead to continued support of state regulation. Considering all these factors, I conclude there are more cons than pros for moving towards federal regulation.

Can we make that decision on an issue by issue basis? I say no. The laws regulating the insurance business today are pervasive and intertwined. In my experience, the issues rarely, perhaps never, have been so finely presented or limited as to permit a federal solution which impacts solely within the boundaries of the issue. Therefore we are constantly faced with solutions which impact beyond the problem and which either set up a dual regulatory scheme or, at least establish precedents for the next solution. An accumulation of such precedents is the best argument for the elimination of the existing system of

state regulation.

MR. FRANKEL: I would just like to make one observation about what is happening in the state of New Jersey, where I work. The only bill that was ever passed over Governor Byrne's veto was a bill introduced this year, which states that when a regulator in any department issues a proposed regulation, it has to go back to the legislature for review. Thus, insurance companies which are critical of a proposed bill have an opportunity to air their views before the regulation is finalized. This is a significant development which we may see occurring in other states.