



FOR RELEASE: March 26, 2010

CONTACTS: See Below

Poizner's Foreign Policy Actions Exceed Legal Authority

SACRAMENTO – *Five trade associations representing California's life, health, and property/casualty insurance industry issued the following statement today in response to Insurance Commissioner Steve Poizner's announcement related to insurer investments.*

"In a regulated environment, the regulator must act within the law. Commissioner Poizner has exceeded his legal authority by his well-intentioned but misguided attempts to bar insurance company investments that are not prohibited by state or federal law.

"California's insurance commissioner has broad powers to regulate insurance companies in this state. The conduct of foreign policy is not one of them. Insurers have repeatedly made this point to the Commissioner. Insurers comply with state and federal laws regulating their investments, and the Commissioner acknowledged in his press statements that insurers' investments in companies doing business in Iran are not in violation of the law. The Department has been provided with meticulous documentation of the law that defines the Commissioner's authority to regulate insurer investments.

"To understand the Commissioner's position and to reach a satisfactory resolution of this matter, the trade associations asked in a February 19 letter (attached) for an explanation of these and other important points:

- Where does the Commissioner find the legal authority to regulate the investments of insurers domiciled in states other than California? It is the prerogative of the regulators in those states to regulate insurance companies domiciled in those jurisdictions.
- On what criteria did the Commissioner determine the companies that appear on his list of "bad investments?" There are companies on that list that no longer do business in Iran. CalPERS and presumably other institutional investors, have significant holdings in companies on that list.
- On what basis will the Commissioner determine in the future what companies are "bad?" How will insurers make future investment decisions?

"Insurers have yet to receive satisfactory responses to these fundamental questions. Instead, the Commissioner chooses to regulate without due process. California has a legal process by which regulations are proposed, reviewed and discussed in public hearings before they are adopted and enforced. The Department has taken none of these steps.

“With no legal authority, the Commissioner would establish a perilous precedent by regulating investments in this fashion. Future Insurance Commissioners could take similar action to restrict investments in companies that engage in any number of practices that a Commissioner disagrees with or finds politically offensive. The potential list is limited only by the imagination.

“Insurance companies will consider their options and take appropriate steps within the boundaries of California law.”

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Attachment: Letter of February 19, 2010

February 19, 2010

TO: The Honorable Steve Poizner
Insurance Commissioner

FROM: Brad Wenger, President, Association of California Life and Health Insurance
Companies
Sam Sorich, President, Association of California Insurance Companies
Rex Frazier, President, Personal Insurance Federation of California
Ken Gibson, Vice President, American Insurance Association
John Mangan, Vice President, American Council of Life Insurers

SUBJECT: List of Companies with Alleged Ties to Iran

We are writing on behalf of the Association of California Life and Health Insurance Companies, the American Council of Life Insurers, the Association of California Insurance Companies, the Personal Insurance Federation of California, and the American Insurance Association. Our associations represent a significant percentage of the insurance companies – both domiciled and non-domiciled – licensed to do business in California.

At the outset, let us say that we are not taking issue with your point that the present government of Iran poses a huge threat to the security of the United States and the world.

We have reviewed the documents issued by the Department of Insurance on February 10, 2010 regarding the Department's Iran-related investments initiative. These documents – your press release, the List of companies doing business in Iran, the letter to insurers and its attached Response Form – present a number of serious concerns. Any company compelled to be a signatory to the Response Form has fiduciary duties to its stakeholders to invest its resources in a manner that is prudent and yields acceptable returns. Before any company can consider the Department's initiative in a responsible manner and fully understand the ramifications of signing the Response Form, we believe it is imperative that the potential impact of the Iran-related initiative on insurers' investment duties and the following areas of concern be addressed and clarified:

- The procedure appears to recognize no distinction between insurers that are legally domiciled in another jurisdiction and insurers that are legally domiciled in California. Adjustments to statutory financial statements – including adjustments to statutory surplus – are the prerogative of the regulator of the jurisdiction in which the insurer is legally domiciled. As you know, California-licensed insurers that are domiciled in other jurisdictions prepare their annual statements according to the requirements of their domiciliary commissioner. Your action would appear to place the licensees that are legally domiciled elsewhere in direct conflict with their respective regulators. We would appreciate it if you would explain how you determined the Department's jurisdiction over non-domestic insurers' statutory financial statements. Moreover, the prerogative of domiciliary regulators is not only reflected in law in California and virtually every other state, it is also ensconced in the NAIC's Financial Regulation Standards and

Accreditation Program. How will the Department's action toward non-domiciled licensees reconcile with the NAIC's Accreditation Program?

- While you state that you have determined that companies on the List are subject to financial risk, the methodology used to make this determination is unclear. There are significant variables to consider regarding risk measures, including (1) the relative size of Listed companies and the percentage of business they each do in Iran and (2) the percentage of insurer investments in those companies relative to the insurer's total portfolio. We request clarification on the methodology used by your Department to determine financial risk. Furthermore, please advise if you considered the risk of investments in debt of the Listed companies, which we believe is the predominant investment held by insurers, as opposed to risk you determined exists in investments in shares of the Listed companies.
- The List includes several companies that are not currently identified by RiskMetrics Group (a consultant DOI did not use) as actively doing business in Iran (this according to the most recent CalPERS legislative report of December 31, 2009). We would appreciate an explanation of the methodology or analysis relied on by the Department to determine a given company's status of doing business in Iran, both currently and in the future.
- Your letter states that the Department in the future may revise the List by "making changes based on other risk-related considerations." In the absence of any stated criteria or process by which these decisions may be carried out, it will be difficult for member companies, as they continue to make day-to-day decisions in the course of business, to understand how and on what basis the Department will make decisions on future revisions. Any additional guidance you can provide on the Department's intent with regard to the criteria or process by which these decisions may be made for future revisions will be appreciated.
- Beyond those Listed companies, the Department intends to treat investments in affiliates that are owned 50% or more by Listed companies as non-admitted assets. Most of the Listed companies are large, complex organizations with constantly changing ownership positions in numerous affiliates. The Department has neither identified these affiliates, nor has the Department revealed any criteria or processes by which such affiliates will be identified and made known to the insurers. As with the risk-related considerations discussed above, we request that the Department provide guidance as to the criteria or processes by which affiliates of Listed companies will be identified and made known to the insurers.
- Your letter states that the Department will deny statement credit for the Listed investments, but the Department's approach fails to comply with significant procedural safeguards. The Department has announced a broad statement of law to all licensees with no explanation of its standards and no opportunity for licensees to be heard. Even assuming the Department could deny statement credit based upon its novel assertion of asymmetrical risk, it cannot do so using an underground regulation applicable to the entire industry with no due process.

The issues set forth in this letter are of great concern to our members who are attempting to determine how to most responsibly respond in good faith to your actions and requests. With this in mind, we look forward to receiving your responses to these issues and we respectfully request that you delay the March 12 deadline for returning the Response Form until such time as these questions and concerns are

addressed and resolved. As always, we are very willing to meet with you and your staff to discuss these concerns.

Thank you for your consideration of the above, and we look forward to hearing from you soon.